

LEGAL PROTECTION FOR SHARE TRANSFERS: THE ROLE OF DERIVATIVE ACTION LAWSUITS IN DEFENDING SHAREHOLDER RIGHTS

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Abstract

This research examines the legal complexity of share transfer in Indonesia, focusing on derivative action as an instrument for protecting shareholders' rights. This research is strictly limited to the Indonesian legal framework and does not involve comparative analysis with foreign jurisdictions. The methodological scope is also limited to a normative juridical approach, relying solely on statutory analysis, doctrinal studies, and jurisprudence without conducting empirical data collection or field-based validation. The study aims to analyze the legal construction of share transfer, identify juridical challenges, and evaluate the effectiveness of derivative action in protecting minority shareholders' interests. Utilizing a normative juridical method, the research investigates legislation, legal literature, and relevant jurisprudence. Findings reveal that derivative action is a complex legal mechanism transforming corporate governance, providing space for minority shareholders to protect corporate interests from potential abuse. The research uncovers significant implementation challenges, including evidence complexity and structural resistance. The conclusion emphasizes the need for regulatory framework improvement, strengthening judicial institutions' capacity, and enhancing legal literacy to create an effective and just legal protection system.

Keywords: Share Transfer, Derivative Action, Legal Protection

Abstrak

Penelitian ini mengkaji kompleksitas hukum terkait peralihan saham di Indonesia dengan berfokus pada mekanisme *derivative action* sebagai instrumen perlindungan hak-hak pemegang saham. Ruang lingkup penelitian ini dibatasi secara ketat pada kerangka hukum korporasi Indonesia dan tidak melibatkan analisis perbandingan dengan yurisdiksi asing. Batasan metodologis penelitian ini juga terletak pada penggunaan pendekatan yuridis normatif, yang sepenuhnya bertumpu pada analisis peraturan perundang-undangan, doktrin hukum, dan yurisprudensi tanpa melakukan pengumpulan data empiris maupun validasi berbasis lapangan. Penelitian ini bertujuan untuk menganalisis konstruksi hukum peralihan saham, mengidentifikasi tantangan yuridis, serta mengevaluasi efektivitas mekanisme *derivative action* dalam melindungi kepentingan pemegang saham minoritas. Melalui interpretasi hukum dan analisis terhadap peraturan terkait, literatur, serta putusan pengadilan, penelitian ini menemukan bahwa *derivative action* berfungsi sebagai mekanisme hukum yang kompleks yang memperkuat tata kelola perusahaan dengan memberikan ruang bagi pemegang saham minoritas untuk membela kepentingan korporasi dari potensi penyalahgunaan kewenangan. Temuan penelitian juga menunjukkan adanya tantangan signifikan dalam implementasinya, termasuk kesulitan pembuktian, keterbatasan akses terhadap informasi korporasi, serta resistensi struktural dalam organ perusahaan. Penelitian ini menyimpulkan bahwa perbaikan kerangka regulasi, penguatan kapasitas lembaga peradilan, dan peningkatan literasi hukum di kalangan pemegang saham

merupakan langkah penting untuk mewujudkan sistem perlindungan hukum yang lebih efektif dan berkeadilan dalam praktik peralihan saham.

Keywords: Peralihan Saham, *Derivative Action*, Perlindungan Hukum

I. INTRODUCTION

Limited Liability Companies (PT) occupy a central position in the Indonesian business ecosystem, which originated from the legacy of the colonial legal system through the principle of concordance.¹ Shares are not just financial instruments, but rather a representation of the fundamental rights of shareholders in the governance and distribution of company profits.²

The dynamics of share transfers reflect the complexity of corporate law. Although Law No. 40 of 2007 concerning Limited Liability Companies has regulated the mechanism, empirical practice still shows vulnerabilities, especially for minority shareholders.³ The risk of irregularities in the transfer of shares can result in significant losses and threaten the principle of corporate justice.

Historically, the evolution of the concept of share transfer in Indonesia illustrates a complex transformation in the corporate legal regime.⁴ The post-independence period to the reform era shows a paradigm shift from a state-driven model to a more market-oriented approach.⁵ This raises new challenges in harmonizing interests between majority and minority shareholders.

The share transfer mechanism cannot be separated from the dynamics of capital ownership in the corporate structure.⁶ Every share transfer transaction has the potential to affect the balance of power, voting rights, and profit flows of the company. This complexity requires a legal framework that is able to accommodate the interests of various parties proportionally.⁷

The contemporary legal regime requires transparency and accountability in every corporate mechanism, including the

¹Syahrullah and Nasrullah, "History of the Development of Limited Liability Companies in Indonesia," *Fundamental: Scientific Journal of Law* 9, no. 1 (2020): 68–76, <https://doi.org/10.34304/fundamental.v1i1.14>.

²Implementation of Good Corporate Governance Principles in Pt .,," 2024, 1138–53, <https://doi.org/10.23920/jphp.v1i2.292.1>.

³Edwin Khristian, Herman Karamoy, and Novi Swandari Budiarto, "Risk Management Analysis in Realizing Good Corporate Governance (Case Study at PT Angkasa Pura I (Persero))," *Journal of Accounting and Auditing Research "GOODWILL"* 12, no. 2 (2021): 112–28.

⁴Zulheri, "Harmonization of Company Share Regulations in the Legal Regimes of Indonesia and

Singapore as a Basis for the Establishment of the ASEAN Single Market," *Yuridika* 28 (2013): 75–92, www.pickeringpacific.com.

⁵Ade Reza Hariyadi, "Dynamics of Indonesian National Development Planning Policy," *JDKP Journal of Decentralization and Public Policy* 2, no. 2 (2021): 259–76, <https://doi.org/10.30656/jdkp.v2i2.3887>.

⁶Angga Putra Pratama, "Legal Regulation of Company Takeovers According to Indonesian Capital Market Law," *UNES Law Review* 6, no. 4 (2024): 10453–63.

⁷Comparative Perspectives and Singapore Indonesia, "Accountability in Protection Policy," no. 27 (2023): 89–102.

transfer of shares.⁸. The principle of good corporate governance emphasizes the importance of protecting the rights of shareholders, especially those in minority positions. This is not just a formal legal issue, but concerns substantive justice in business practices.⁹.

The vulnerability of minority shareholders in the share transfer process is a global phenomenon that does not only occur in Indonesia.¹⁰. Various legal jurisdictions have developed protection instruments, one of which is through the concept of derivative action lawsuits. This legal instrument allows minority shareholders to file lawsuits on behalf of the company against actions that are detrimental to the interests of the corporation.¹¹.

The economic-legal perspective shows that share transfer is not simply an ownership transaction, but rather a complex mechanism that affects the capital structure, governance

and future of the company.¹². Each share transfer has the potential to carry strategic implications, ranging from changes in management control to repositioning stakeholder interests.¹³.

The complexity of share transfers has increased with the development of modern financial instruments, such as share derivatives, conversion options and cross-border transaction mechanisms.¹⁴. The legal framework is required to be continuously adaptive to accommodate new innovations in global business practices, while maintaining the principle of protecting shareholder rights.¹⁵

However, despite the existence of derivative action mechanisms under Indonesian law, there remains limited scholarly analysis on how effective this instrument truly is in protecting minority shareholders specifically in the context of harmful share transfers.¹⁶ Previous studies tend to focus on general corporate governance,

⁸Devindya Citra et al., "The Role of Law in Ensuring Transparency and Accountability of Corporate Governance" 2, no. 4 (2024): 202–8.

⁹Ade Mahmud et al., "Substantive Justice in the Process of Asset Recovery of the Results of Corruption," *Suara Hukum Journal* 3, no. 2 (2021): 227–50.

¹⁰Case Study, PT Pitala, and Gunawan Raya, "Legal Implications for Companies That Ignore General Meetings of Shareholders," 2025.

¹¹Maya Sari Tan, Abdul Rahmad Budiono, and Hanif Nur Widhiyanti, "Legal Protection for Minority Shareholders Not Involved in the Acquisition Process," *Yuridika* 32, no. 3 (2017): 441, <https://doi.org/10.20473/ydk.v32i3.4827>.

¹²Giovanni Osvald, Eko Prasetyo, and Paulus Basuki Hadiprajitno, "Analysis of the Influence of Corporate Governance and Ownership Structure on Capital Structure (Empirical Study on Manufacturing Companies Listed on the Indonesia Stock Exchange in 2015-2017)," *Diponegoro Journal of Accounting* 8, no.

3 (2019): 1–12, <http://ejournal-s1.undip.ac.id/index.php/accounting>.

¹³Address Jl et al., "Factors Affecting Stock Prices in Food and Beverage Subsector Businesses Listed on IDX," no. 4 (2024).

¹⁴Fitri Irka Wahyu Niansyah, Putri Indriana, and Amrie Firmansyah, "Utilization of Derivative Instruments in Indonesia and Comparison of Accounting Standards Related to Derivatives," *Journal of Accounting Science Unit* 6, no. 2 (2018): 140–52, <https://doi.org/10.37641/jiakes.v6i2.141>.

¹⁵Lovelly Dwina Dahren, "Legal Protection for Copyright Holders Based on Law No. 28 of 2014 Concerning Copyright," *Execution* 3, no. 2 (2021): 102, <https://doi.org/10.24014/je.v3i2.13358>.

¹⁶Ni Putu Rosita Novanda, Ni Luh Made Mahendrawati, and Ni Komang Arini Styawati, "The Legal Protection of Minority Shareholders Against Company Consolidation in the Perspective of the Limited Liability Company Law," *Journal of Court and*

majority-minority conflicts, or the normative concept of derivative actions, but have not deeply examined its practical applicability, limitations, and enforcement challenges in actual share transfer disputes.¹⁷

The formulation of the problem in this study is based on the complexity of share transfers which often cause tensions of interest between majority and minority shareholders. The fundamental issue that is the focus of the study is how the current legal mechanism is able to provide effective protection for shareholder rights in the share transfer process. This study will critically explore legal loopholes that can threaten the integrity of the share transfer process, by questioning whether the existing regulatory framework is comprehensive enough to guarantee fairness and transparency.

Specifically, the study will analyze the legal construction governing share transfers, with a primary focus on the mechanism of derivative action lawsuits as an instrument of legal protection. The key question to be answered is to what extent derivative action lawsuits can be an effective means for minority shareholders to protect their interests in the context of potentially detrimental share transfers. This includes an in-depth study of the legal limitations, lawsuit filing procedures,

and the practical implementation of the legal protection mechanism.

The purpose of this study is not merely theoretical academic, but also intends to provide substantial contributions in the development of a legal protection framework for shareholders. Comprehensively, the study aims to conduct an in-depth analysis of the legal regime of share transfers in Indonesia, with a focus on identifying existing protection mechanisms. Through a normative-analytical approach, this study will map the legal complexities surrounding the share transfer process, with the aim of producing a more comprehensive understanding of the dynamics of shareholder rights protection.

Furthermore, this study aims to evaluate the effectiveness of derivative action lawsuits as a legal instrument. This includes an in-depth analysis of the capacity of such lawsuits to provide concrete protection for minority shareholders, as well as identifying challenges and opportunities in their implementation. The final objective is to formulate concrete recommendations for improving the legal framework, which can contribute to the development of a more equitable and transparent corporate legal system.

The theoretical benefit of this research lies in its contribution to enriching the

Justice 4, no. 2 (2025): 1–19, <https://doi.org/10.56943/jcj.v4i2.762>.

¹⁷ Adi Widjaja, “Legal Protection of Minority Shareholders Through Derivative Lawsuits,” *Nurani*

Hukum 5, no. 2 (2022): 127, <https://doi.org/10.51825/nhk.v5i2.17115>.

academic treasury of corporate law in Indonesia. Through a comprehensive analysis of share transfers and their legal protection mechanisms, this research is expected to provide significant contributions to the development of the concept of shareholder rights protection. This in-depth study will broaden academic understanding of the legal complexities surrounding corporate transactions, especially in the context of share transfers which are often vulnerable to irregularities.

In practice, this study aims to produce an applicable guide for various stakeholders. For legal practitioners, the results of the study can be a reference in handling complex share transfer cases. For business actors, the research findings can provide a deeper understanding of the legal risks and protection mechanisms in the share transfer process. Furthermore, this study is expected to be a valuable input for policy makers in efforts to improve regulations related to the protection of shareholder rights, especially in the context of fair and transparent share transfers.

II. METHOD

This study employs a normative legal research method that focuses on the critical analysis of legal norms, statutory regulations, and legal doctrines related to share transfers and the protection of shareholder rights. Data sources consist of primary legal materials such as Law Number 40 of 2007 on Limited Liability Companies, implementing

regulations, and relevant court decisions supported by secondary materials including academic books, legal journals, and scientific publications on corporate law. Data collection is conducted through comprehensive library research by systematically identifying, cataloging, and reviewing legal materials relevant to the study.

The analysis applies consolidated legal interpretation methods grammatical, systematic, and teleological in a single integrated framework. Grammatical interpretation examines the textual meaning of legal provisions, systematic interpretation situates the norms within the broader legal system, and teleological interpretation evaluates the underlying purpose of the provisions. Through a qualitative-normative analytical approach and deductive reasoning, the study maps the legal construction of share transfer mechanisms, identifies potential legal gaps, and assesses the effectiveness of derivative action lawsuits as a minority shareholder protection instrument.

Validity is strengthened through triangulation of legal sources, comparing statutory norms, legal doctrines, and empirical legal practices, complemented by a limited comparative review of relevant foreign jurisdictions. The final analytical stage synthesizes these interpretations to evaluate the adequacy of the current legal framework and formulate constructive recommendations for improving fairness and transparency in

share transfer regulation and shareholder protection.

III. Results and Discussion

3.1 The Complex Dynamics of Share Transfers in the Indonesian Corporate Landscape

Share transfer is a very complex legal phenomenon, going beyond a simple transaction of ownership transfer. In the context of Indonesian corporate law, this mechanism contains a series of legal, economic, and strategic implications that require in-depth analysis. Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) does not merely regulate procedures, but creates a fundamental framework that ensures transparency, fairness, and protection for all stakeholders.

The complexity of share transfers can be seen from the multidimensional interests involved.¹⁸ Every share transfer has the potential to change the internal power structure of the corporation, affect the strategic decision-making mechanism, and bring significant legal consequences. The share transfer process cannot be viewed as a simple mechanism, but rather as a transaction that requires caution, in-

depth consideration, and a comprehensive understanding of the internal dynamics of the organization.¹⁹.

Legally, share transfers in Indonesia are strictly regulated by various regulations. Article 48 of the UUPT outlines that any share transfer must take into account the preemptive rights of existing shareholders. This reflects the principle of legal protection that guarantees transparency and fair opportunity for existing shareholders to maintain their ownership proportion.

The economic dimensions of share transfers are much more complex than simply transferring ownership.²⁰ Each share transfer transaction has the potential to have a significant impact on the company's valuation, capital structure and corporate strategy.²¹. Factors such as stock price, company financial condition, and growth prospects are critical variables influencing the transfer decision.

The strategic perspective of share transfers reveals deeper complexity. In contemporary corporate practice, share transfers are often an instrument for:

1. Strategic ownership restructuring
2. Acquisition of corporate control
3. Optimization of capital structure

¹⁸Muhammad Rafi and Eldi Putra, "Factors Affecting Audit Report Lag in Banking Companies Listed on the Indonesia Stock Exchange in 2017-2022," *Diponegoro Journal of Accounting* 12, no. 4 (2023): 1–15, <http://ejournal-s1.undip.ac.id/index.php/accounting>.

¹⁹Florencia Lavina Setiawan, "Legal Study in Share Acquisition (Acquisition) in Limited Liability Companies Reviewed from Law Number 40 of 2007" 3, no. 2 (2024): 1328–35.

²⁰Ferdy Putra and Adhitya Agri Putra, "The Effect of Share Ownership Structure, Capital Structure and Profitability on Firm Value," *Journal of Financial and Business Accounting* 14, no. 1 (2021): 1–10, <https://doi.org/10.35143/jakb.v14i1.4469>.

²¹Roro Endah Dwi Putri Hapsari and Dies Nurhayati, "JIMEA | Scientific Journal of MEA (Management, Economics, and Accounting)," *Scientific Journal of MEA (Management, Economics, and Accounting)* 5, no. 3 (2021): 494–512.

4. Implementation of business diversification strategy

The main challenge in share transfer lies in the balance between the individual interests of shareholders and the collective interests of the corporation.²² Any share transfer must consider aspects of governance, regulatory compliance, and long-term impacts on the corporate ecosystem.²³

The complexity is further compounded by the diversity of legal instruments involved. The transfer of shares requires not only a transfer agreement, but also comprehensive documentation that includes:

1. In-depth due diligence
2. Share transfer agreement
3. Approval of company organs
4. Corporate approval mechanism
5. Settlement of tax aspects

In the context of economic globalization, share transfers in Indonesia are increasingly influenced by the dynamics of international investment and cross-jurisdictional regulatory harmonization. This requires a multidisciplinary approach that integrates legal, economic, and strategic management perspectives.

A brief illustration can be seen in several disputes between majority and minority shareholders in Indonesia, such as cases where majority shareholders attempted to transfer shares to affiliated parties without proper disclosure or without offering preemptive rights to minority shareholders. These disputes commonly raised allegations of oppression and unfair prejudice, highlighting the vulnerability of minority shareholders when preemptive rights or fair valuation principles are disregarded.²⁴

Comparatively, jurisdictions such as the United Kingdom enforce stronger minority protections through statutory preemptive rights under the Companies Act 2006, requiring that any new share issuance or transfer must first be offered to existing shareholders.²⁵ Meanwhile, in the United States particularly in Delaware corporate law minority protection relies heavily on fiduciary duty doctrines and the business judgment rule, where courts can invalidate share transfers deemed oppressive or conducted in bad faith. These examples demonstrate how other jurisdictions strengthen safeguards to prevent abusive share transfers.

²²Jojok Dwiridotjahjono, "Implementation of Good Corporate Governance: Benefits, Challenges and Opportunities for Public Companies in Indonesia," *Unpar Journal of Business Administration* 5, no. 2 (2009): 101–12.

²³Crescentiano Agung Wicaksono, "The Effect of Environmental Costs, Environmental Performance, and Foreign Ownership on Corporate Financial Performance," *Economics, Finance, Investment and*

Sharia (EKUITAS) 5, no. 4 (2024): 627–35, <https://doi.org/10.47065/ekuitas.v5i4.5066>.

²⁴O Kayode Akinsola, "The Legal Mechanisms for Protecting Minority Shareholders: A Comprehensive Guide to Shareholder Rights and Remedies in Corporate Law," no. January (2025), <https://www.researchgate.net/publication/388658579>.

²⁵Harry Coghill, "Australia Minority Shareholder Rights IBA Corporate and M&A Law Committee 2022," *Macfarlanes London*, 2022.

3.2 Legal Construction of Derivative Action Lawsuits: Corporate Legal Protection Mechanisms

Derivative action lawsuits are a sophisticated legal instrument that emerged in response to potential irregularities in corporate governance.²⁶ This legal concept gives minority shareholders the power to protect the company's interests from potential detrimental actions taken by management or majority shareholders.²⁷

Theoretically, derivative action lawsuits translate corporate governance principles into concrete legal mechanisms. Article 97 of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) does not merely provide procedural rights, but creates a supervisory system that allows shareholders to play an active role in maintaining the integrity and health of the corporation. This mechanism allows shareholders representing at least 1/10 of share ownership to file a lawsuit on behalf of the company against directors or commissioners suspected of committing unlawful acts.

From an Indonesian legal perspective, the construction of a derivative action lawsuit has deep legal complexity.²⁸ This concept is a

legal instrument that brings together the interests of capital protection and the principles of corporate responsibility.²⁹ The main characteristic of a derivative action lawsuit lies in its ability to address structural weaknesses in a company's internal oversight mechanisms.

The legal prerequisites for filing a derivative action lawsuit are very strict. Based on jurisprudence and academic interpretation, there are several fundamental conditions that must be met:

1. Evidence of Corporate Loss Shareholders must be able to comprehensively demonstrate that the actions of the directors or commissioners directly harm the interests of the company. This requires in-depth documentation and legal analysis.
2. Shareholders' Good Faith Lawsuits must be motivated by the need to protect corporate interests, not simply personal conflicts or attempts at extortion.
3. Preliminary Procedures Before filing a lawsuit, shareholders are required to follow internal procedures, such as providing a written warning and

²⁶Muhammad Reza Firdaus, "Derivative Action as an Effort to Provide Legal Protection for PMA Companies," *UNES Law Review* 6, no. 1 (2023): 1948–57.

²⁷Lintang Agustina Roesadi, Budiharto, and Rinitami Njatrijani, "Protection of Minority Shareholders in the Event of Share Acquisition in a Subsidiary (Case of PT. Sumalindo Lestari Jaya, Tbk)," *Diponegoro Law Journal* 6, no. 2 (2017): 1–13,

<https://media.neliti.com/media/publications/162918-ID-perlindungan-pemegang-saham-minoritas-da.pdf>.

²⁸Bheti Widyastuti et al., "SOCIAL WORK CRIMINAL STUDY" VIII (2020): 56–63.

²⁹EJZ Mangindaan, D Rombot, and ..., "Legal Protection for Investors in Securities Trading Transactions in the Capital Market," *Lex ...* 10, no. 4 (2022): 4–7, <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/42447>.

requesting the General Meeting of Shareholders (GMS) to take action.

Derivative action lawsuits are not just a legal mechanism, but a fundamental instrument in realizing the principles of corporate transparency and accountability.³⁰

The complexity of this lawsuit lies in the very high burden of proof. Minority shareholders must be able to show:

1. Fiduciary violations by company organs
2. Quantifiable material losses
3. Causal relationship between unlawful acts and corporate losses

International practice shows that derivative action lawsuits are sophisticated mechanisms that require a multidisciplinary approach. They are not merely legal instruments, but rather a means of check and balance in the corporate ecosystem.

The main challenges in implementing derivative action lawsuits in Indonesia lie in:

1. Complexity of proof
2. Limited access to information for minority shareholders
3. Structural resistance from established management

A fundamental justification for the existence of derivative action lawsuits lies in the structural power imbalance between majority and minority shareholders. In many corporate settings, majority shareholders

possess dominant control over decision-making processes, which may lead to actions that disregard or even harm the interests of minority shareholders. This asymmetry of power underscores the essential function of derivative actions as a corrective legal mechanism designed to safeguard the corporation when internal governance structures fail to provide adequate oversight.

In conclusion, strengthening the capacity of shareholders particularly minority shareholders alongside regulatory reforms that clarify procedural requirements and reduce evidentiary barriers is crucial for enhancing the effectiveness of derivative action mechanisms in Indonesia. Without such improvement, the role of derivative lawsuits as a vital tool for corporate oversight and accountability will remain limited.

3.3 Architecture of Evidence in Derivative Action Lawsuits: Complexity and Legal Dynamics

The evidentiary process in a derivative action lawsuit is the most critical and complex stage in the construction of Indonesian corporate law.³¹ the mechanism of proof is not merely a matter of legal technicalities, but rather a sophisticated representation of the enforcement of the principles of good corporate governance.³² Minority

³⁰Paramita Prananingtyas, "Legal Protection for Gold Investors," *Legal Issues* 47, no. 4 (2018): 430, <https://doi.org/10.14710/mmh.47.4.2018.430-444>.

³¹Muhammad Jufri Dewa et al., "Implementation of The New Separation Theory of Power in the State

Institutional System in Indonesia" 6, no. 2 (2024): 432–48.

³²Imam Mustofa, "Guarding the Principles of Good Corporate Governance with Law Enforcement,"

shareholders are faced with the intellectual challenge of constructing a comprehensive legal argument that goes beyond the simple allegation of harm.

The evidentiary architecture in derivative action lawsuits requires a multidimensional approach that combines legal, economic and forensic analysis.³³ The existence of actual losses of the company is not enough to be simply stated, but must be systematically constructed through a series of credible evidence. Proof is an intellectual process that requires high analytical skills, complete documentation, and a deep understanding of the mechanisms of corporate law.³⁴

Direct causality between management actions and corporate losses is a critical element that requires the construction of sophisticated legal arguments. Shareholders must show a causal relationship that is not merely hypothetical, but has a legal significance that can be accounted for. This requires the ability to trace transaction trails, analyze corporate documents, and present credible experts to provide technical testimony.

The good faith component in filing a lawsuit is a determinant factor that emphasizes the substantive motivation behind the lawsuit.

According to the Supreme Court jurisprudence, shareholders must be able to show that the derivative action lawsuit is not based on personal interests or destabilization efforts, but purely to protect corporate interests. The construction of good faith evidence requires comprehensive and accountable motivational transparency.

Identifying errors or negligence of company organs is the highest intellectual challenge in the proof process.³⁵ Shareholders are required to be able to present concrete evidence that shows fiduciary violations, procedural irregularities, or actions that are contrary to the principles of corporate governance. This requires searching internal documents, analyzing corporate policies, and being able to connect a series of facts that reflect a systematic pattern of violations.

The complexity of proof in derivative action lawsuits reflects the sophistication of contemporary corporate law. It is not merely a legal mechanism, but a fundamental instrument in upholding the principles of transparency, accountability, and corporate justice. Each element of proof requires a systematic approach that goes beyond simple argumentation, demanding analytical skills, intellectual integrity, and a deep understanding of the dynamics of law and business.

Millah 7, no. 1 (2007): 181–94, <https://doi.org/10.20885/millah.vol7.iss1.art11>.

³³Muhammad Reza Firdaus, "Derivative Action as an Effort for Legal Protection for PMA Companies."

³⁴Muhammad Irfan et al., "The Importance of Proof," Judge: *Journal of Law Volume*05, no. 02 (2024): 74–81.

³⁵Ni Komang Nea and Marwanto Adiningsih, "Responsibility of Limited Liability Company (PT) Organs in Case of Bankruptcy," Kertha Semaya: *Journal of Legal Science*7, no. 6 (2019): 1–16, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/52497>.

A practical illustration of this evidentiary complexity can be seen in a hypothetical scenario where majority shareholders approve a series of related-party transactions that divert corporate assets to an affiliated entity at below-market value. In such a case, minority shareholders filing a derivative action must prove not only that the company suffered a measurable financial loss, but also that the board's approval process lacked due diligence and violated fiduciary duties. This mirrors several real disputes in Indonesian corporate practice, where minority shareholders struggled to obtain internal documents and expert financial assessments to establish the causal link between managerial misconduct and corporate losses.

3.4 Corporate Governance Transformation: Legal Dynamics and Corporate Integrity

Derivative action lawsuits cannot be understood as mere litigation instruments, but rather as fundamental mechanisms in the transformation of corporate governance in Indonesia. According to a comprehensive analysis, this legal mechanism represents a significant evolution in the paradigm of

corporate supervision, where law plays a role not merely as a regulatory instrument, but as an agent of systemic transformation in the business ecosystem.³⁶.

The creation of an internal system of checks and balances through derivative action lawsuits is a fundamental legal innovation.³⁷. This mechanism transforms the corporate power structure, dismantling the traditional hierarchy that tends to give absolute power to management or majority shareholders. Derivative action lawsuits provide a control mechanism that allows minority shareholders to play an active oversight role, preventing potential abuse of power.³⁸.

The push for management transparency is one of the most significant contributions of this legal mechanism.³⁹. By requiring management to be accountable for every corporate action, derivative action lawsuits create systemic pressure to provide open, accountable, and information-based governance. This not only has legal implications, but also transforms corporate culture from a closed approach to a paradigm of openness and accountability.

Protection of minority shareholders' interests is one of the fundamental

³⁶Suyanto, "Criminal Law Review: Bibliometric Exploration of Research Developments and Innovations," *Sanskara Law and Human Rights* 2, no. 01 (2023): 30–41, <https://doi.org/10.58812/shh.v2i01.245>.

³⁷Wachid Aditya Ansory and Krisnadi Nasution, "Legal Reformulation on the Right to Sue for Shareholders Below 1/10," *Bonum Commune Business Law Journal* 5, no. 11 (2022): 109–22, <https://doi.org/10.30996/jhbhc.v5i1.6041>.

³⁸Sumriyah Imam Hakim Masyhuri, Wasiatun, "Effectiveness of Legal Protection for Shareholders Below 1/10 in the Mechanism for Implementing Derivative Action Lawsuits" 1 (2023).

³⁹Esti Alemlia Puspita and Erni Wiriani, "Analysis of Sharia Economic Law on Free Halal Certification Through Self-Declare Mechanism" 8, no. 4 (2024): 1665–88.

achievements of this legal construction. Through derivative action lawsuits, the law provides concrete instruments for shareholders with limited ownership to fight against discriminatory and exploitative practices. This mechanism does not merely provide legal protection, but also creates structural equality in the corporate ecosystem.⁴⁰

Preventing corrupt practices in corporate decision-making is a strategic impact of derivative action lawsuits. By creating significant legal risks for any fraudulent or unprofessional actions, this mechanism serves as an effective deterrent instrument. The law does not simply wait for violations to occur, but proactively creates a corporate environment that has incentives to behave ethically and professionally.

This transformation presents a new paradigm where the law does not merely supervise, but proactively forms a culture of governance with integrity. Derivative action lawsuits transcend the conventional function of law, changing it from a mere repressive instrument to a constructive mechanism for the development of sustainable corporate governance. It becomes an integral part of the internal democratization process of the corporation, where every stakeholder has the space to participate in maintaining the integrity and health of the organization.

However, the transformative potential of derivative action lawsuits continues to encounter significant structural limitations within the Indonesian legal system. One of the most persistent barriers is the restricted access of minority shareholders to essential corporate information, a challenge rooted in both regulatory gaps and organizational resistance. Without adequate access to board minutes, financial reports, internal correspondence, or documentation of corporate decisions, minority shareholders often struggle to meet the evidentiary standards required to establish misconduct or breach of fiduciary duty. This asymmetry of information not only diminishes the practical enforceability of derivative actions but also reinforces the entrenched dominance of majority shareholders and management within the corporate hierarchy.

In addition to information barriers, the procedural ambiguity surrounding derivative action mechanisms such as inconsistent judicial interpretations and the absence of clear evidentiary guidelines creates legal uncertainty that discourages minority shareholders from pursuing their rights. These systemic obstacles illustrate the tension between the transformative aspirations of corporate governance reform and the operational realities of Indonesia's legal infrastructure.

Despite these challenges, recent legal and institutional developments signal gradual

⁴⁰Acep Rohendi, "The Impact of the Cipta Kerja Law on Business Legal Rules," *Selisik* 9, no. 2 (2023): 1–26.

progress toward strengthening minority shareholder protection. Several court decisions have begun to adopt more progressive interpretations of fiduciary duties and corporate transparency, thereby expanding the space for minority-initiated oversight. Regulatory initiatives introduced by the Financial Services Authority (OJK) and amendments to corporate governance guidelines have also emphasized disclosure, accountability, and equitable treatment of shareholders. These incremental reforms demonstrate a growing recognition within Indonesia's legal system that derivative action lawsuits are not merely procedural instruments, but essential components of a modern governance framework that aspires toward integrity, transparency, and corporate democracy.

3.5 Future Projections and Recommendations for Indonesian Corporate Law Policy

The development of derivative action lawsuits and the dynamics of Indonesian corporate law require a comprehensive and strategic multidimensional approach. The main challenge of the corporate legal system lies in its ability to create a dynamic balance

between the protection of corporate interests and the individual rights of shareholders.⁴¹

Improvement of the regulatory framework is a fundamental prerequisite in the development of a derivative action lawsuit mechanism. Law Number 40 of 2007 concerning Limited Liability Companies requires periodic updates that are able to accommodate the complexity of modern corporate transactions. There is a need for regulations that are more responsive to the dynamics of global business, which are not merely procedural in nature, but are also able to provide substantive protection for all stakeholders.⁴²

Strengthening the capacity of judicial institutions is a critical element in realizing an effective legal system. The Supreme Court and commercial courts need to develop the capacity of judges through continuing education, especially in understanding the complexities of contemporary corporate law. The technical ability of judges in interpreting the construction of corporate law is a determining factor in the quality of legal decisions.⁴³

Increasing corporate legal literacy among business people, academics, and the general public is a fundamental strategy. A comprehensive understanding of legal

⁴¹Ayu Rahmawati and Ferial Abdul Hakim, "Challenges of Law Enforcement in Cases of Corporate Crimes Against the Environment in Indonesia" 2 (2024): 850–59.

⁴²Table of Contents et al., "Population, 14(2), 2003" 14, no. 2 (2003): 20–25.

⁴³Mochammad Dino Panji Pananjung, Patia Chairunnisa, and Triayu Rosdiana, "Implementation of Active Examination of Judges' Decisions Accompanied by the Principle of Reward-And Punishment in the Framework of Realizing a Judicial Institution with Dignity and Integrity," *Padjadjaran Law Review* 5, no. 35 (2017): 101–18.

mechanisms such as derivative action lawsuits is not just a professional need, but a prerequisite for realizing a business ecosystem with integrity. Continuous education programs, cooperation between universities, legal practitioners, and law enforcement agencies are key instruments in transforming legal awareness.

The development of a lawsuit support mechanism requires complex institutional innovation. The establishment of a corporate mediation institution, the development of a pre-litigation system, and a protection mechanism for whistle-blowers are strategic steps in strengthening the corporate legal system. The flexibility of the legal mechanism will reduce the burden of litigation and create space for constructive dialogue between various stakeholders.⁴⁴.

The transfer of shares and derivative action lawsuits are essentially a reflection of the complexity of modern corporate law. Both are not merely formal mechanisms, but rather a representation of the dynamics of justice, transparency, and accountability in the Indonesian business ecosystem. They represent the evolution of legal thinking that goes beyond the procedural approach, towards a responsive, just, and dignified legal construction.

The challenge ahead lies in the ability of the legal system to continuously adapt,

create a dynamic balance between individual and collective interests, and maintain integrity in corporate practices. Law is no longer seen as an instrument of restraint, but rather as a strategic partner in developing a healthy, transparent, and sustainable business ecosystem.

To strengthen these projections, it is essential to draw on concrete comparative examples from established corporate law jurisdictions. For instance, the United States particularly Delaware, as a global reference for corporate adjudication demonstrates how a well-developed derivative action mechanism can effectively balance managerial authority with shareholder oversight. Delaware courts apply rigorous fiduciary duty standards and maintain transparent procedural guidelines, making derivative lawsuits a credible instrument for addressing managerial misconduct. This comparative model illustrates the importance of judicial specialization and consistent jurisprudence, elements that Indonesia is still working to develop within its commercial court system.

Similarly, the United Kingdom's Companies Act 2006 offers a structured framework for derivative claims that highlights the importance of judicial gatekeeping. Through a two-stage permission process, UK courts ensure that only meritorious cases proceed to litigation, thereby preventing

⁴⁴Sudjana Sudjana, "Effectiveness and Efficiency of Intellectual Property Dispute Resolution Through Arbitration and Mediation Based on Law

Number 30 of 1999," Adjudication: *Journal of Legal Studies*2, no. 1 (2018): 81, <https://doi.org/10.30656/ajudication.v2i1.598>.

frivolous suits while preserving shareholders' access to justice. This approach provides a useful benchmark for Indonesia, especially in designing more predictable procedural standards and enhancing the integrity of corporate dispute resolution.

These international experiences show that effective derivative action systems rely not only on regulatory clarity, but also on institutional capacity, judicial sophistication, and robust transparency norms. Learning from these jurisdictions, Indonesia can further refine its policies to strengthen corporate governance, ensure equitable treatment of minority shareholders, and promote a more transparent and accountable corporate environment.

IV. CONCLUSION

This study reveals the fundamental complexity in the mechanism of share transfer and legal protection for shareholders in Indonesia. Derivative action lawsuits have proven to be a strategic legal instrument that allows minority shareholders to protect corporate interests from potential irregularities by management or majority shareholders. Through in-depth normative legal analysis, the study shows that share transfer is not just an ownership transaction, but a complex mechanism that affects the power structure, governance, and internal dynamics of the organization.

The legal construction of derivative action lawsuits exhibits a sophisticated protection architecture, with strict legal

prerequisites requiring proof of corporate harm, shareholder good faith, and comprehensive preliminary procedures. Research identifies that these mechanisms are transforming the paradigm of corporate oversight, shifting the focus from the traditional hierarchical approach to a system of checks and balances that allows for the active participation of all stakeholders in maintaining organizational integrity.

Importantly, this study identifies several priority areas that require immediate attention to strengthen Indonesia's corporate legal system. The first priority is the improvement of the regulatory framework to ensure that legal provisions remain adaptive to modern corporate complexities. The second priority is the enhancement of judicial capacity, as the effectiveness of derivative action lawsuits relies heavily on the competency and consistency of judicial interpretation. The third priority is the advancement of corporate legal literacy and the development of institutional support mechanisms that enable minority shareholders to utilize legal protections effectively. Overall, this study underscores that the law should function not merely as a mechanism of control, but as a strategic partner in cultivating a transparent, accountable, and equitable corporate ecosystem.

Key findings of the study underscore the need for continued development in Indonesia's corporate legal framework. Key recommendations include improving

regulations, strengthening the capacity of judicial institutions, increasing legal literacy, and creating innovative support mechanisms. The study highlights that law is no longer just a controlling instrument, but rather a strategic partner in creating a transparent, accountable, and equitable business ecosystem.

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