



Received: 16-03-2024
Accepted: 26-04-2024

International Journal of Advanced Multidisciplinary Research and Studies

ISSN: 2583-049X

Legal Position of Shareholders with Multiple Voting Rights in Technology-Based Limited Liability Companies in the Initial Public Offering Process

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Abstract

Shares with Multiple Voting Rights (MVS) is a share classification where one share grants more than one voting right. MVS is a new share classification regulated through POJK Number 22/POJK.04/2021. It is different from Law Number 40 Year 2007 on Limited Liability Companies which adheres to one share one vote (OSOV). Based on Article 53 paragraph (4) of the Company Law, there are only 5 share classifications. This creates legal uncertainty regarding the legal position of MVS shareholders and their

legal protection. This research uses normative juridical methods with statutory and conceptual approaches, and legal materials are analyzed using the deductive method. The result of this research is that the legal position of MVS shareholders is the same as the majority shareholder. The legal implication is that MVS is only given to technology-based limited liability companies (startups) because it has special characteristics and MVS shareholders become majority shareholders in terms of voting rights.

Keywords: Voting Rights, Multiple Voting Shares, Technology-Based Limited Liability Company

1. Introduction

Technology-based startups are companies that massively utilize technology to improve the performance or profits of businesses or companies. Some experts and policy makers call it the digital economy.¹ This is in line with the rapid development of technology and information, especially the internet in recent years.

Accommodating companies that create new innovations with high levels of productivity and growth (new economy) or startups to list their securities on the Indonesian stock exchange by conducting a stock IPO. OJK Regulation Number 22/POJK.04/2021 concerning the Application of Share Classification with Multiple Voting Rights by Issuers with Innovation and High Growth Levels Conducting Public Offerings of Equity Securities in the form of Shares (hereinafter POJK 22/2021) was issued. One of the provisions regulated in the POJK is regarding shares with multiple voting rights or Multiple Voting Shares (hereinafter referred to as MVS). Based on Article 1 paragraph 1 POJK 22/2021, Shares with Multiple Voting Rights is a classification of shares where 1 (one) share grants more than 1 (one) voting right to the shareholder. Currently, there is only one issuer that uses this policy, namely PT Goto Gojek Tokopedia, Tbk (GOTO).

The responsibility of the company owner is based on the nominal amount of shares owned.² This responsibility includes all things inherent in share ownership, both profits in the form of dividends, and otherwise bear losses. Thus, share ownership is also followed by ownership of One Share One Vote (hereinafter referred to as OSOV) because the vote in share ownership helps determine the direction of the company, whether it will lead to profit or loss. OSOV is a logical consequence of that function as shareholders will make optimal decisions when their gains (or losses) are proportional to their investment in the company.³ However, OSOV is contrary to MVS. The Company Law regulates the classification of shares, but does not regulate the classification of MVS shares because under Article 53 paragraph (4) of the Company Law there are only 5

¹ Dona Budi Kharisma, "Membangun Kerangka Pengaturan Startup di Indonesia (Building Regulatory Framework for Startup in Indonesia)", *Jurnal RechtsVinding*, Vol. 10, No. 3, 2021, p. 432.

² I Putu Wisnu Dharma Pura dan I Nyoman Budiana, *Kebebasan Penetapan Modal Dasar Perseroan Terbatas Oleh Para Pihak Berdasarkan Peraturan Pemerintah Nomor 29 Tahun 2016*, *Jurnal Analisis Hukum*, Vol. 1 No. 1, 2018, p. 37.

³ Pey-Woan Lee, "Dual-Class Shares in Singapore - Where Ideology Meets Pragmatism," *Berkeley Business Law Journal*, Vol. 15, No. 2, 2018, p. 422.

classifications of shares. The Company Law does not regulate in detail whether or not MVS exists and whether or not it is allowed, it only regulates that unless the articles of association determine otherwise.

One of the requirements for the use of MVS by issuers according to Article 3 paragraph (1) POJK 22/2021 is to first amend the articles of association. Then Article 84 paragraph (1) of the Company Law states that each share issued has one vote, unless the articles of association determine otherwise. However, OJK through POJK issued regulations related to MVS with a foundation that is still ambiguous. This can be seen from the consideration of POJK 22/2021, which only lists the Capital Law and OJK Law but does not include the Company Law in the consideration of POJK 22/2021.

The conditions by using technology or utilization of technology regulated in POJK 22/2021 so that this MVS can be used by the issuer are also unclear so that companies that can fall under these conditions also cause multiple interpretations. There are no laws and regulations that regulate this more clearly.⁴ So that it becomes biased regarding the legal basis because there is no reference from the relevant law.

The things that have been stated above are the background that underlies the author to discuss the legal position of shareholders with multiple voting shares in a technology-based limited liability company that will conduct an initial public offering of shares. Then what are the legal implications of multiple voting shares in a technology-based limited liability company that will conduct an initial public offering of shares.

2. Methodology

The type of research used is normative juridical, where the author interprets and examines the application of rules concerning principles, concepts, doctrines and norms that apply in positive law. The approaches used are statutory approaches and conceptual approaches. The legal materials used are primary legal materials, secondary legal materials and non-legal materials, which are collected by literature study method and analyzed by deductive analysis method.

3. Results and Discussion

Legal Position

Legal position has an understanding that where a legal subject or legal object is located. By having a position, the subject of law or the object of law can carry out actions and authorities as their status. According to Utrecht as quoted from the book "ilmu hukum" by Satjipto Rahardjo⁵, law is a set of rules (commands and prohibitions) that manage the order of a society and therefore must be obeyed by that society.

According to Harjono, "Legal Standing" is the position or legal status of a legal subject in a legal system.⁶ This can include the rights and obligations attached to the legal

subject, as well as its legal relationship with other legal subjects.⁷ Legal position is the status of the subject or object of law to get a place to carry out its functions and objectives. With this position, the subject or object of law will be able to carry out activities that are permitted or prohibited by law.

Multiple Voting Shares (MVS)

Shareholder voting rights refer to the rights that shareholders have in a company to cast their votes in voting on important company decisions.⁸ Each issued share has one voting right, unless the company's articles of association specify otherwise. According to Article 1 point 2 POJK 22/2021 explains that shares with multiple voting rights are a classification of shares in which 1 share grants more than 1 voting right to shareholders who meet the requirements.

In relation to companies that apply Dual Class Shares (DCS) or multiple voting shares, shareholders' voting rights can have differences in terms of voting weight or influence in making important decisions in the company. As stated by Professor Bobby Reddy of the University of Cambridge in his article entitled "From Dual-Class Shares-Lite to Full Fat: The FCA's Potential About-Turn on Dual-Class Shares", dual-class shares are a capital structure where certain privileged shareholders hold shares with greater voting rights than other shareholders.⁹

Legal Position of Shareholders with Multiple Voting Shares in Technology-Based Limited Liability Companies

POJK 22/2021 is the basis for the application of the classification of multiple voting shares (MVS) for startups with the aim of protecting the company's vision and mission in accordance with the founders' objectives in developing the business activities carried out by the startup even though the share ownership is diluted and no longer the majority. Multiple voting rights provide one share with more than one voting right determined by a ratio in accordance with POJK. This is different from the Limited Liability Company Law which implicitly regulates one share one vote (OSOV).

Regarding legal position, it will not be separated from the prevailing law in society. Satjipto Rahardjo states that law cannot be separated from society, because both have a reciprocal relationship. Therefore, the law is universal, which regulates all aspects of community life (political, economic, social, cultural, land and security) with no single aspect of community life escaping the touch of the law.¹⁰

The interests owned by legal subjects need to be limited so that everyone can carry out their obligations and obtain their rights as they should. The legal position of a legal subject is reflected in the rights and obligations that must be carried

⁷ R. Soeroso, *Pengantar Ilmu Hukum* (Jakarta: Sinar Grafika, 2011), p.269.

⁸ Mas Rahmah, *Hukum Pasar Modal* (Jakarta: Kencana, 2019), p. 136.

⁹ Admin, Bobby Reddy, *From Dual-Class Shares-Lite to Full Fat: The FCA's Potential About-Turn on Dual-Class Shares*, diakses dari www.blogs.law.ox.ac.uk/oblb/blog-post/2023/06/dual-class-shares-lite-full-fat-fcas-potential-about-turn-dual-class-shares, Accessed on 7 September 2023.

¹⁰ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya, 2006), p.8.

⁴ Jakobus Anakletus Rahajaan dan Wahid Yaurwarin, *Bisnis Start Up Dalam Kompleksitas Hukum di Indonesia*, *Jurnal of Business Application*, Vol. 1 No.1, 2022, p.71.

⁵ Satjipto Rahardjo, *Ilmu hukum*, Cet. ke-VI (Bandung: Citra Aditya Bakti, 2006), p. 38.

⁶ Harjono, *Konstitusi sebagai rumah bangsa: pemikiran Dr. Harjono, S.H., M.C.L., Wakil Ketua Mahkamah Konstitusi* (Jakarta: Konstitusi Press, 2008), p.176.

out and fulfilled by the legal subject in applying the legal regulations themselves.¹¹ To see the legal position of shareholders with multiple voting rights, we will review the basis for the issuance of POJK 22/2021 and review its place in statutory regulations, especially from the Company Law. The Company Law regulates the classification of shares, but does not regulate the classification of shares with multiple voting rights. Based on Article 53 Paragraph (4) of the Company Law, the classification of shares referred to, among others:

- a. shares with voting rights or without voting rights;
- b. shares with special rights to nominate members of the board of directors and/or members of the board of commissioners;
- c. shares that after a certain period of time are withdrawn or exchanged for another classification of shares;
- d. shares that entitle the holder to receive dividends in advance of holders of other classifications of shares on cumulative or non-cumulative dividend distribution;
- e. shares that entitle the holder to receive first from the holders of other classifications of shares the distribution of the remaining assets of the company in liquidation.

The classification of shares is only related to the rights attached to the owner of the shares. For example, series A shares have voting rights, the right to nominate directors and/or commissioners, and other provisions stipulated in the articles of association. Meanwhile, series B shares only have voting rights but cannot propose directors and commissioners. The classification in question is more on the rights owned to determine the future direction of the company, not on the number of votes owned to be used.

The presence of POJK 22/2021 has caused changes to the Public Offering process and the nature of publicly listed PTs in Indonesia. These changes are like providing a red carpet for technology companies or startups so that in the public offering process and the running of the startup after becoming public, it has specificities that are not owned by other companies, in this case, conventional companies. Where if previously the voting rights classification was only 5 based on the Company Law, then indirectly this POJK adds 1 classification of shareholder voting rights. If previously each share had one vote, then with this POJK, one share can have more than one vote.

The position of POJK in laws and regulations is guaranteed in Law Number 12 of 2011 concerning the Formation of Laws and Regulations (hereinafter referred to as "UUP3U"). Article 8 of UUP3U states that laws and regulations include regulations stipulated by institutions established by law, and OJK is included in these criteria. The laws and regulations stipulated by the OJK (in this case POJK) are recognized and have binding legal force.

The question that arises is what about the content of this Regulation. Because this regulation is not all regulated in the UUPM or the Laws and Regulations in the field of capital markets and their implementing regulations. Such as the rights attached to shareholders. So where will it refer if it is not regulated in the UUPM and its derivative rules? then it will refer to other rules. the other rule is the UUPT. Because

the form of the company - which will IPO is a legal entity and is in the form of PT. then it will automatically be subject to the UUPT.

Each share basically gives certain rights to its owner as referred to in Article 52 paragraph (1) of the Company Law, namely: Attend and vote in the General Meeting of Shareholders (hereinafter referred to as GMS); Receive dividend payments and the remaining assets from liquidation; and Exercise other rights specified in the Company Law.

The above rights are generally owned by all shareholders, both majority and minority, in a PT. However, not all of these rights can be owned absolutely by all shareholders because each share classification will determine its rights as regulated in the laws and regulations and the AD of PT. The company can classify its shares into several types of share classifications.

The regulation regarding MVS as regulated through POJK 22/2021 which states that one share can have more than one vote, is not included in the share classification referred to in Article 53 paragraph (4) of the Company Law. Even in Article 84 paragraph (1) of the Company Law, it has actually been regulated that each share issued has one voting right. This is part of the OSOV that has been explained previously.

Voting rights are not regulated in detail in the UUPM, so automatically both closed and open PTs will look at the UUPT if there is nothing in the UUPM related to voting rights. Voting rights in the management of PT become very crucial because it plays an important role in determining the direction of the company indirectly. Voting rights are also one of the rights owned by shareholders. Proof of ownership of the company is shares.¹³ Individuals or legal entities who own shares will be called shareholders. The amount of shares owned by each shareholder is based on the investment or assets given to the company. So naturally every shareholder has an interest in the company. Because they don't want the company to lose money.

When a PT will IPO and use MVS, the basis is POJK 22/2021. However, the rights, obligations and matters necessary to protect investors or shareholders who will purchase the shares through the IPO or shareholders who have previously owned the shares that are not included in the MVS are not clearly regulated in POJK 22/2021. It is only provided that even MVS shareholders will have 1 vote only on some GMS agenda items. However, other protections are not regulated in detail. Then it will automatically refer to the Company Law or other laws and regulations that regulate this matter. However, the Company Law is not included in the background consideration of the issuance of the POJK. It is questionable why this is not included, while matters that are not regulated in the POJK related to shareholders will refer to the Company Law.

Regarding the fact that one share can cast more than one vote, it needs to be questioned where its position is in the laws and regulations. Meanwhile, if we refer to one of the principles, namely the principle of *lex superior derogat legi inferiori*, which means that higher laws (norms / legal rules)

¹¹ Rahadiyan Veda Mahardika, Bhim Prakoso, dan Iswi Hariyani, *Kedudukan Subyek Hukum Ditinjau Dari Hak Keperdataan (Refleksi: Terjadinya Tumpang Tindih Lahan Hak Guna Usaha)* (Jember: UM Jember Press, 2022), p. 9-10.

¹² Kurniawan, *Tanggung Jawab Pemegang Saham Perseroan Terbatas Menurut Hukum Positif*, *Mimbar Hukum*, Vol. 26, No. 1, 2014, p. 74.

¹³ *Ibid.*

negate the validity of lower laws.¹⁴ So if there is a conflict between higher and lower laws and regulations, the higher one must take precedence. To determine which is higher or lower, the type and hierarchy of laws and regulations have been regulated in the provisions of Article 7 and Article 8 of the UUP3U. POJK itself is a product of OJK which is included in the regulations of the Agency established under the law. However, the product of the agency is not equivalent to the law. So it should not make rules that have not been regulated before because this can cause legal uncertainty.

In the formation of the rule of law, the main principle is built in order to create clarity on legal regulations, this principle is legal certainty.¹⁵ Legal certainty always requires clear and logical regulation of a rule. Clear in the sense that there is no norm ambiguity or doubt, while logical in the sense that it does not clash or cause norm conflicts.¹⁶ So legal certainty must be clear and must not be ambiguous so that it is not multi-interpreted or can cause legal uncertainty. POJK 22/2021 does not include the Company Law as its consideration. However, POJK takes a loophole in Article 84 paragraph (1) of the Company Law which states that every share issued has voting rights, unless the articles of association determine otherwise. This phrase "... unless the articles of association determine otherwise" is used as a basis in POJK 22/2021 as a loophole that is utilized for the issuance of this OJK Regulation. It is said to be a loophole because by utilizing this phrase, POJK 22/2021 will not conflict with the law, which in fact will violate the principle of *lex superior derogat legi inferiori*. The phrase causes multiple interpretations because it does not regulate in more detail the limitations referred to by "... unless the articles of association determine otherwise".

POJK 22/2021 determines that issuers or PTs conducting a public offering of equity securities in the form of shares may apply shares with multiple voting rights provided that it has been regulated in the articles of association. The requirement in the POJK is that the issuer or PT has been regulated in its articles of association. If the articles of association have not been included, then before the PT IPO, it can amend its articles of association using MVS and then conduct an IPO as required in POJK 22/2021 and can apply MVS.

The position of multiple voting rights (MVS) in Indonesian laws and regulations is that POJK 22/2021 uses Article 84 paragraph (1) of the Company Law. Because of the phrase "... unless the articles of association determine otherwise". then related to one share one vote will be default for every share ownership in a limited liability company that does not apply MVS. However, not necessarily every share is one vote, as long as it has been regulated in the articles of

association of the PT, the classification will be applied as stipulated in Article 53 paragraph (4) of the Company Law. This is what is used as the basis in POJK 22/2021.

Regarding the position of the POJK itself, although OJK basically has the authority to make new regulations in the capital market sector. However, the substance of the content contained in POJK 22/2021, namely regarding the regulation of Multiple Voting Rights (MVS) when a PT will IPO and become a public PT, has normative vagueness because it has never been regulated before in any regulation including the Capital Market Law and the Company Law. If the substance is still vague, the rights, obligations and protection for non-MVS shareholders will also be ambiguous. Given that MVS itself has a different form so that the protection will also be different. Protection for non-MVS shareholders will be weak if there are losses incurred for non-MVS shareholders. POJK 22/2021 has regulated administrative sanctions, but it is not enough considering that if it is not regulated in this POJK, it will refer back to the Capital Law and Company Law, while the Capital Law and Company Law have not adopted the MVS concept.

Legal Implications of Multiple Voting Shares in Technology-Based Limited Liability Companies in the Process of Initial Public Offering of Shares

MVS regulation in Indonesia is regulated in POJK 22/2021. POJK 22/2021 regulates starting from issuers that are allowed to apply MVS in their shares, shareholders who are allowed to own MVS, the MVS period to administrative sanctions imposed on issuers or parties that violate the provisions in POJK 22/2021. Issuers that are allowed to apply the MVS scheme to their shares are those that fulfill the conditions specified in Article 3 paragraph (2) POJK 22/2021. The article states as follows:

"Issuer as referred to in paragraph (1) must fulfill the following criteria:

- a. Using technology to create product innovations that increase productivity and economic growth and have broad social benefits;
- b. Having shareholders who have significant contributions in the utilization of technology as referred to in letter a;
- c. Fulfill:
 1. Total company assets of at least Rp2,000,000,000,000.00 (two trillion rupiah);
 2. Has conducted operational activities for at least 3 (three) years prior to filing the Registration Statement; the annual compound growth rate of total assets for the last 3 (three) years is at least 20% (twenty percent); and
 3. the annual compound growth rate of revenue for the last 3 (three) years is at least 30% (thirty percent);
- d. Is an Issuer that has never conducted a Public Offering of equity securities;
- e. Other criteria determined by the Financial Services Authority."

Issuers that have met the conditions stated above are allowed to conduct an IPO by applying the MVS scheme. The application of MVS to the issuer's shares for a maximum of 10 years from the effective date of the registration statement and can be extended once with a maximum extension period of 10 years as stipulated in Article 5 POJK 22/2021.

¹⁴ Nurfaqih Irfani, *Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, Problematika, dan Penggunaannya dalam Penalaran dan Argumentasi Hukum*, Jurnal Legislasi Indonesia, Vol. 16, No.3, 2020, p. 311.

¹⁵ Mario Juyanto dan Aditya Yuli Silistyawan, *Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum*, Jurnal Crepido, Vol. 1, No. 1, 2019, p. 14.

¹⁶ Bayu Indra Permana, Bhim Prakoso, dan Iswi Hariyani, *Problematika Pengean Pajak Penghasilan Terhadap Objek Warisan: Dalam Perspektif Kepastian Hukum* (Yogyakarta: Bintang Semesta Media, 2022), p.9.

In contrast to the requirements for the establishment of a Limited Liability Company (PT) which requires the establishment of a PT where the procedures and procedures for its establishment according to UUPT are:¹⁷ Written agreement between two or more persons; Preparation of deed of establishment before a notary; Ratification by the Minister of Law and Human Rights; Registration of Limited liability companies. Then to become a public company, the Capital Market Law requires in Article 1 Number 22 of the Capital Market Law that the Company has been owned by at least 300 (three hundred) shareholders and has a paid-up capital of at least Rp. 3,000,000,000.00 (three billion rupiah) or a number of shareholders and paid-up capital determined by Government Regulation.¹⁸

If a company or PT wants to apply shareholders with multiple voting rights (MVS), apart from having to fulfill the requirements set out in POJK 22/2021, the PT must have previously fulfilled the requirements for establishing a PT, the procedure for establishing which is in the Company Law.¹⁹ To become a public company, a PT must conduct an IPO. After the IPO, the PT becomes a public company with the conditions set forth in the Capital Market Law.²⁰

The shares issued by each company during the IPO have different classifications that are regulated in the company's articles of association. According to the Company Law, the company sets 1 or more classifications of shares, of which one is ordinary shares. When an IPO company uses MVS, the shares purchased by the public are ordinary shares, while the MVS shareholders are predetermined in the articles of association. Shareholders who are allowed to own MVS shares are those who have met the conditions stipulated in POJK 22/2021. Article 12 paragraph (1) states that those who can own MVS shares for the first time are those that have been determined in the GMS and published in the prospectus before the submission of the registration statement.

In the case of shareholders with multiple voting rights of more than 1 party, Article 13 paragraph (1), MVS shareholders must have the same vision and mission and vote equally in every decision making in the GMS. To ensure the common vision and mission of the MVS shareholders, Article 13 paragraph (4) POJK 22/2021 regulates that the MVS shareholders are required to make an agreement between shareholders containing a commitment to carry out the vision and mission. If there are different

votes among MVS shareholders, the different votes if the voting rights are smaller will then be deemed to vote the same as the majority vote of MVS shareholders. If the different votes have different voting rights, it will be considered to follow the vote of the majority of ordinary shareholders.

The application of the ratio of MVS voting rights to ordinary share voting rights in accordance with the number of shares owned is regulated in detail in Article 10 POJK 22/2021. Article 10 of the POJK regulates in detail the application of the ratio of MVS voting rights to ordinary voting rights as follows:

- a. MVS shareholders who own 10% to 43.76 MVS shares have a voting rights ratio of 10:1
- b. MVS shareholders who own 5% to less than 10% MVS shares have a voting rights ratio of 20:1
- c. MVS shareholders who own 3.5% to less than 5% of MVS shares have a voting rights ratio of 30:1
- d. MVS shareholders who own MVS shares of 2.44% up to less than 3.5% have a voting rights ratio of 40:1

There is an exception to the voting rights ratio provision, namely that the issuer may increase the ratio of MVS voting rights to ordinary shares to a maximum of 60:1. The increase in the ratio of MVS voting rights can be done if the voting rights of MVS shareholders are not more than 50% of all voting rights.

The exception is regulated in Article 12 paragraph (3) because POJK 22/2021 explicitly states in Article 12 paragraph (2) that MVS shareholders either individually or collectively must have voting rights greater than 50% of all voting rights, while for voting rights of ordinary shares owned by parties other than shareholders with multiple voting rights, at least 10% of all voting rights. The voting rights of shareholders with multiple voting rights are also limited to no more than 90% of all voting rights. If the voting rights of shareholders with multiple voting rights are more than 90% of all voting rights, in accordance with article 11 paragraph (3) POJK 22/2021, the voting rights of ordinary shares are calculated to be 10% of all voting rights.²¹

The implication of the voting rights ratio is during the GMS. When the PT does not use MVS, it will automatically use OSOV as regulated in the Company Law. In the Company Law, during the GMS, in the agenda other than the obligation of the board of directors and the board of commissioners to present information relating to the management of the PT, no decision can be made unless all shareholders are present (Article 75 paragraph (3) of the Company Law) and the decision on the added agenda of the GMS must be approved unanimously (Article 75 paragraph (4) of the Company Law).

GMS decision making is based on deliberation to reach a consensus (Article 87 paragraph (1) of the Company Law), but if deliberation to reach a consensus cannot be achieved, then the decision is valid if approved by more than ½ of the total votes cast (Article 87 paragraph (2) of the Company Law). It can be interpreted that for valid decision-making if it adheres to OSOV is more than 50% of the voting rights reflected in its share ownership unless the PT issues a classification of shares without votes. Unlike MVS where

¹⁷ Niru Anita Sinaga, *Hal-hal Pokok Pendirian Perseroan Terbatas di Indonesia, Jurnal Ilmiah Hukum Dirgantara*, Vol. 8, No. 2, 2018, p. 36-39.

¹⁸ Anggi Purnama Harahap, Rahma Ramahan Hasibuan, dan Lupitta Risma Candanni, *Initial Public Offering (IPO) Terhadap Perusahaan Rintisan (Startup) di Indonesia*, Indonesian Journal of Islamic Economies and Business, Vol. 2, No. 2, 2017, p. 31.

¹⁹ Widya Rahmadhani, *Perbedaan Equity Crowdfunding dan Initial Public Offering (IPO) dalam Hukum Pasar Modal Indonesia*, Jurnal Ilmu Sosial dan Pendidikan, Vol. 5, No. 2, 2021, p. 14.

²⁰ I Dewa Gede Angga Bhasudeva, I Nyoman Putu Budiarta, Ni Made Puspasutari Ujjanti, *Perlindungan Hukum Otoritas Jasa Keuangan Terhadap Investor Pasar Modal atas Diberlakukannya Delisting Saham oleh Bursa Efek Inonesia*, Jurnal Preferensi Hukum, Vol. 3, No. 2, 2022, p. 272.

²¹ Dhifa Nadhira Syadzwin & Esti Setyowati, *Peran Notaris, Restrukturisasi, Perusahaan Non Badan Hukum*, Jurnal Ilmu Kenotariatan, Vol. 1, No. 2, (2020), p. 11.

the voting rights of MVS shareholders as a result of the regulation will remain more than 50% due to the ratio of voting rights as above. Not the number of shareholdings.²²

The impact of this arrangement is that every agenda of the GMS held will automatically follow the decision of the MVS shareholders. POJK 22/2021 provides an exception for MVS shareholders where the voting rights ratio does not apply and will become one vote on certain GMS agenda items as regulated in Article 38 POJK 22/2021, each share with multiple voting rights has one vote at the GMS on the agenda:

- a. Amendments to the articles of association of the issuer which must be approved by the minister who organizes government affairs in the field of law and human rights, except for changes to the authorized capital;
- b. Appointment or dismissal of independent commissioners;
- c. Appointment or dismissal of a public accountant or public accounting firm that will provide audit services for annual historical financial information; and
- d. Submission of a request for the issuer to be declared bankrupt or dissolution of the issuer.

Decisions that need to be taken and only carried out at the GMS because it is the authority of the GMS according to the Company Law include: Amending the Company's Articles of Association (Article 19); Repurchasing issued shares (Article 38); Increasing the Company's capital (Article 41); Reducing the Company's capital (Article 44); Approving the Company's annual work plan (Article 64 paragraph 2); Approving the annual report including the ratification of the financial statements and the report on the supervisory duties of the Board of Commissioners (Article 69); Appointing the Board of Directors (Article 95); Stipulating regulations on the division of duties and management authority among members of the Board of Directors (Article 92 paragraph (5)); Dismissing members of the Board of Directors (Article 4 paragraph (5) jo Article 105); Appointing the Board of Commissioners (Article 111); Appointing Independent Commissioners (Article 120 paragraph (2)); Authorizing the Board of Commissioners to perform management actions of the Company in certain circumstances for a certain period of time (Article 118 paragraph (1)); Dismissing members of the Board of Commissioners permanently or temporarily (Article 111 jo Article 119); Dissolving the Company (Article 142 paragraph (1) item a jo Article 144).

There are so many GMS authorities regulated in the GMS that it is not surprising that indirectly when using OSOV, shareholders with more than 50% ownership or commonly referred to as majority shareholders have great authority in determining the direction of PT because of the large number of voting rights owned in the GMS. Unlike the MVS concept where MVS shareholders are equal to ordinary shareholders or non-MVS shareholders only on the four agenda items of the GMS as mentioned above. While the rest will indirectly be decisions made based on the votes of MVS shareholders.

The GMS cannot necessarily be held without first meeting the quorum.²³ A quorum is the minimum number of

shareholders with valid voting rights who must be present at the meeting to make GMS decisions. The GMS quorum is regulated by laws and regulations and bylaws of each PT. The GMS quorum may vary depending on the type and material of the GMS.

In general, according to Article 86 paragraph (1) of the Company Law, a GMS can be held if more than 1/2 of the total number of shares with voting rights are present or represented.²⁴ This is different from the quorum setting in PTs that apply MVS, where actually non-MVS shareholders do not have much influence in the GMS. However, in a PT that applies MVS, there is a provision stating that the number of ordinary shares present at each GMS must represent at least 1/20 of the total voting rights of ordinary shares owned by non-MVS shareholders (Article 37 paragraph (1) POJK 22/2021). If the first GMS does not reach the quorum, the second GMS will be summoned. If in the case of the first and second GMS less than 1/20, the limit on the number of ordinary shares present at the third GMS is determined by OJK based on the issuer's request (Article 37 paragraph (2) POJK 22/2021). In determining the amount of voting rights of MVS shareholders, it is carried out before the GMS.

Share ownership with multiple voting rights is unlike other share classifications. The classification of shares with multiple voting rights is given a period of use by the issuer and is regulated in the regulation that issued the multiple voting rights rule itself, namely POJK 22/2021.²⁵ The period of application of MVS as stated in Article 5 paragraph (1) that the application of shares with multiple voting rights is a maximum of 10 years from the effective date of the registration statement in the context of an initial public offering of shares. However, it can be extended according to Article 5 paragraph (2) POJK 22/2021 that the period can be extended 1 time with a maximum of 10 years. However, Article 5 paragraph (3) POJK 22/2021 for extending the period of application of MVS must obtain the approval of independent shareholders in the GMS.

The implications of the MVS regulation contained in POJK 22/2021 are also a legal umbrella for technology-based PTs in conducting IPOs. Previously, there was no clear regulation governing technology-based PTs or startups. They are treated the same following existing laws and regulations. Meanwhile, this startup has special characteristics.

The phrase technology-based PT is not recognized in the laws and regulations. Technology-based PT is another term for what is commonly known as a startup. Due to the nature of its business based on information technology, the business activities of startup businesses refer to the ITE Law and its derivative rules. This online business in Indonesia is regulated and defined as an electronic trading system, which

²² M. Andy Rahmad Wijaya, *Analisis Hukum Atas Penerapan Klasifikasi Saham dengan Hak Suara Multipel di Pasar Modal Indonesia*, Al'Adl: Jurnal Hukum, Vol. 14, No. 2, 2022, p. 372.

²³ Parningotan Joy Hans Manalu, Liju Zet Viany, dan Karel Yossi Umboh, *Syarat Mendirikan Perseroan Terbatas dan Rapat Umum Pemegang Saham (RUPS) berdasarkan Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas*, Lex Privatum, Vol. 9, No. 2, 2021, p. 69.

²⁴ Muhammad Yusron Yuwono, *op.cit.*, p. 218.

²⁵ Marcelline Allegra, Tarsisius Murwadji, dan Nur Harrieti, *Akibat Hukum Pemberlakuan Multi Voting Shares Oleh Otoritas Jasa Keuangan di Indonesia*, Aladalah, Vol. 1, No. 2, 2023, p. 167.

is a trading transaction of goods and/or services carried out through a series of electronic devices and procedures.²⁶

Technology-based PTs are the same as startups that have actually been regulated in the ITE Law and its derivative regulations. However, in the Indonesian legal setting, it is better known as Electronic System Operator. Meanwhile, business activities carried out through technology are called electronic commerce.²⁷

The implication of POJK 22/2021 is to create a legal basis for the implementation of MVS. POJK 22/2021, although issued for companies that are going to IPO, not all companies can conduct an IPO by implementing MVS. This is reflected in Article 3 paragraph (2) letters (a) and (b) POJK 22/2021 which says:

- (a) Using technology to create product innovations that increase productivity and economic growth and have broad social benefits.
- (b) Having shareholders who have a significant contribution to the utilization of technology as referred to in letter a.

Referring to the Explanation of Article 3 paragraph (2) POJK 22/2021, what is meant by "using technology" can be shown by the company's success in creating technology that becomes the company's main business. Product innovation can be in the form of new technology, innovation, and/or a new business model, which also serves to differentiate the company from existing business actors. In addition, product innovation can also be seen from the unique features or intellectual property rights owned by the company.²⁸ Then what is meant by social benefits is that this product innovation is related to the vast community of product users and the business chain involved in product distribution to the community, which is indirectly related to the provision of employment and other social benefits.²⁹

The forms of protection and legal remedies aimed at safeguarding all shareholders' interests from adverse actions against both PT and shareholders are as regulated in the Company Law, Company Law and POJK 22/2021. The existing forms of protection and legal remedies are not only for minority shareholders or in this case non-MVS shareholders, but also to protect PTs from losses.

The form of legal protection provided by laws and regulations in Indonesia can be summarized by drawing a red thread between the form and the principle that becomes the measuring value regarding the protection of minority shareholders. In Indonesia, there are two laws and regulations that explicitly regulate Limited Liability Companies and the protection of minority shareholders, namely Limited Liability Company Law Number 40 of 2007 and Law Number 8 of 1995 concerning Capital Markets, and derivatives of the Law in the form of OJK regulations.

²⁶ Rio Christiawan, *Aspek Hukum Startup*, (Jakarta: Sinar Grafika, 2021), p. 7.

²⁷ Imam Lukito, *Tantangan Hukum dan Peran Pemerintah Dalam Pembangunan E-Commerce*, JIKH, Vol. 11, No.3, 2017, p. 356-357.

²⁸ Rasji dan Dwi Indriyanie, *op.cit*, p. 1665.

²⁹ Dimas Pasha Hafidz & Mohammad Rafi Al Farizy, *Perlindungan Hukum Pemegang Saham Terhadap Tindakan Penarikan Kembali Saham Ditinjau Dari Undang-Undang Perseroan Terbatas*, Jurnal Ilmu Kenotariatan, Vol. 4, No. 1, (2023), p. 72.

POJK 22/2021 as the legal basis for the implementation of MVS regulates many technical matters that will be complied with by PT. From POJK it also indirectly regulates actions that can minimize the losses suffered by non-MVS shareholders. Starting from risks, rights and obligations, vision and mission and long-term goals, as well as other information that hopefully can make things clear and when the prospective shareholder will buy shares with a PT that applies MVS, the prospective shareholder is aware of the risks that will be faced.

The implications arising from the application of MVS will have a different impact from the use of the OSOV concept or non-MVS PT. This impact is in the form of rights, obligations and several procedures in managing PTs between MVS and non-MVS. The form of protection is not regulated in detail in POJK 22/2021, so it will return to the Company Law and the Capital Law.

4. Conclusions

The legal position of shareholders with multiple voting rights, which is part of the share classification, was previously not clearly regulated in the laws and regulations and was only issued through POJK 22/2021 with the consideration in POJK 22/2021 being the Capital Law and OJK Law but no mention of the Company Law. Meanwhile, the classification of shares is regulated in the Company Law through Article 53 paragraph (4) of the Company Law and related to voting rights is regulated in Article 84 paragraph (1) of the Company Law. The basis for POJK 22/2021 applying multiple voting rights is the phrase in Article 84 paragraph (1) of the Company Law with the phrase "... unless the articles of association determine otherwise". Then the legal position of shareholders with multiple voting rights is the same as majority shareholders who have majority voting rights.

Then the implication of multiple voting rights is that these multiple voting rights are only given to technology-based PTs (startups) because they have special characteristics. MVS shares give a large number of votes to existing shareholders or in this case founders with the determination prior to the IPO and specified in the articles of association of the company (issuer). Ordinary or non-MVS shareholders, although they have a majority of shares, are still not in control of the company because the majority shareholder will still have majority voting rights with a maximum of 90% in accordance with the share ratio set out in POJK 22/2021. With these implications, it is also necessary to look at the protection provided by UUPM, UUPT, and POJK 22/2021.

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