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Protection of Shareholders Through *Shareholders Agreement* (Study: Comparison of Indonesian and Canadian Laws)

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Abstract

Protection for shareholders is essential in corporate practice to provide legal certainty for shareholders. This study aims to analyze the effectiveness of shareholders agreements as an important instrument for overcoming the limitations of articles of association in order to increase legal certainty for shareholders, as well as to analyze legal comparisons between Indonesia and Canada regarding the regulation of shareholders agreements in order to increase legal certainty for shareholders. The research method used is normative juridical, with a legislative approach and a comparative law approach. The results of the study show that in Indonesia, shareholders agreements are recognized as civil agreements that are binding on the parties as long as they do not conflict with the UUPT and the articles of association. However, in Indonesia, this is not explicitly regulated in the law. In contrast, in Canada, shareholders agreements have obtained special provisions through the Unanimous Shareholders Agreement (USA), which can explicitly limit or take over some of the authority of the board of directors. In Canada, shareholders agreements can be an alternative for dispute resolution. This study recommends harmonizing shareholders agreements with the articles of association and explicit provisions regarding shareholders agreements.

Keywords: Shareholder Protection, Shareholders Agreement, Indonesian Law, Canadian Law.

A. Introduction

Investment plays an important role in the growth and development of the economy today. Investment is an investment with the intention of getting profits in the future. With an increase in the number of investors who invest their capital in a company, it will directly encourage overall economic growth in a country. In economic development, companies play a major role because companies are parties that need capital to run their businesses. However, in its development, investment creates significant complexity problems, especially in the relationship between shareholders and companies.

The relationship between the company and shareholders is motivated by the existence of mutualism. Shareholders are parties who invest their savings or capital in a company, which in turn the company will use the capital to fund the running of its business activities. In the practice of the corporate world, shareholders as capital owners do have a number of rights regulated by law and listed in the company's articles of association. However, behind these rights, they also have responsibilities and obligations that need to be carried out. This

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relationship is not only limited to capital participation but also creates various agreements and agreements between shareholders and the company, both which have been regulated in the articles of association and also those regulated through special agreements between shareholders and companies, one of which is in the form of *shareholders agreements.*

Shareholders agreement It is an agreement between the shareholders and the company to establish their rights and obligations to the company, the shareholders agreement is not only limited to the structure and composition of capital, but also the composition of the board of directors, commissioners, internal relations of the company, the company's governance, and the protection of minority shareholders, and other matters.[1] In the context of freedom of contract, a holder's agreement with a company can be defined as a written or oral contract between the shareholders and the company, which is established based on the general principles of contract law.[2] The implementation of *the shareholders agreement* is based on the provisions of the Civil Code and is recognized as a valid agreement and binding on the parties. Although *this shareholders agreement* is not expressly regulated in Law Number 40 of 2007 concerning Limited Liability Companies. However, this *shareholders agreement* is mentioned in Article 4 of the UUPT, namely; "This Law, the Company's articles of association, and other provisions of laws and regulations apply to the Company".[3] From this provision, it can be interpreted that the company is not only subject to the provisions of the Limited Liability Company Law and the Articles of Association but also to other laws and regulations.

Shareholders agreement is different from the articles of association, the articles of association of a PT are not only binding on shareholders, but also third parties, in contrast to shareholder agreements which only bind the parties who sign it (agree to it). And each change is different from every amendment to the Articles of Association because the Articles of Association can be amended through the GMS according to the quorum, while the agreement can only be amended with the consent of the parties. The Articles of Association apply to shareholders automatically, while the agreement does not apply automatically unless an addendum is made. In addition, the Articles of Association are open and have stronger legal force, including the application of sanctions such as the revocation of voting rights and dividends, which the shareholders' agreement does not have.[4] The implementation *of a shareholders agreement* is important, because there is legal uncertainty faced by shareholders that are not regulated in the articles of association of a company. Through *a shareholders agreement*, at least it can provide legal certainty for shareholders and a dispute resolution mechanism.

This is as happened in one of the legal cases that occurred between PT Wisma Aman Sentosa and PT Mitra Tirta Utama, PT Indo Prakarsa Gemilang, and PT Lumbung Mas Sejahtera has received a legal decision Number 2035 K/Pdt/2018. Disputes between shareholders and the company can be resolved through *a shareholders agreement* that has been mutually agreed upon by the parties. In the agreement, the division of the composition of the board of directors and the board of commissioners in the disputed Limited Liability Company (PT) is usually regulated. Because *the shareholders agreement* has legal force and

[1] Agus Riyanto, "*Shareholders Agreement (SHA)*", https://business-law.binus.ac.id/2016/11/15/shareholders-agreement-sha/, accessed June 7, 2025.

[2] Paulius Miliauskas. "Company Law Aspect of Shareholders Agreements in Listed Companies" (Disertasi, Universitas Vilnius, 2014).

[3] Article 4 of Law Number 40 of 2007 concerning Limited Liability Companies

[4] Herlien Budiono, *A Collection of Civil Law Writings in the Field of Notary Books Three* (Bandung: PT Citra Aditya Bakti, 2018) pp. 229-230.

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is binding, each party is obliged to comply with and implement the content of the agreement. If in the implementation of the Extraordinary General Meeting of Shareholders (GMS LB) there is a party that does not carry out its obligations in accordance with the content of the agreement, then the party can be considered to have committed a default or violation of the agreement that has been agreed.

In addition, *the shareholders' agreement* also includes a specific dispute resolution mechanism through negotiation, mediation, and arbitration before it is brought to court, this provides a more efficient resolution process and maintains company confidentiality. Therefore, it can be said that *the shareholders' agreement* acts as a strong internal guideline in resolving disputes between the company and shareholders, provides clarity of rights and obligations, and can be a reference in every dispute that occurs between the company and shareholders.[5] However, not all companies in Indonesia have this *shareholders agreement*.

This is related to corporate practices in Indonesia, there are several reasons why companies rarely make *shareholders agreements*, including because the law itself does not require every company to make *a shareholders agreement*. In addition, so far, some companies have relied more on articles of association to regulate the rights and obligations of shareholders. Meanwhile, the company's articles of association often only regulate general matters. In addition, the reason why some companies in Indonesia do not make this agreement is also related to the personal relationship between shareholders, shareholders have close relationships, and consider that there is no need to make an agreement because of mutual trust between the company's shareholders.

This is as stipulated in Section 146 of the *Canada Business Corporations Act RSC 1985 C-44* which states that *a unanimous shareholder agreement* hereinafter abbreviated as USA is a valid written agreement between all shareholders (or between all shareholders and one or more other parties) that limits part or all of the powers of the board of directors to manage or supervise the management of business and affairs company. This Agreement transfers the rights, obligations, and management responsibilities from the board of directors to the shareholders who are parties to the agreement. In addition, the purchaser or recipient of shares subject to the USA is considered a party to the agreement, and if they are not notified of the existence of the USA, they have 30 days after knowing to cancel the transaction of the purchase of such shares. This USA is binding on all relevant parties and limits the power of the board of directors in accordance with the content of the agreement. Canada as a country that adheres to *the common law* system has regulated this *shareholders agreement* which has been strengthened in its laws and regulations, especially related to business.

And through this rule, it has become a reference for the settlement of cases that occur in Canada, especially cases that have been in the company. As the case of *MapleTech Innovations Ltd*., a family company in Toronto, Canada, shows the importance of *the role of shareholders agreements* in resolving internal conflicts between shareholders. The company was founded by three family members who each own 33.3% shares. Over time, there have been differences of opinion regarding the strategic direction of the company, such as business expansion, appointment of directors, dividend distribution, and issuance of new shares. This disagreement causes a *deadlock* in decision-making that threatens the stability of the company. However, since the shareholders have previously agreed on a *shareholders*

[5] Naflah Naafilah. "The Position and Legal Consequences of the Agreement Between Shareholders (Case Study of Decision Number 2035 K/PDT/2018)", *Indonesian Notary 2,* no. 21 (2020): 448-470.

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agreement, the conflict can be resolved effectively.

Although there are various studies on shareholder protection in Indonesia, there is still a significant research gap in the form of a lack of in-depth comparative analysis between the *implicit Shareholders Agreement* (SHA) arrangement in the UUPT and the explicit *model of the Unanimous Shareholders Agreement* (USA) in Canada, which causes legal uncertainty for minority shareholders. *The novelty of* this research lies in the proposed model of reconstruction of strengthening *shareholders agreements* in Indonesia through the adoption of flexibility elements from the Canadian CBCA, which has not been widely explored in the domestic corporate law literature. By filling this gap, the research is expected to provide concrete policy recommendations to revise the UUPT, thereby increasing the balance between *civil law legal certainty* and contractual flexibility, as well as strengthening the attractiveness of foreign investment in Indonesia.Based on the above problem description, the researcher considers it important that the legal problems that have been described above are raised with the following problem formulation: (1) how to arrange legal protection for shareholders in Indonesia? and (2) how the law *of shareholders agreements* in Canada and Indonesia compares in providing protection for shareholders.

B. Research Methods

The research method used in this study is a normative juridical method, which focuses on studying the Law. The normative juridical method is a type of legal research that focuses on literature review. This research was carried out by examining various legal materials, both in the form of written sources such as laws and regulations, doctrines, and other secondary legal literature. In this study, we examine Law Number 40 of 2007 as a Law of Indonesia and *Canada Business Corporation Act RSC 1985 C-44* as a Law of Canada. This research uses a legislative approach and legal comparison. The legislative approach focuses on laws that deal with companies both in Indonesia and in Canada. Furthermore, this study uses a comparative approach comparing one law with another, in other words, this research is focused on comparing legal regulations with their implementation in the field. In addition, a comparative legal approach is used to understand the advantages and disadvantages of each legal system to be studied.

Primary, secondary, and tertiary legal materials are the data sources used for this study. The primary legal material for this study is all types of laws and regulations relevant to the topic of discussion, such as the Civil Code, Law Number 40 of 2007, OJK Regulations, and the Canada *Business Corporation Act RSC 1985 C-44*. The secondary legal materials used are textbooks, the results of previous research, and the views of legal experts. The tertiary legal material in this study is a language dictionary, which is used to understand and interpret terms in Canadian laws and regulations. In this study, the data collection technique applied is *library research*. This literature study is carried out through the study of various sources of writing, such as reference books, journals, and related previous research findings. The goal is to obtain a strong and in-depth theoretical foundation as a basis for analyzing the issues being studied. The analysis techniques applied are descriptive in order to describe the data in detail and accurately.

This study applies the *comparative normative juridical method* as the main analysis technique, involving the systematic evaluation of Indonesian and Canadian legal norms through a doctrinal comparative approach to identify similarities, differences, and practical implications, and the theory of treaty law, corporate law and the principle of legal protection. This approach allows for an evaluative analysis of the effectiveness of shareholder protections, highlighting Canada's balance between freedom of contract and legal certainty,

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thereby providing recommendations for regulatory updates relevant to the Indonesian context.

C. Results and Discussion

1. Legal Protection Arrangements for Shareholders in Indonesia

In the corporate legal system, legal protection for shareholders is considered a very important aspect to maintain the fairness and stability of the company. Regulations that regulate the relationship between companies and shareholders do not only function as a controlling instrument, but as a form of protection against abuse of power by certain parties, especially large shareholders. Legal protection for shareholders is divided into two, namely preventive and repressive protection.[6] Preventive legal protection is a form of protection that provides opportunities for the public to file objections or express opinions before the government's decision is finalized[7], Meanwhile, repressive legal protection is a form of protection provided after a violation or dispute occurs, with the aim of resolving the problem so that justice is achieved for the parties involved.[8]

Regulations or legal protection arrangements for shareholders in Indonesia are regulated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) and OJK Regulations. In this UUPT, it has been stated regarding legal protection to shareholders, in Articles 52 to 56 it has regulated the rights of shareholders, such as the right to attend and vote in the GMS, the right to obtain dividends, the right to the remaining wealth from the liquidation, as well as the right to obtain relevant information about the company, justice between shareholders, legal certainty in the transfer of ownership and transparency of the company's administration. Furthermore, this article also discusses the content and purpose of the company's articles of association, this provision can provide preventive legal protection, because it can guarantee the participatory rights and economic rights of shareholders. In Article 61 paragraph (1) which reads "Every shareholder has the right to file a lawsuit against the Company in the district court if they are harmed due to the Company's actions that are considered unfair and without reasonable cause as a result of the decision of the GMS, the Board of Directors, and/or the Board of Commissioners" this is a form of repressive legal protection for minority shareholders because they have the right to sue the Company in court if the decision taken by the Company is considered detrimental.[9] This article is an important pillar in the legal protection system of shareholders because it can guarantee the right to sue to seek justice, prevent abuse of the authority of the company's organs, provide a balance between the power of the majority and provide protection to the minority, and strengthen the principles *of good corporate governance*.[10] The principle *of good corporate governance* is needed to build a system

[6] Puspita Ika Hapsari. "Legal Protection of Shareholders in the Process of Applying for the Dissolution of a Limited Company to the Court (Study of Decision Number: 534 K/PDT/2014)" (Thesis, Universitas Brawijaya, 2019)

[7] Rudhi Prasetya, *Limited Liability Company Theory and Practice*, (Jakarta: Sinar Grafika, 2014), 4.

[8] Tuti Rastuti, *The Ins and Outs of Corporate Law (* Bandung: Refika Aditama, 2015), 296.

[9] Sinta Pala Sari, Maisah, Sudiarni, Himsar Pariaman Ompusunggu. "Legal Protection of the Interests of Minority Shareholders in Public Company Decision Making in Indonesia" *Aufklarung : Journal of Education, Social and Humanities 3,* no. 3 (2023): 291-297.

[10] Satrio Septian Nugroho and Iwan Erar Joesoef. "Legal Protection of Non-Controlling Shareholders on Limited Liability Company Policy" *DIVERSI: Legal Journal* 9, no. 1 (2023): 202-228.

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that is able to ensure that the company is managed in a balanced and controlled manner, so that managers can minimize the risk of errors in management and are encouraged to make optimal use of company assets to create maximum added value for the company.[11]

Then, in Article 97 paragraph (6) which reads "On behalf of the Company, shareholders who represent at least 1/10 (one-tenth) of the total number of shares with voting rights may file a lawsuit through the district court against members of the Board of Directors who due to their mistake or negligence cause losses to the Company." it can be said that shareholders are authorized to represent the company in filing a lawsuit against members of the Board of Directors who commit violations or errors which has the potential to harm the company. This provision also provides legal means for shareholders to ensure the accountability of the board of directors, strengthen sound and transparent corporate governance, protect the interests of corporations and minority shareholders, and reflect the principles of the rule of law in the modern corporate system. The principle *of the rule of law* is aimed at eliminating arbitrary actions and privileges.[12] Furthermore, in Article 114 paragraph (6) "On behalf of the Company, shareholders who represent at least 1/10 (one tenth) of the total number of shares with voting rights may sue members of the Board of Commissioners who due to their mistake or negligence cause losses to the Company to the district court." This can be interpreted as the shareholders are authorized to represent the company in filing a lawsuit against a member of the board of commissioners who is suspected of committing a violation or negligence, if the act results in losses to the company. The provisions of this article are a concrete manifestation to ensure justice and legal certainty in company management, as well as a form of implementation of the principles of good corporate governance through legal supervision instruments.

Next, in Article 138 paragraph (3) which reads "Applications as intended in paragraph (2) may be submitted by: a. 1 (one) or more shareholders representing at least 1/10 (one tenth) of the total number of shares with voting rights; b. other parties who based on laws and regulations, the Company's articles of association or agreements with the Company are authorized to submit an application for an audit; or c. the Prosecutor's Office in the public interest." This indicates that if there is an indication that the company, the Board of Directors, or the Board of Commissioners have committed unlawful acts or acts that cause losses to other parties, the shareholders have the right to submit a request for an audit of the company. The provisions of this article safeguard the interests of shareholders and the public through an open and transparent audit process.

Furthermore, in Article 144 paragraph (1) which reads "The Board of Directors, the Board of Commissioners or 1 (one) or more shareholders representing at least 1/10 (one-tenth) of the total number of shares with voting rights, may submit a proposal for the dissolution of the Company to the GMS." This confirms that shareholders can submit a proposal to dissolve the Company. This article guarantees a democratic and transparent decision-making mechanism. In addition to the provisions of the Law on Shareholders, there are also regulations that regulate shareholder protection, namely

[11] Rinitami Njatrijani, Bagus Rahmanda, and Reyhan Dewangga Saputra. "Legal Relations and the Application of Good Corporate Governance Principles in Companies" *Gema Keadilan* 6, no. 3 (2019): 242-267.

[12] Pramesti Ratu Fiqih, Adellia Mahardhika Widodo, Anisa Miftahul Firdaus. "Analysis of the Application of the Rule of Law by the Constitutional Court as The Guardian of Constitution (Study on the Case of the Constitutional Court's Decision Number 90/PUU-XXI/2023)" *Discourse: Journal of Studies and Education* 1, no. 3 (2024): 238-249.

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POJK Number 32/POJK.04/2014 concerning the Plan and Implementation of the General Meeting of Shareholders of Public Companies. In Article 3 paragraph (1) it is stated that "1 (one) or more shareholders who together represent 1/10 (one-tenth) or more of the total number of shares with voting rights, unless the articles of association of the Public Company specify a smaller amount, may request that a GMS be held." This article is a form of repressive legal protection for shareholders, especially for minority shareholders.

This provision gives direct power to shareholders to demand that the company hold a GMS if the board of directors or board of commissioners is deemed not to be carrying out its governance functions properly. Furthermore, Article 12 paragraph (2) which states that "The shareholders who can propose the agenda of the meeting as referred to in paragraph (1) are 1 (one) or more shareholders representing 1/20 (one-twentieth) or more of the total number of shares with voting rights, unless the articles of association of the Public Company specify a smaller amount." This article affirms the participation rights of shareholders in the decision-making process in corporations, with a threshold of only 5%, this arrangement is more progressive than others, as it can open up a wide space for minority investors to influence the company's strategic agenda.

Furthermore, Articles 19 to 20 state that "Shareholders have the right to attend the GMS, either alone or through their proxies, and have the right to obtain information and materials related to the agenda of the meeting as long as it does not conflict with the interests of the company" This article provides a legal guarantee for the right to information that requires the directors to submit annual reports to shareholders. Then in Article 37 which states that "The Financial Services Authority is authorized to impose administrative sanctions on any party who violates the provisions of this POJK, including the party who causes the violation to occur." This article is the core of the protection of repressive laws under POJK Number 32/POJK.04/2014, this article provides the authority to enforce administrative law starting from written warnings, fines, business restrictions, to the revocation of permits.

One of the existing forms of shareholder legal protection is the existence of shareholder rights, the following are the rights of shareholders[13]

1. This *right* has been regulated in Article 61 paragraph (1) of the Constitution. This right is the inherent authority of shareholders to file lawsuits against parties suspected of negligence or acts that cause losses to the company, be it members of the board of directors or the board of commissioners.
2. The Right to *Appraisal Right* this right has been regulated in Article 62 paragraph (1) of the Constitution. This right gives authority for a person if the shareholders do not agree with the company's actions or decisions, they have the right to request that the value of their shares be evaluated accurately.
3. The *Pre-Emptive Right* has been regulated in Article 43 paragraph (1) and paragraph (2) of the Constitution. This right establishes the obligation for the company to first offer new shares or additional capital to all existing shareholders, each time it will issue new shares, so that existing shareholders get the first priority in purchasing the shares.

[13] Agus Riyanto, "Shareholder Rights in Indonesia," https://business-law.binus.ac.id/2018/02/17/hak-hak-pemegang-saham-di-indonesia/ accessed on October 11, 2025.

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4. This Derivative Right has been regulated in Article 97 paragraph (6) for lawsuits against the board of directors and Article 114 paragraph (6) for lawsuits against the company's commissioners. *Derivative right*[14] is interpreted as the inherent legal right of shareholders to file a lawsuit on behalf of the company against directors who are proven to have committed violations or negligence in the performance of their duties. The act is considered to have caused losses to the company and violated fiduciary obligations that should be carried out by the board of directors with full responsibility and good intentions.
5. The right to Examination *(Enqueterecht)* this right has been regulated in Article 138 paragraph (3) of the Constitution. This right is the authority that shareholders have to submit an audit request against the company if there is a suspicion that the company has committed dishonest actions or deviated from the applicable legal provisions.[15]

These five rights are basically complementary to each other, *personal rights* and *appraisal rights* function as preventive protection against adverse actions, while *derivative rights* and *enqueterecht* are repressive mechanisms that can be taken after a violation of the law by the company's organs.

Although the Law has regulated various forms of legal protection for shareholders normatively both through preventive and repressive protection, in practice it has not been fully able to guarantee legal certainty and balance between shareholders. Therefore, a contractual legal instrument has emerged, namely *a shareholders agreement*, which is prepared based on the principle of freedom of contract. The position of the agreement in the process of establishing a limited liability company is a form of business entity formed on the basis of a capital partnership, where the responsibility of each founder is limited to the amount of capital that has been deposited.[16] *The shareholders agreement* regulates the structure of the directors, the company's restrictions on carrying out certain activities, and the right of shareholders to obtain information related to the company. The purpose of this arrangement is to provide assurance for shareholders that they know each other about the parties they invest in, while ensuring that no other shareholders come from groups they do not want.

In addition, the content *of the shareholders' agreement* must not contradict or negate the provisions of the law or the Articles of Association that are mandatory.[17] In modern business practice, the need for more specific and flexible arrangements, especially regarding control rights, transfer of shares, and internal dispute resolution, has led to the emergence of *shareholders agreements* as complementary instruments that regulate internal relations between shareholders outside of the Articles of Association. The existence of normative limitations in the UUPT causes legal protection for shareholders to be considered ineffective, therefore business actors then use *shareholders agreements* as a more flexible contractual mechanism to regulate the rights and obligations between shareholders outside the Articles of Association.

[14] Gunawan Widjaya. *Legal Risks as Directors, Commissioners & Owners of PT* (Jakarta: Forum Sahabat, 2008), 66.

[15] Dian Aprilliani, "The Application of the Principle of Justice in Good Corporate Governance to the Fulfillment of the Rights of Minority Shareholders" *Journal of Legal Opinion* 3, no. 1 (2015).

[16] Ridha Wahyuni and Siti Nurul Intan Sari Dalimunthe, "The Legal Position of Agreements in the Establishment of Limited Liability Companies in the Form of Micro and Small Business Entities Based on the Job Creation Law" *ACTA DIURNAL Journal of Notary Law* 6, no.1 (2022): 51-64.

[17] Gunawan Widjaja. *Limited Liability Company Law,* (Jakarta: Raja Grafindo Persada, 2003), 278.

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2. Comparison of Legal Arrangements of Shareholders Agreement in Canada and Indonesia in Providing Legal Protection for Shareholders

Shareholders agreements in Canada are explicitly set forth in Section 146 of the *Canada Business Corporations Act RSC 1985 C-44* (CBCA). This provision contains the concept *of Unanimous Shareholders Agreement* (USA), which is a written agreement made by all shareholders of a corporation (or all shareholders and one or more other parties) that limits or takes over part or all of the power of the board of directors to manage or supervise the management of the corporation's business and affairs. In Article 146 of the CBCA provisions of the shareholder agreement, it states that[18]:

1. *Pooling Agreement* A written agreement between two or more shareholders may provide that in exercising voting rights, shares owned by them will be disclosed in accordance with the provisions of the agreement.
2. *Unanimous Shareholders Agreement* A valid written agreement between all shareholders of a company, or between all shareholders and a person who is not a shareholder, which restricts, in whole or in part, the authority of the board of directors to manage the business and affairs of the company, is valid.
3. *Declaration by single shareholder* A person who is the beneficial owner of all shares issued by a company makes a written statement restricting, in whole or in part, the authority of the board of directors to manage the company's business and affairs, the statement is considered a shareholder agreement.
4. *Constructive Party* (Parties to the Agreement) shareholders who accept the transfer of shares subject to the shareholder agreement are considered parties to the agreement.
5. *Shareholders*' Rights Shareholders who are parties to the shareholders' agreement unanimously have all rights, authorities and obligations as directors of the company concerned to the extent that the agreement limits the director's authority to manage the company's business and affairs, and the directors are exempt from their obligations and responsibilities.

The USA contains veto rights on fundamental issues, information obligations, *buy-sell/buy-out* mechanisms, *deadlock resolution*, and share transfer arrangements all to balance negotiating positions (especially for minorities) and prevent expropriation by controllers. The Canadian academic literature justifies the USA with the *theory of the "nexus of contracts"* as a governance contract that replaces the default rules of the law.[19]

In the Canadian legal system, the existence of the USA is recognized and stated in the CBCA, especially in Article 146 which provides a clear legal basis for shareholders to limit or take over the authority of the board of directors in the management of the company. Based on the fact that the USA is not only binding on the signatories, but also binding on the company, the CBCA explicitly affirms that the authority of the board of directors can be transferred to the shareholders through the USA, and the legal consequence is that the responsibility of the board of directors also transfers to those who take over the function[20]. Meanwhile, in Indonesia, *the shareholders' agreement* does not have an explicit regulatory basis in the Constitution. Implicit recognition of the

[18] Margaret Smith. "Canada Business Corporation Act : Unanimous Shareholders Agreements" *Library of Parlement.* (2002).
[19] Nicolas Juzda. "Unanimous Shareholder Agreements" (Disertasi, Universitas Toronto, 2014)
[20] *Canada Business Corporation Act Article* 146

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arrangement is based on the principle of freedom of contract which states that all legally made agreements are valid as law for the parties who make them. What can be said in Indonesia is that *shareholders* are private and are not automatically binding unless the substance is adopted or included in the company's Articles of Association (AD). This shows that the difference *in shareholders' agreements* in Indonesia still focuses on horizontal relationships between shareholders, not as an instrument of corporate governance as regulated in the Canadian CBCA. Furthermore, in terms of legal protection, in Indonesia *the shareholders agreement* includes special arrangements that protect the rights of minority shareholders, such as the right to tag along, drag along, the right *of first refusal*, and the mechanism for restoring share rights, but normatively not regulated in the UUPT.[21] Meanwhile, a *shareholders agreement* is a binding contract for the party who makes it, and functions to regulate the rights, obligations, and decision-making process in the company in detail and comprehensively. *This shareholders agreement* provides strong protection for minority shareholders with various clauses such as veto rights, repurchase rights, and effective dispute resolution mechanisms that have been regulated in the CBCA.

In terms of legal protection, the existence of *a shareholders' agreement* regulated in the CBCA is considered important for dispute resolution in Canada, as practiced in the Case of EDE Capital Inc. v. Guan (2023 ONSC 3273) is a dispute between the investment company EDE Capital Inc. and its minority shareholders. The dispute stemmed from the misuse of investment funds provided by shareholders based on a shareholders' agreement that contained an arbitration clause. The shareholders argued that the funds were not used as promised, thus causing *oppressive conduct* against them as minority investors. This case shows that *shareholders' agreements* in Canada apply internally to shareholders, but can be an instrument for resolving contractual disputes through arbitration.[22] Meanwhile, in Indonesia, there has been dispute resolution through *shareholders agreements* such as Decision Number 2035 K/Pdt/2018 involving PT Wisma Aman Sentosa against PT Mitra Tirta Utama, PT Indo Prakarsa Gemilang, and PT Lumbung Mas Sejahtera. This case discusses the legality and position of the shareholders' agreement, including the main clause for the appointment of directors and commissioners in a limited liability company in Indonesia, even though *the shareholders' agreement* is a contractual between shareholders, its binding power against the company and third parties is still limited by the provisions in the company's Constitution and AD. This decision emphasizes that in the Indonesian legal system, *shareholders agreements are* only contractual between parties and do not necessarily replace the Articles of Association or the authority of the board of directors, in contrast to the mechanism in *common law* countries such as Canada which gives explicit recognition to *the Unanimous Shareholders Agreement (USA).*

The difference in the system between Canada and Indonesia is that Canada places a shareholders agreement as part of a *corporate governance instrument*, while Indonesia views it as a private agreement between shareholders. In Indonesia, which

[21] Dwi Nugraha, Velliana Tanaya, Akila Kieyenatama Kristanto, Aldryan Perez Elisa Paka, Jordan Baros Indraputra Silalahi, Thomas Rifera Indraputra Silalahi. "Legal Protection of Shareholders in the Shareholders' Agreement of Life Insurance Companies against State Administrative Decisions" *JIHHP: Journal of Law, Humanities, and Politics* 5, no. 5 (2025): 3994-4009.

[22] Stephanie Clark, "*Ontario – No contracting out of the Model Law,*" https://arbitrationmatters.com/ontario-no-contracting-out-of-the-model-law-752/ diakses pada 30 Oktober 2025.

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adheres to the *civil law system*,[23] the law depends on written regulations, the force that binds the law. This causes the SHA to be unable to directly change the corporate governance structure, such as transferring the authority of the board of directors, because all structural changes must be in line with the Articles of Association (AD) and ratified by the notary and the Ministry of Law and Human Rights. Conflicts between SHA and AD often make SHA *unenforceable* in court, so its power is limited to shareholder relationships only, with no structural impact on the company. Meanwhile, in Canada, it adheres to the *common law system* that prioritizes the practice and results of the courts in interpreting the USA. Its relevance in Canada this agreement has a higher flexibility because the courts recognize the principle of freedom of contract broadly that allows the transfer of authority of directors directly to shareholders, creating a vertical bond with the company itself. This weakness in Indonesia weakens the protection of minorities, because the majority can ignore the SHA if it is not stated in the AD, thus causing legal uncertainty and potential expropriation.

The main advantage of the Canadian system lies in the explicit recognition of *the Unanimous Shareholders Agreement* (USA) in *the Canada Business Corporations Act* (CBCA) Section 146 which allows shareholders to legally transfer or limit the authority of the directors in the conduct of the company's activities, this arrangement strengthens protections for shareholders. Meanwhile, in Indonesia, which emphasizes the certainty of written law and the hierarchy of corporate legal norms, it must be based on and consistent with the provisions of the UUPT. This system has limitations, particularly in the flexibility of contractual arrangements. This is because *the shareholders' agreement* has not yet received an explicit legal basis in the UUPT, but is only recognized based on the principle of freedom of contract. Consequently, the agreement is not directly binding on the company, unless the substance is included in the AD through a valid ratification mechanism.

Things that can be taken from the corporate law system in Canada, especially regarding the importance of explicit recognition of *shareholders agreements* into positive Indonesian law. The model of reconstruction *of shareholders agreements* in Indonesia can propose a more comprehensive approach by expanding the scope of SHA's authority to include veto rights over strategic decisions, share transfer arrangements, and financial information mechanisms, while ensuring alignment with the UUPT. The binding force of the new shareholders can be increased through a Canada-like *"constructive party"* clause , where the new shareholders are considered to be bound automatically if mentioned in the SHA and AD, avoiding the need for reapproval. The relationship between SHA and the Articles of Association must be required to integrate part of its substance into the AD in order to have the binding power of the company, thereby avoiding conflicts and increasing enforceability. The *deadlock settlement mechanism* can be reconstructed with options such as *buy-sell* agreements, mandatory mediation before arbitration, or the appointment of independent arbitrators, which are tailored to Indonesian practices to prevent company paralysis.

Aspects	Indonesia	Canada

[23] Afga Samudera Erlangga and Kevin Hartono. "Comparison of Civil Law and Common Law Law Systems in the Application of Jurisprudence" *Proceedings of Airlangga Faculty of Law Colloquium 1* (2024): 318-323.

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Legal Status	Implicit based on the principle of freedom of contract (Civil Code Article 1338), not explicit in the Civil Code.	It is explicitly regulated in CBCA Article 146 as an instrument of corporate governance.
Legal Consequences for the Board of Directors	Cannot transfer the authority of the board of directors directly; remain subject to the AD and UUPT.11	It can limit or transfer the authority of the board of directors to the shareholders, with the exemption of the responsibility of the directors.
Binding Power on New Shareholders	Not automatic; depending on the share transfer clause and approval, it is prone to conflict if it is not included in the AD.	Automatically through *a "constructive party"* (new shareholders are considered binded).
Deadlock & *Dispute Resolution* Settings	Contractual, such as arbitration or mediation, but *enforceability* is limited if it conflicts with AD.	Integrated in the USA, including buy-sells, arbitration, and *deadlock* resolutions that bind the company structurally.

The normative implication is that Indonesia needs to update regulations so that shareholders' agreements can obtain a stronger legal status and have binding force on the company. One option that can be considered is to add a provision similar to CBCA s.146 to the UUPT or its implementing regulations, which recognize the applicability of the *shareholders' agreement* if approved in writing by all shareholders. This model includes: (1) The obligation to integrate the substance of the shareholders agreement into the AD for structural strength; (2) automatic *recognition of binding force* on new shareholders; (3) Standard deadlock mechanisms such as mandatory *buy-outs* or special corporate courts; (4) Protection of minorities through veto. This will increase flexibility without sacrificing the certainty of *civil law*, as well as attract foreign investment with stronger protections. This approach will also strengthen the principle of legal certainty and the balance of interests between majority and minority shareholders, especially in the resolution of disputes later in life. Thus, the learning of the legal system that applies in Canada is about strengthening *the regulation of shareholders agreements in Indonesia so that it can create a balance between contractual flexibility and legal certainty, expand protections for minority shareholders, and encourage the creation of* more transparent and accountable corporate governance.

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D. Conclusions and Recommendations

Based on the results of the research, it can be concluded that shareholders' agreements have an important role in providing legal protection for shareholders, especially in matters that are not regulated in detail in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). In Indonesia, *a shareholders' agreement* has been considered a kind of civil agreement as long as it does not conflict with the Constitution and the Articles of Association, but has not been explicitly regulated. This is in contrast to the legal system in Canada, which expressly governs *the Unanimous Shareholders Agreement* (USA) in *the Canada Business Corporations Act* (CBCA) Article 146, which allows shareholders to limit or take over part of the authority of directors. This difference shows that the Canadian legal system provides more legal certainty and stronger protection to shareholders compared to Indonesia. Therefore, there is a need to reform corporate law regulations in Indonesia to provide an explicit legal basis for the existence and enforceability of *shareholders agreements*. The Government of Indonesia needs to consider adding provisions similar to CBCA s.146 to the UUPT or its implementing regulations, so that the *shareholders*' agreement has binding legal force on the company, not just between shareholders.

In addition, it is important to harmonize the *shareholders' agreement* with the articles of association so that there is no overlap or legal conflict in its implementation, as well as providing more comprehensive protection for minority shareholders. With clearer recognition of *shareholders agreements* in the Indonesian legal system, it is hoped that certainty, fairness, transparency, and certainty will be created in corporate governance. Clear regulations not only strengthen the legal position of shareholders, but can also build investor confidence both domestically and abroad. The implementation of a strong shareholders agreement will also help prevent conflicts of interest within the company, provide balanced protection between majority and minority shareholders, and create a healthier and more accountable business climate.

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