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Legal Protection for Indonesian Family-Owned Company Minority Shareholders: Comparative Study with Germany and Australia

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ABSTRACT

This paper examines the legal protections provided for Minority Shareholders in Family–Owned Company in Indonesia, Germany and Australia. It further examines whether the Company Law has provided a sufficient legal protection for Minority Shareholders in Indonesia Family – Owned Company after comparing with the equivalent regulation in Germany and Australia. Based on the juridical- normative research which uses statutory and comparative approach, it resulted that there are similarities and differences of Minority Shareholders protection provided by each country, in which the different protections are: (i) Rights on Equal Treatment; (ii) Rights to Appoint and Revoke Management; (iii) Restraint on Contravention; dan (iv) Rights to Information. This paper concludes that Indonesia has not provide a sufficient legal protection for Minority Shareholders compared to Germany and Australia due to the protections which have not yet been regulated under the Company Law while the protections will help provide a more certainty in protecting Minority Shareholders to obtain its rights in Family-Owned Company. Thus, this paper recommends that the unregulated protections shall be added to Company Law to ensure the rights of Minority Shareholders and to reduce oppressive act by Majority Shareholders in Family-Owned Company.

1. Introduction

A family business is generally defined as one where a family owns enough of the stake or equity to be able to exert control over strategy and is involved in top management positions.[1] A family business or a family company is a company where the family holds a larger part of casting a ballot shares, where an extent of the senior administration post are held by individuals from one family and where their youngsters are relied upon to stick to

1 Andrea Colli and Mary Rose, "Family Business," in *The Oxford Handbook of Business History*, ed. Geoffrey G. Jones and Jonathan Zeitlin (Oxford: Oxford University Press, 2008), 194.

this same pattern.[2] Another definition of a family business is a company which consists of two or more family members who control the finance matters in such company[3], or a company is classified as a family business if there are, in any event, two generations involved in and have impact on the organization arrangement.[4]

Studies have affirmed that family business is the most widely recognized type of business structure since it has advantages[5], among others, (i) it utilizes a huge number of individuals and produce a lot of the world's wealth;[6] (ii) it tends to have a strong vision, commitment and values from its founder or successor; (iii) it has a long-term view and concern for the sustainability of its business;[7] and (iv) it tends to have loyalty values, so they have a strong foundation for teamwork.[8] Despite having advantages, it has also disadvantages such as, (i) it tends to be narrow in their views and are quickly satisfied with certain achievements; (ii) a careless management by a family within the company may fall on complaints, result in bad business decisions, or may cause investors sell the company to other parties; (iii) it tends to be conflict-prone, and rather difficult to control; (iv) the possibility of going extremes due to incomplete conflicts in succession aspect such as anti-social and employing incompetent members.[9]

As a recognized business structure in Indonesia[10], the legal status of the business association becomes a further consideration. This is because the legal status may relate to the association of profit and loss in the future, or the choice of legal status may only be

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2 Stuart Rock, *Family Firms* (Cambridge: Cambridge, Published in association with the Institute of Directors by Director Books, 1991).

3 Craig E. Aronoff and John L. Ward, "Family-Owned Businesses: A Thing of the Past or a Model for the Future?," *Family Business Review* 8, No. 2 (June 21, 1995): p. 121–130, http://journals.sagepub.com/doi/10.1111/j.1741-6248.1995.00121.x.

4 Robert G. Donnelley, "The Family Business," *Family Business Review* 1, No. 4 (December 21, 1988): p. 427–445, http://journals.sagepub.com/doi/10.1111/j.1741-6248.1988.00427.x.

5 Colli and Rose, "Family Business," 194; See also: Panikkos Zata Poutziouris, Kosmas X. Smyrnios, and Sabine B. Klein, "Introduction: The Business of Researching Family Enterprises," in *Handbook of Research on Family Business*, ed. Panikkos Zata Poutziouris, Kosmas X. Smyrnios, and Sabine B. Klein (Cheltenham and Northampton: Edward Elgar Publishing with IFERA, 2006), p.1–10; and John A. Davis, "What Makes a Family Business Last?," *Harvard Business Review*, last modified 2020, accessed July 15, 2020, https://hbr.org/2020/02/what-makes-a-family-business-last#:~:text=Family firms tend to take,and build greater financial stability.

6 Yetty Komalasari Dewi, "In Search of Legal Foundation for Indonesian Family Firms," *Indonesia Law Review* 6, No. 2 (August 31, 2016): 247, http://ilrev.ui.ac.id/index.php/home/article/view/228.

7 Ondřej Machek and Petra Votavová, "Advantages and Disadvantages of Family Entrepreneurship and How to Prevent Distress : Evidence from the Czech Republic," *Mathematical Models and Computational Methods* (2015): 168.

8 Nyoman Marpa, *Perusahaan Keluarga: Suksesi Atau Mati* (Tangerang: Cergas Media, 2012), 26–27.

9 Marpa, *Perusahaan Keluarga: Suksesi Atau Mati*, 26–27; See also: Veland Ramadani and Frank Hoy, "Family Businesses in Transition Economies," in *Family Businesses in Transition Economies: Management, Succession and Internationalization*, ed. Léo-Paul Dana and Veland Ramadani (Cham: Springer International Publishing, 2015), 31–32, http://link.springer.com/10.1007/978-3-319-14209-8.

10 "Only 13% of Indonesian Family Businesses Survive until Third Generation: Deloitte," *The Jakarta Post*, last modified 2019, accessed April 6, 2020, https://www.thejakartapost.com/news/2019/12/06/only-13-of-indonesian-family-businesses-survive-until-third-generation-deloitte.html.

based on projects that require companies to use certain forms.[11] Company[12] is the most common form of business entity and most often used in National and International Economic movements.[13] Therefore, this research will only focus on family business in the form of Company, and will be refer to as "Family-Owned Company". [14]

Company is subject to the provisions stipulated in Law Number 40 Year 2007 concerning Limited Liability Company (**"Company Law"**), which define Company as:[15]

> *"...a legal entity constitutes a capital association, established based on an agreement, in order to conduct business activities with the Company's Authorized Capital divided into shares and which satisfies the requirements as stipulated in this Law, and its implementing regulations".*

Company is a legal entity which comprises of a capital association. Authorized capital of the Company consists of all nominal shares.[16] Shares[17] are owned by shareholders and issued on behalf of the owner.[18] Business wise, the main interest of shareholders as investors is arguably gaining profits. Shareholders with more shares (**"Majority Shareholder"**)[19] unquestionably anticipate more noteworthy benefits from the Company. The loss they get will be even much prominent if the Company suffers a loss. Along these lines, the Majority Shareholders tend to be more active in terms of participation in the Company's activities. On the other hand, the rights or interests of Minority Shareholders might be violated or neglected.

Those conflicts may benefit the interests of the family as the Majority Shareholder on one hand and ignore the interests and rights of the Minority Shareholders on the other hand (*conflict of interest*).[20] This situation resulted in the emergence of the Majority Rule Principle[21], where if it is applied primarily, a potential of abuse of power may arise causing

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11 Agus Sardjono et al., *Pengantar Hukum Dagang*, ed. Tri Subhi A. (Jakarta: RajaGrafindo Persada, 2014), 27.

12 Company is referred to as Limited Liability Company, which have the same meaning as Companies in United Kingdom, see: United Kingdom, *Companies Act 2006 (c 46), article 1 paragraph (1).* Furthermore, it also has the same meaning as Corporation in United States, see: John Armour, Henry Hansmann, and Reinier Kraakman, *What Is Corporate Law?*, The Essential Elements of Corporate Law (Oxford, 2009), 2–6.

13 John S. Hill, *World Business: Globalization, Analysis, and Strategy* (Mason: Thomson/South-Western, 2005), 17.

14 The term Family-Owned Company will be referred to as a family business in which uses Company as their legal form. Therefore, it is considered to be a legal entity.

15 Indonesia, *Undang-Undang Perseroan Terbatas, No, 40 Tahun 2007, LN 106 Tahun 2007, TLN 4756, Pasal 1 ayat (1).* [Indonesia, Limited Liability Company Law, No. 40 Year 2007, LN 106 Year 2007, TLN 4756, Article 1 paragraph (1)]

16 Binoto Nadapdap, *Hukum Perseroan Terbatas: Berdasarkan Undang-Undang Nomor 40 Tahun 2007* (Jakarta: Jala Permata Aksara, 2007), 80.

17 Pursuant to Bank Indonesia Board of Directors Decree No. 24/32/Kep/Dir, 12 August 1991, share is a certificate of ownership of a Company, whether it is traded on the capital market or not.

18 Nadapdap, *Hukum Perseroan Terbatas: Berdasarkan Undang-Undang Nomor 40 Tahun 2007*, 81.

19 Article 84 paragraph (1) of Company Law adheres the principle of one share one vote. Therefore, a person who possess more shares is considered as Majority Shareholder.

20 A.B. Susanto and Himawan Wijanarko, *The Jakarta Consulting Group on Family Business* (Jakarta: The Jakarta Consulting Group, 2007).

21 Majority Rule principle is a condition where Majority Shareholder is considered to be rule or policy maker, as well as the highest power is on the side that has more votes.

Minority Shareholders to be powerless in facing the authority of Majority Shareholders in a Family-Owned Company.

Conflicts in Family-Owned Company can be minimized by the existence of Good Corporate Governance, and adequate Good Family Governance as outlined in the Company's Code of Conduct.[22] Nonetheless it frequently does not provide a comprehensive Minority Shareholder protection, therefore it must follow the applicable law. Protection of Minority Shareholder in Indonesia Family-Owned Company is governed under the Company Law, as Indonesia does not provide any specific formal rules and regulations for it.[23] The forms of protections under the Company Law are: 1) The Right to Request that the Company to Repurchased Shares,[24] 2) The Right to Request a GMS,[25] 3) Derivative Action,[26] 4) The Right to Request an Inspection Towards the Company,[27] and 5) The Right to Propose a Dissolution of the Company.[28]

From the protection that has been given by Company Law, a thought arises as to whether the protections are sufficient for Minority Shareholders so that they feel protected. Therefore, it is necessary to compare with an equivalent regulation abroad, namely Germany[29] and Australia[30] to assess and evaluate how sufficient Company Law's protection after comparing and analyzing the protection of the two countries.

Family-Owned Company plays a much larger role in the German economy compared to other E.U. countries.[31] Ninety-one percent of all business association in Germany are family owned, generating 55% of total corporate revenue. [32] Germany provides Governance Code for Family Business (**"GK Family Business")** which provides guidelines for the responsible management of the family business as well as business-owner families.

Most common form of business association used in Germany is Company (*Gesellschaft mit beschränkter Haftung* – **"GmbH"**). GmbH is governed under German Limited Liability

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22 Interview with Mr. Nyoman Marpa: he stated that Good Corporate Governance and Good Family Governance are the main key to conduct business with family. By having an adequate implementation, it will reach a prosper cohesiveness which leads to a minimum conflict. Good Family Governance arises from family values that have traditionally been taught and implemented when doing business.

23 Interview with Mr. Bamunas Boediman: he stated that with no formal regulations given by Indonesia for Family-Owned Company, therefore his Family-Owned Company will comply to Company Law, specifically following the rules that apply to the Minority Shareholders.

24 See article 62 of Company Law

25 See article 79 paragraph (2) of Company Law

26 See article 114 paragraph (6) of Company Law

27 See article 138 paragraph (3) of Company Law

28 See article 144 paragraph (1) of Company Law

29 The particular reason to compare with Germany is because it is a civil law country, which is similar to Indonesia. Furthermore, the number of Family-Owned Company is very high and it is provided by a governance code by Germany Government.

30 Australia is a common law country therefore this becomes a significant comparison with Indonesia which adheres to civil law. The number of family businesses in Australia is also very high and the involvement of private agencies towards family companies also exists.

31 Anja Müller, "Study: Family-Owned Companies Most Important Employers in Germany," *Handelsblatt Today*, last modified 2017, accessed April 30, 2020, https://www.handelsblatt.com/english/companies/handelsblatt-exclusive-study-family-owned-companies-most-important-employers-in-germany/23567808.html?ticket=ST-12148031-avdcHjeH4t0MXtqZcPCP-ap5.

32 Ibid.

Companies Act (*GmbH-Gesetz* – **"GmbHG"**), therefore the regulation towards the protection of Minority Shareholder is included. GmbHG is a Private Limited Company, whereas Stock Corporation (*Aktiengesellschaft* – **"AG"**) is the Public Limited Company. Germany divides the regulation of their Public and Private Limited Company, which resulted that AG is govern under The Stock Companies Act (*Aktiengesetz* – **"Aktg"**).

Since Germany does not govern family business through a specific law or regulation, therefore Germany Family-Owned Company will subject to GmbHG and AktG. This means the protection of Minority Shareholder given under GmbHG and AktG is applicable to Family-Owned Company. The protections provided include:[33] 1) Right on Equal Treatment, 2) Right to Convene Shareholders Meeting and to Vote[34], 3) Right to Information[35], 4) Rights to Appoint and Revoke Management, and 5) Rights to Request a Special Audit.

Furthermore, family business is also known and widely used in Australia reaching the number of 70%.[36] In Australia, a Company by the name of Family Business Australia (**"FBA"**) provides access to educate and train families in specific and general business development and generates opportunities for families in business to learn and grow by networking and sharing with their peers.[37]

Australia uses the term of Corporation, which is govern under Corporations Act (*Cth*) 2001 (**"Corporations Act"**). In Common Law countries such as Australia, the concept of Majority Rule has existed and has been the basis and principle for the development of corporate law for many years[38]. Historically, the concept of Majority Rule arose from the case of *Foss V Harbottle (1843) 67 ER 189* which made the precedent or jurisprudence of the Majority Rule constitute the main policy maker at the General Meeting of Shareholders (**"GMS"**) in the Company.[39] This matter results in exploitative and detrimental, as well as oppressive actions towards Minority Shareholders (**"Shareholders Oppressions"**).[40]

Since there are no specific laws and regulation for Family-Owned Company, Australia Family-Owned Company will be subject to the Corporation Act. With respect to the protection of Minority Shareholders, Australia also classifies Shareholders Oppressions as

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33 Jan Henning Martens, *Rights of Minority Shareholders Commission in Charge of the Session: International Business Law Commission London, 2015 (National Report of Germany)* (London, 2015).

34 German, "Limited Liability Company Act, *GmbHG", Federal Law Gazette III, Index No. 4123-1 as last amended by Article 10 of the Act of 17 July 2017 (Federal Law Gazette I p. 2446), Sec. 50*

35 German, *GmbHG*, Sec. 51(a)

36 Family Business Australia, *KPMG and Family Business Australia Survey of Family Businesses 2009* (Australia: KPMG and Family Business Australia, 2009), https://www.familybusiness.org.au/documents/item/1815.

37 "What We Do," *Family Business Australia*, accessed April 30, 2020, https://www.familybusiness.org.au/about-us/what-program. FBA is an Australian Company which help family to assist and confide their Family Business, as well as to facilitate and engage resources and channels that promote success and foster sustainability. FBA assist family business individuals, their advisers, directors and employees create a sustainable and professional family business.

38 Amir Husnan, *Saham Sebagai Surat Berharga* (Jakarta: Pena Sahabat, 2002).

39 George Williams, "Cooperative Federalism and the Revival of the Corporations Law: Wakim and Beyond," *Company and Securities Law Journal* 20 (2002): 160, https://apo.org.au/node/5478.

40 John Farrar and Laurence Boulle, "Minority Shareholder Remedies - Shifting Dispute Resolution Paradigms," *Bond Law Review* 13 (2001): 2.

actions that are unfair, oppressive and unnatural.[41] The protection for Minority Shareholder provided under the Corporation Act are: 1) Statutory Derivative Action[42], 2) Requesting Order to Court of Oppressive Conduct of Affairs[43], 3) Right to Inspect Books[44], 4) Winding Up Request[45], 5) Injunctions to Restrain Contravention.[46]

The above topic arises from Universitas Indonesia literature namely "In Search of Legal Foundation for Indonesian Family Firms" journal written by Yetty Komalasari Dewi and "Kedudukan Rapat Umum Pemegang Saham dan Perlindungan Hukum Bagi Pemegang Saham Minoritas dalam Suatu Perseroan Terbatas" written by Indra Gunawan. To date, the topic of shareholders protection in Family-Owned Company are yet to be written and therefore this paper may exist as the pioneer for further family-owned company minority shareholders research in the next generation.

In light of the above topic, the lack of Indonesian shareholders protection can be seen based on the comparison of Australian and Germany Family-Owned Company protection. Therefore, this paper will enhance the probable protections to be set out in Indonesian Company Law by assessing protections in Germany and Australia.

2. Method

This study applies a juridical normative method by analyzing data through comparative approach and qualitative approach. Comparative approach will enhance to compare the legal protection for Minority Shareholders in Family-Owned Company in Indonesia, German and Australia. Further, qualitative approach will be used to analyze the data to describe and link information related to the legal protection of Minority Shareholders in Indonesia, mainly in Family-Owned Company sector to be compared with Germany and Australian Family-Owned Company relevant laws and regulations as applicable in each country.

3. Minority Shareholders Legal Protection in Indonesia, Germany and Australia Family-Owned Company

3.1. Indonesia family-owned company minority shareholder protection

In light of the above, Indonesia laws and regulations is silent on the differentiation of family business and general business (i.e., in this case, a Company). Further, with the existence of Law No.11 of 2021 on Job Creation (Law 11 of 2021) in which governs Individual Entity (locally known as *PT Perorangan*), the protection set out below will also

41 Ibid.
42 Australia, *Corporations Act 2001*, No. 50 2001. Section 236
43 See Sec. 232 Corporation Act
44 See Sec. 247 Corporation Act
45 See Sec. 461 Corporation Act
46 See Sec. 1324 Corporation Act

be applicable to it. However, this paper focuses only on Private Entity (locally known as *PT Persekutuan Modal*) which are commonly used by Family Businesses in Indonesia.

3.1.1. Provisions regarding the Purchase of Shareholders' Shares[47]

Shareholders have the right to ask the company to buy its shares in fair price if such shareholders disagree with the company's corporate decision/action. However, this protection must fulfil the element which includes: (a) Changes in AoA, (b) Transfer or Assurance of Company Assets with a value of more than 50% or (c) the Company has experienced mergers, consolidations, acquisitions, and separations.

Further, in case the shares requested to be purchased as referred to in article 61 paragraph (1) exceed the limit of the share repurchase provisions by the Company as referred to in Article 37 paragraph (1) letter b, the Company is obliged to make the remaining shares purchased by third party.

3.1.2. Right to Request a GMS[48]

Shareholder or a collective shareholder whom represent 1/10 of total share may request to conduct a GMS. In the event that Minority Shareholder who would request an important GMS must apply a request to the BoD in a registered letter containing the reasons for holding the GMS. After the request has been sent, BoD is obligate to give notice for the GMS to be held within 15 days after the request it received.[49] If a certain circumstance the BoD failed realize the GMS, therefore the request shall be notified to the BoC and will be held within 15 days after the request is received.[50] Furthermore, Minority Shareholder may also request the District Court to give them permission to conduct GMS if both BoD and BoC failed to call the GMS. [51]

3.1.3. Derivative Action[52]

Shareholders are eligible to file a lawsuit with the aim of protecting their rights and interests. The lawsuit is made based on the Policies or Decisions of each of the Company's organs which are considered to be unfair and without reasonable reasons, therefore detriment to the Shareholders. The lawsuit shall be submitted to the District Court within the Company's domicile. The object of the lawsuit is shareholders standing is against a Decision (as a claim object) that is unfairly unfair, unreasonable and without clear reasons. Company Law provides the legal basis for Minority Shareholders to file a lawsuit on behalf of the Company through the local District Court against the Board of Directors and Board of Commissioners due to their negligence which has caused losses to the Company.[53] The

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47 See article 62 of Company Law
48 See article 79 paragraph (2) of Company Law.
49 See article 79 paragraph (5) – (6) Company Law
50 Ibid, paragraph (7)
51 See article 80 Company Law. With note, the reason to conduct a GMS must be specific and detail to reduce the possibility of misunderstanding.
52 See article 61 paragraph (1) of Company Law
53 Minority Shareholders within this article refer to as Shareholders with at least 1/10 of the total shares owned (with voting rights). See article 97 paragraph (6) and article 114 paragraph (6) for ease reference.

object of the lawsuit is a form of error or negligence committed by the BoD and/or BoC and such error or negligence can and/or cause a loss to the Shareholders. Therefore, in concern that the object of the law is based on tort resulting from error/negligence, such proof must contain the elements as set out under Article 1365 - 1366 Civil Law.[54]

3.1.4. Provision to conduct an inspection towards the Company[55]

Shareholders may request for a due diligence which was based on an allegation that the Company has carried out tort which is detrimental to the Shareholders or Third Parties. Company Law opens the possibility for the shareholders to conduct such due diligence by way of allegation on tort committed by the BoD/BoC and/or the Company, which may be detrimental to the Shareholders or Third Parties.[56]

3.1.5. Request to Dissolve the Company[57]

Shareholders may request the company to be dissolve based on the resolution of the GMS submitted by the Board of Directors, the Board of Commissioners, one or jointly with a Minority Shareholder who has a stake of 10% may submit a proposal to dissolve the Company. Therefore, the Company Law provides protection for Minority Shareholders in the right to file this. To approve the dissolution of the Company, the GMS must be held if at least 3/4 (three quarters) of the total number of shares with voting rights is present or represented at the GMS, and the decision is valid if agreed at least 3/4 (three quarters) of the total votes issued legally at the GMS.[58]

3.2. German family-owned company minority shareholder protection

Similar to Indonesia, Germany laws and regulations are silent on regulations for Family-Owned Company. Further, the protection for Minority Shareholders provided by GmbHG and AG are as set out below:

3.2.1. Right on Equal Treatment[59]

General protection given to Minority Shareholders is right on equal treatment (*Gleichbehandlungsgrundsatz).* As a fundamental rights, this right is applicable to all types of German Corporation. This right enhances the right on equal treatment requires a shareholder may not be treated differently, and the Company may request all shareholders to pay additional contribution in order for the profit to be distributed in equal shares. The

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54 Rosa Agustina, *Perbuatan Melawan Hukum* (Jakarta: Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2003), 44.

55 Right to Inspect the Company by Shareholders is governing under article 138 – 141 of Company Law. Each article governs different type of reasons by the Shareholders who initiate to inspect the Company within the reasons stipulated by law. Please see article 138 – 141 of Company Law for ease reference.

56 Both letter (a) and (b) of Article 138 paragraph 1 have the intention to receive data or information from Company's internal

57 See article 144 paragraph (1) of Company Law

58 Yahya Harahap, *Hukum Perseroan Terbatas* (Jakarta: Sinar Grafika, 2016), 547.

59 Jan Henning Martens, *Rights of Minority Shareholders Commission in Charge of the Session: International Business Law Commission London, 2015 (National Report of Germany)*, 3.

example of right on equal treatment is all shareholders may participate in capital increases, however, shareholders may waive its rights granted under this principle

3.2.2. Right to Convene for Shareholders Meeting and to Vote

In GmbH, Shareholders have the right to request a shareholders meeting, therefore a certain Minority Shareholders may convene for a shareholder meeting as well. All shareholders may exercise their voting rights, and it is not permitted to irrevocably waive such right or to transfer the same to other parties.[60] Shareholders with a shareholding of at least 10% of the issued capital have the right to demand for a shareholders meeting, and possibly amend the agenda. Shareholders shall request the meeting from the management, by attaching the needs or purpose of the meeting as well as the grounds to consider such meeting is necessary. If the purpose and grounds is considered valid, therefore shareholders shall call the meeting themselves. These particular rights may exercise on every event the management refuse or avoids calling for meeting or does not react to request in a "timely manner".[61]

In AG, a similar action as GmbH can give Minority Shareholder opportunity to call for a Stockholders Meeting, however a slight difference exists in AG which a condition when a Minority Shareholder would request a certain information, the law opens the possibility for them to call for the Stockholders Meeting. Section 122 paragraph (1) AktG provides Minority Shareholder with at least 5% of the capital stock with this particular right. Further, Minority Shareholders who owns 5% of the capital stock or at least shares in the nominal value of 500,000 EUR may request amendments of the meeting agenda within 24 days before the meeting takes place (30 days for a listed Company).[62] If in condition where the board does not call for a stockholders meeting, Minority Shareholders are entitled to seek a court order to authorize them to call the meeting. With note, Minority Shareholders may not call for a meeting themselves.[63]

3.2.3. Right to Information

In GmbH, Shareholders have the right to access any information, however these rights shall be an effective protection towards the Minority Shareholder. Each shareholder may request any information concerning the business matters from the managing director such as: review of books and documents of the Company, contracts, information about profit and losses, financial liabilities, as well as the existence and terms of guarantees and securities.[64] Right of information is applicable any time, however Company's AoA may put an article which allows shareholder to request a written form and other formalities even though it does not require shareholders resolution to exercise this right. Pursuant to Sec. 51a paragraph 2 *GmbHG*, management may only hold information if only the concern information is reasonably deemed to serve a purpose outside the scope of the Company

60 Ibid.
61 Ibid. German Law does not determine the "timely manner", however any time limit within this right shall be determine on case-by-case basis and urgencies of the meeting may determine the time limit.
62 Ibid., 4.
63 Ibid.
64 Ibid.

and may bear a substantial risk for the Company which cause disadvantage if it is misused. The refusal of the management has to be approved by shareholders resolution which may be adopted with a simple Majority.[65] However, the requesting shareholder has no voting rights unless permitted in the AoA.[66] In terms of accounting method and evaluation, Company is not obligated to give information to the stockholders as long as the annual statement of accounts sufficiently demonstrates the financial and profitability of the Company. In addition, each shareholder may speak at the shareholders' meeting, but the chairman may restrict their time without allowing differences between the speakers, which is based on the right on equal treatment.[67]

3.2.4. Appointment and Revocation of the Management

The 'right of appointment' gives the Minority Shareholder the right to appoint the managing director directly himself without the need for a shareholders' resolution.[68] Each shareholder may request to revoke a managing director through shareholders resolution at any time, and shareholders may request the court to appoint managing director if any means they are not able to appoint a person by themselves.[69] Shareholders shall be entitled to delegate or appoint someone to the management (in this case, rights of equal treatment applies), but there are no regulation stating that each shareholder obligate to represent in the management.[70]

Supervisory Board have the right to appoint the Management Board but there are no special rights for the Minority Stockholder to be represented in the Supervisory Board[71]. Therefore, the protection given by law is that they may request the Stakeholders Meeting to revoke a member of the Supervisory Board for good cause. Stockholders shall be entitled by the AoA to delegate/appoint a person to the Supervisory Board (to ensure the rights of equal treatment is applicable). In any case, the right of delegates is limited to one third of all board mandates to ensure that the Company is not controlled by persons without corresponding shareholdings.[72] Furthermore, stockholders may request that the court appoints one or more members of the Supervisory Board if only it does not have any sufficient members.[73] Stockholders of listed Companies may approve the remuneration of the Management Board, but the approval must have no legal effect and may not be challenged.

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65 Ibid.
66 See Sec. 47 para 4 GmbHG
67 Ibid, para (2)
68 Martin Schulz and Oliver Wasmeier, *The Law of Business Organizations: A Concise Overview of German Corporate Law* (Berlin, Heidelberg: Springer International Publishing, 2012), 111.
69 Sec. 29 of German Civil Code (**"BGB"**): To the extent that the board is lacking the necessary members, they are to be appointed, in urgent cases, for the period until the defect is corrected, on the application of a person concerned, by the local court that keeps the register of associations for the district in which the association has its seat.
70 Jan Henning Martens, *Rights of Minority Shareholders Commission in Charge of the Session: International Business Law Commission London, 2015 (National Report of Germany)*, 6.
71 Ibid.
72 See Sec. 101 para (2) point 4 AktG
73 See Sec. 104 AktG

3.2.5. Special Audit[74]

Another protection of Minority Shareholders is the right of the shareholders meeting to request a special audit of the management. Pursuant to Section 46 point 6, shareholders duties include the regulation of audits and oversight of the management. The special auditor appointed by the Company may examine the business and in particular the management. Auditor is allowed to inquire with the employees as well as reviewing documents. By the end of the finalization of its audit, auditor shall report its result to the shareholders meeting. In AG, each stockholder with a shareholding of more than 1 % of shares or shares in the amount of 100,000 EUR or more may request such special audit in case the Stockholders Meeting voted against the special audit, provided that he can demonstrate his suspicion of damages to the Company.[75]

3.3. Australia family-owned company minority shareholder protection

Shareholder's protections are inseparable from Minority Shareholders as per regulated under Corporation Act. The protection given have the aim to protect shareholders if any event of Shareholders Oppression occurred. Oppressive have an understanding as a willful or careless imposition of pressure, or unfair dealing or tactics of a reasonably serious kind.[76] Some courts have stretched the meaning of the word, anxious to relieve beleaguered shareholders but most attempts at definition suggest fairly serious misbehavior is required, short despite of fraud and illegality.[77]

3.3.1. Statutory Derivative Action

The procedure for bringing statutory derivative actions is set out in Part 2F.1A in Sections 236 to 242 of the Corporations Act. Derivative action is an action brought by a shareholder or director of a Company in the name and on behalf of that Company.[78] Such an action is 'derivative' in the sense that the right to sue belongs not to the party actually bringing the action but is 'derived' from that of the Company.[79] Applicants as defined in Section 236 paragraph (1) point (a) must first apply to the Court for leave 'to bring or intervene in proceedings on behalf of a Company. The action is derivative because the applicant relies on a cause of action belonging to the Company rather than a personal cause of action.[80] The Court must grant the leave application if it is satisfied of the criteria set out in s 237(2) (a)

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74 Jan Henning Martens, *Rights of Minority Shareholders Commission in Charge of the Session: International Business Law Commission London, 2015 (National Report of Germany)*, 10.

75 See Sec. 142 para (2) AktG

76 J. F. Corkery, "Oppression or Unfairness by Controllers - What Can a Shareholder Do About It? An Analysis of S 320 of the Companies Code," *Adelaide Law Review* 9, No. 4 (1985): 444.

77 Ibid.

78 Matthew Berkahn, "The Derivative Action in Australia and New Zealand: Will the Statutory Provisions Improve Shareholders Enforcement Rights?," *The Bond Law Review* 10 (1998): p. 5.

79 Ibid.

80 Nance Frawley, "The Cost of Bringing a Statutory Derivative Action in Australia-Is It Time to Reconsider the Terms of Section 242 of the Corporations Act 2001?," in *2007 Corporate Law Teachers Conference*, 2007, 1.

to (e) (the leave criteria).[81] The Court may make any order it considers appropriate regarding the costs of the application and the derivative action.[82]

The prevalent disposition of the courts around then towards shareholders' right was that the 'best interests of the Company' (as dictated by the wishes of the majority) ought to essentially beat the interests of any individual shareholders, consequently adequately isolating the procedure by which choices were produced using the issue of the dynamic ability of the majority, including a consideration of the nature and impact of the inquiries which were decided on.[83] Section 232 – 234 Corporation Act opens the opportunity to file a lawsuit or petition to the court for an investment and civil court process as a form of legal protection for individual Shareholders. In addition, the protection provided to shareholders or members of the Company as a whole is also provided through the mechanism of remedies.[84]

3.3.2. Requesting Order to Court of Oppressive Conduct[85]

Pursuant to the regulation of derivative action, specifically in Section 232 Corporation Act provides members with remedies if the Company's action may somehow be contrary with the interest of the members as a whole, oppressive, unfairly prejudicial or unfairly discriminatory. Which then this situation affects members within their capacity as members or in any other capacity. Further stated in Section 234 sets the eligible applicants whom able to apply for a court order under Section 232, which are:

a. Member of the Company[86]
b. A person removed from the register of members for a selective reduction[87]
c. Past members if the application relates to the circumstances in which they ceased to be a member[88]
d. A person to whom a share in the Company has been transmitted by will or by operation of law[89]
e. A person whom ASIC thinks appropriate having regard to investigations it is conducting, or has conducted into the Company's affair or matters connected with the Company's affair.[90]

Company's affair is the main element in order to conduct this action. Company's affair is breakdown as the conduct of the directors, Majority Shareholders and the Company itself

81 Ibid., 2.
82 See Sec. 242 Corporation Act
83 Berkahn, "The Derivative Action in Australia and New Zealand: Will the Statutory Provisions Improve ShareholdersEnforcement Rights?," 6.
84 Phillip Lipton and Abe Herzberg, *Understanding Company Law 16th Edition* (Rozelle DC: Thomson Reuters, 2012), 509.
85 Ibid., 612.
86 See Sec. 234 (a) Corporation Act. with note that the application may also relate to an act or omission that is against another member in their capacity as a member
87 See Sec. 234 (b) Corporation Act
88 See Sec. 234 (c) Corporation Act
89 See Sec. 234 (d) Corporation Act
90 See Sec. 234 (e) Corporation Act

which contrary to the interests of members. Further define in Section 53 Corporation Act, Company's affair also includes:

> *"…Promotion, formation, membership, control, business, trading, transaction and dealings, property, liabilities, profits and the income, receipts, losses, outgoings and expenditure; The internal management and proceedings; Power of person to exercise, or to control the exercise of, the rights to vote attached to shares in the body corporate or to dispose of, or to exercise control over the disposal of shares."*

3.3.3. Right to Inspect Books[91]

Generally, the main purpose of this right is to strengthen the hand of shareholders whose right are limited. This right to inspect books [92]raise two distinct consideration which are: enhances the ability of shareholders to hold directors accountable because it gives them the means to enforce members remedies through access to Company information and records; this right could infringe the legitimate interest of a Company to prevent confidential or sensitive information becoming accessible to unsatisfied shareholders.

Pursuant to Section 247D Corporation Act, it explains that directors or the Company by resolution passed at a general meeting may authorize a member to inspect the book of the Company. Not only in Section 247D, Section 247A is an expanded regulation given by Australia to gain access for the members to the books of the Company. A member is able to apply to the court for an order authorizing the member or another person to inspect the books. The court will only make such an order if only it is satisfied that the member is acting in a good faith and the inspection is to be made for a proper purpose. Other than that, a court may also authorize a person other than members to inspect the books on behalf of the member, therefore this enables member to seek an order authorizing a solicitor[93], auditor or other appropriate person to obtain certain information to assist the member in the conduct of litigation.

3.3.4. Winding Up Request

Section 461 paragraph (1) opens the possibility for court to wind up a Company, which further classified into several reasons to wind up. Point (e) of this Section permits the court to wind up the Company when the directors have acted in the affairs of the Company in their own interest, rather than in the interests of the member as a whole, or in any other manner that appears to be unfair or unjust to other members; point (f) and (g) permits the court to wind up a Company where the grounds set out in Sec. 232 are established; and point (k) permits the court to wind up a Company where it is of the opinion that it is just and equitable to do so.

Section 461 paragraph (1) point (e) further interpret a condition where directors act unanimously, or majority of the directors act in their own interest or in the interest of one

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91 Lipton and Herzberg, *Understanding Company Law 16th Edition*, 638.

92 "Books" in right to inspect books refer to as financial reports, financial records and other relevant documents.

93 Solicitor means an Australian legal practitioner whose Australian practicing certificate is not subject to a condition that the holder is authorized to engage in legal practice as or in the manner of a barrister only;

or more of them.[94] Further, it may also apply if a condition where a single director persuade others to act based on their personal interest.[95] Section 461 paragraph (1) point (f) and (g) is self-explanatory, the main element is the clear grounds for this protection is Sec. 232 is fully established. Lastly, for point Section 461 paragraph (1) point (k), the grounds has been interpreted broadly so as to give the court a wide discretion to winds up a Company and has often been used as a means of resolving a situation where Minority Shareholders have been harshly treated by the controllers of the Company.[96] Some circumstances which opens a possibility to wind up under this point is: breakdown in the mutual trust and confidence of members; public interest that the Company wound up; deadlock; fraud, misconduct, or oppression in the conduct and management of the Company's affairs; or failure of substratum.[97]

3.3.5. Restrain on Contravention

In section 1324, the Corporation Act provides a mechanism to prevent the Company or the directors of the Company from continuing actions that could harm the Company, so that before or during the lawsuit process, the court can: grant the request that the Company expects certain actions or policies or as a whole as long as the lawsuit against the Company is in progress.[98]. In the case of granting the application with the stipulation[99], the court can determine the existence of compensation to others in accordance with the provisions of article 1324 paragraph (10).

This section empowers the court to grant an injunction restraining a person from engaging in conduct that constituted, constitutes or would constitute: a contravention of the Corporate Act; attempting to contravene Corporate Act; aiding, abetting, counselling or procuring a person to contravene this Law; inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Law; being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Law; or conspiring with others to contravene this Law. [100]

Based on the above comparative explanation it can be understood that there are similarities and differential between Indonesia compared to Germany and Australia. The similarities are: (i) all of those countries do not regulate Family-Owned Company in a specific law or regulation, therefore, the protection provided for Minority Shareholder will comply to what is given by each Company Law, and (ii) the similar legal protection includes: the right to attend and vote at a GMS, the right to file a lawsuit, the right to repurchase shares, rights to inspect the Company, and winding up request. Whereas, the differences are: (i) Germany and Australia have provide a different approach towards its Family-Owned Company by GK Governance Code and FBA,[101] and (ii) the protection that

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94 Lipton and Herzberg, *Understanding Company Law 16th Edition*, 633.
95 Ibid.
96 Ibid., 634.
97 Ibid., 634–635.
98 See Sec. 1324 para (4) Corporate Act
99 Ibid, para (1)
100 *Australia,* Section 1324, breakdown into points of each classification of this protection of Shareholders.
101 The existence of GK Governance Code and FBA makes it easier for Family-Owned Company to build, run, consult, get direction and education for family members so that the business can achieve their respective

have not yet been regulated in Indonesia include: Rights on equal treatment, rights to appoint and revoke management, restrain on contravention and rights to information. Based on the comparison, the previous protection which has not been regulated in Indonesia can be added to provide more sufficient protection for Minority Shareholders, especially in the Family-Owned Company.

3.4. Additional legal protection for company law compared with Germany and Australia

This section sets out the proposed additional legal protection for Company Law ("**Proposed Legal Protection"**), as per the applicable Minority Shareholder protection regulation under Germany and Australia laws and regulations.

3.4.1. Rights on Equal Treatment

Equal treatment may be classified as a general statutory provision in German Corporate Law. It is considered as an incentive strategy which effectively binds Majority Shareholders to act in the interests of shareholders as a class which include the interests of Minority Shareholders.[102] Germany tend to be the influencer of this right towards other civil law jurisdiction which enhance others to see equal treatment as a fundamental principle in governing all aspects of corporate law.[103] The term "equalities" shall be differentiate into two: on one hand, the general criterion of equality regarding rights and duties attributed to shareholders by the AoA and by the law and, on the other hand, equal treatment of shareholders facing Company's decisions on the basis of the general criterion of equality.[104]

Germany provides this right in Section 53a of AktG. The equal treatment of shareholders *vis - á - vis* the Company is a limit to the forces of Company's bodies so the violation can cause cancellation of company decisions or to sue directors for damage.[105] It put forward that shareholder shall not be arbitrarily subject to an unequal treatment either by the Company as well as other shareholders unless any consent given by them to conduct such unequal treatment.[106]

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goals. That way, it can be seen that the awareness of government and private agencies in Indonesia is still less than Germany and Australia despite the number of family businesses in Indonesia is very towering. This can be a reference for the government to pay more attention to Family-Owned Companies, which statistically make a large contribution to the country's economy.

[102] Reinier Kraakman et al., *The Anatomy of Corporate Law* (Oxford: Oxford University Press, 2017), 86, https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780198739630.001.0001/acprof-9780198739630.

[103] Ibid., 87.

[104] Federico M. Mucciarelli, "Equal Treatment of Shareholders and European Union Law Case Note on the Decision 'Audiolux' of the European Court of Justice," *European Company and Financial Law Review* 7, No. 1 (January 2010): 162, https://www.degruyter.com/document/doi/10.1515/ecfr.2010.158/html.

[105] D A Verse, *Der Gleichbehandlungsgrundsatz Im Recht Der Kapitalgesellschaften*, Jus Privatum (Tübingen: Mohr Siebeck, 2006), 8; cited from Mucciarelli, "Equal Treatment of Shareholders and European Union Law Case Note on the Decision 'Audiolux' of the European Court of Justice," 163.

[106] Bernd Rüster, *Business Transactions in Germany*, Business transactions in Germany (Munich, New York: M. Bender, 1983).

This standard doesn't avoid the making of privileged rights, extraordinary rights to consent or approval and preferential shares. In these cases, the shareholders may consent with the non-equivalent treatment of themselves in the AoA.[107] This obviously decreases the significance of the principle from Minority Shareholder protection perspective since the desire of Majority Shareholder which will be incorporated into the AoA, however, equal treatment gives ground to the Minority Shareholder to object certain choice of Majority shareholder or BoD/BoC in favor or harm certain parties of the Company.[108]

In Indonesia, similar rights are not regulated anywhere even though these simple rights can have a large effect towards Minority Shareholders. Such benefit of this right will balance out the principle of majority rule together with the more detailed minority protection provisions in Company Law. Furthermore, with the existence of this right, shareholders may not be treated differently in case of equal rights or obligations. In relate to Family-Owned Company, equal treatment may apply in a form as each member must earn equally.[109] A good corporate governance in Family-Owned Company, shall put in place the parameters by which various categories of shareholders within the Company are treated (e.g., voting rights, method to exercise rights, attendance at GMS).[110] In Family-Owned Company, the value of equality is easier to obtain because in running its business, it still has family relationships. However, in the absence of regulations on equal treatment in Indonesia through Company Law, it would be better if the regulations became statutory as in Germany which would better ensure equality in each Company.

3.4.2. Rights to Appoint and Revoke Management

A similar right given by Germany is that appointing and revocation of BoD or BoC shall be conducted through a GMS resolution.[111] However, in this particular right, Germany permit shareholder to appoint directors without any consent of the resolution.[112] With note that this particular right must be stated in the Company AoA. This right can be exercise if the Minority Shareholder does not wish to become managing director herself/himself but would like to exercise contribution on the person chosen as managing director.[113] To add, Germany also permits the additional right of nomination[114] to ensure the exercise of this right. Furthermore, Shareholder who propose to appoint a certain individual shall be responsible for the removal of the person elected by her/him, unless an important reason

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[107] Daniel Szentkuti, *Minority Shareholder Protection: Germany, France, and the United Kingdom: A Comparative Overview* (Germany: VDM Verlag Dr. Müller, 2008), 19.

[108] Ibid.

[109] Peter Leach, *Family Enterprises: The Essentials* (Great Britain: Profile Books Ltd., 2015).

[110] Saleh Hussain, *Corporate Governance in Family Owned Businesses: Importance of Constitution and Governance* (Ebookit.com, 2017), https://books.google.co.id/books?id=JQXIDgAAQBAJ.

[111] Meaning any appointment or revocation of Board of Directors and/or Board of Commissioner shall be discussed through GMS, following the valid reason concerning the appointment or revocation of Board of Directors and/or Board of Commissioners. (See article 94 Company Law and Sec. 30 AktG and

[112] Schulz and Wasmeier, *The Law of Business Organizations: A Concise Overview of German Corporate Law*, 111.

[113] Ibid.

[114] Right of nomination is a condition where Minority Shareholder is given a binding right to propose a managing director. The appointment of the managing director will be conducted in the GMS through shareholders' resolution and other shareholders are require voting the person nominated.

within the meaning of Sec. 38 para 2 GmbHG [115] exists to warrant the removal from office of this managing director.[116]

This paper view that such rights to appointment can be said to be risky rights because they can be misused by irresponsible parties. On the other hand, rights to nomination can help Minority Shareholders because they are allowed to appoint suitable candidates to be appointed as managing directors. Moreover, Minority Shareholders can appoint professionals who will prioritize the Company's interests over the others so that the progress of the family company is mutually beneficial to all parties. In addition, the rights of nomination are also considered fairer because there must be approval from all shareholders, while the rights of appointment do not require a decision from GMS. To conclude, rights of nominations and appointments can be an additional method for Company Law in order to protect Minority Shareholders, however, it would be better if there are other provisions that can limit the rights of appointment so that the rights are not abused/used arbitrarily by the less responsible party.

3.4.3. Injunction to Restraint on Contravention

This right is given by the Corporation Act under Sec. 1324. The main purpose is to empowers the court to grant an injunction to restraint a person engaging a:[117] contravention or attempting to; or aiding, abetting, counselling or procuring a person to contravene; or inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene; or being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person; or conspiring with others to contravene Corporation Act. The court may provide a court order with the provisions considered necessary by the Court, to detain the individual named for an activity above, to complete the activity and, if in the Court's assessment, wanted to do as such, necessitates that individual to make a move or anything.[118] Applications for requests can be proceeded without having the prompt effect or unique injury to the applicant. The main thing that must be proven is that the undertaking disregards the interests of shareholders or individuals.[119]

This right can help Minority Shareholders if they experience an oppressive act from the Company or other individuals (BoD or BoC). In other words, if a Minority Shareholder feels that an action is included in Sec. 1324 Corporation Act, and can prove the action, then the individual can be asked to be detained by the court. This right can be implemented in Indonesia Family-Owned Company because through this right, Minority Shareholders can submit proposals if there are oppressive actions taken which then result in losses.

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[115] AoA may restrict the permissibility of the revocation to cases in which there are important grounds exist. Such example of acceptable reason for revocation is serious breach of duty or the incapacity for proper management.

[116] Schulz and Wasmeier, *The Law of Business Organizations: A Concise Overview of German Corporate Law*, 111.

[117] *Australia, Corporation Act,* Sec. 1324 para (1)

[118] Agus Ariyanto, "Protection of Minority Shareholders in Australia," *Bina Nusantara University*, last modified 2016, accessed June 26, 2020, https://business-law.binus.ac.id/2016/10/18/protection-of-minority-shareholders-in-australia/.

[119] Ibid.

Company Law should also determine the actions conducted in order to provide circumscription whether Minority Shareholder could exercise this right or not. Hence, if they can prove the concern action, Minority Shareholders can submit the evidence to the court to give a court order to examine or detain the person. Therefore, that oppressive actions will be minimized, and Minority Shareholders will be more protected in their presence in a Company.

3.4.4. Rights to Information

Rights to information gives access to shareholders to receive any information regarding the Company (financial, business progress, etc.) however Indonesia through Company Law does not regulate a certainty for shareholders to earn information. Germany provided such right in Section 51 GmbHG and Section 131 AktG, as well as Australia gives similar right in Section 247A Corporation Act. Article 78 paragraph (2) Company Law stated that annual GMS shall be convened no later than 6 (six) months after the end of accounting year. Meaning that during the GMS, BoD must provide information such as:[120] financial statement[121]; report on the Company's activities; report on the implementation of Social and Environmental Responsibility; details on issues which occurs during the accounting year which is affecting the Company's activities.

Sec. 51 GmbHG and Sec. 131 AktG allows shareholders to submit a request for information to the managing director but the managing director may deny the request if any reason occurred regarding the shareholder may use it for an unrelated purpose of Company and thereby, cause harm to the Company or an affiliated enterprise which is not insignificant. Sec. 247A Corporation Act also permit members to inspect books and scheme alongside with the reason to do so and members must act in good faith.

Associating rights to information with Family-Owned Company, it can be set to be a fundamental right. The principle of transparency is easier to obtain because it still has family values such as being easy to cooperate between family members. Self-awareness of family members certainly has an important role because the progress of the Company is the main goal of the family itself. In the event that there are shareholders of non-family members, this right may become an important limitation. For example: if the family still wants to dominate the Company, therefore some information held by the Company is not fully notified to shareholders of non-family members so that their rights have been violated. If the rights are violated, the shareholder has the right to submit an examination or claim to the Company. With this right, the openness to one another is more harmonious and the rights of Minority Shareholders or non-family members are not impaired.

4. Conclusion

In light of the analysis as set out above, this paper concludes that Indonesia does not provide a sufficient legal protection for Minority Shareholders, which can be seen from the

[120] See Article 66 para (2) Company Law

[121] By minimum consists of the current balance sheet of the latest accounting year, previous accounting year, profit and loss statement from the relevant accounting year, cash flows, report on the equity changes, and the record on such financial statement

unregulated protections provided by Germany and Australia in Indonesia. As compared with Germany and Australia, Indonesia government to reassess the Company Law by adding the additional protections to ensure a better protective environment through Indonesian law perspective. The protections are as set out below i) Rights on Equal Treatment, to balance the principle of majority rule together with the more detailed minority protection provisions in Company Law. In Family-Owned Company, equal treatment to be applicable for earning equal treats by the Company (e.g., voting rights in GMS, attending GMS, giving opinion for the Company). This protection is aligned with kinship principle as existed in family members; ii) Rights to Appoint and Revoke Management, to provide opportunity for Minority Shareholders to appoint and revoke an individual to become a BoD. In a Family-Owned Company, it is very likely that family members hold all of the BoD position which might result in an oppressive conduct. Therefore, this right opens a possibility for Minority Shareholders to appoint a person who is deemed fit to contribute as a BoD to ensure that there is no oppressive conduct by the Majority Shareholders which result in an inflict of financial loss for the Minority Shareholders; iii) Restraint on Contravention, to submit a proposal to the court if any oppressive conduct taken by Majority Shareholders, BoD and BoC which causes Shareholders a loss. If the action were proven by the court, then the concern shall be detained, and it will reduce the oppressive conduct by any other parties, and iv) Rights to Information, to obtain a more transparent information within the Company aside of GMS, and reach the best interest of the family business within the Family-Owned Company.

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