



Validity of the General Meeting of Shareholders after the Expiration of the Term of Office of the Board of Directors and Board of Commissioners

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Abstract

The General Meeting of Shareholders is one of the organs of the company that has other authorities where this authority cannot be given to the Board of Directors or Commissioners. The purpose of this research is to review and explain the mechanism for the implementation of the General Meeting of Shareholders by the Shareholders in ensuring the validity of the actions taken when the board of directors and the board of commissioners have ended their term of office and to review and elaborate on the binding power of the appointment of the board of directors and board of commissioners without the consent of the shareholders. The method used is normative juridical with Case Approach, Conceptual Approach, and uses primary, secondary and tertiary legal materials. The results of this study show that the mechanism for the implementation of the General Meeting of Shareholders by the Shareholders in ensuring the validity of the actions taken if the board of directors and the board of commissioners have ended their term of office, if the General Meeting of Shareholders is held with the permission of the court, then other shareholders can attend the General Meeting of Shareholders aforementioned. Then the appointment of the board of directors and the board of commissioners without the consent of the shareholders and not appointed through the appropriate General Meeting of Shareholders is invalid and null and void for the sake of law so that it does not have binding force.

Keywords: *Validity; General Meeting of Shareholders; Term of Office of Directors; Board of Commissioners.*

INTRODUCTION

Limited Liability Companies (hereinafter referred to as PT) are one of the economic drivers in Indonesia. The term Company in Limited Liability Company, refers to the way of determining the capital of a legal entity consisting of sero-sero or shares, while the term Limited refers to the limit of liability of the company or shareholders, which is only limited to the sum of the nominal value of all shares owned.¹ Limited Liability Company (PT), is a legal entity regulated in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the UUPT). Article 1 Paragraph (1) of the UUPT states that: "A Limited Liability Company, hereinafter referred to as a Company, is a legal entity that is a capital partnership, established based on an agreement, conducts business activities with authorized capital that is entirely divided into shares and meets the requirements set forth in this Law and its implementing regulations." This provision implies that the establishment of a PT must comply with the provisions stipulated in the agreement law.²

According to Article 1 number 4 of the Law on Limited Liability Companies, the GMS is one of the organs of the company that has other authorities where this authority cannot be

¹ C S T Kansil. *Pokok-Pokok Hukum Perseroan Terbatas*. (Jakarta: Pustaka Sinar Harapan. 1996). p. 8.

² Ridwan Khairandi, *Perseroan Terbatas Doktrin, Peraturan Perundang-Undangan dan Yurisprudensi*, (Yogyakarta: Kreasi Total Media, 2009). p. 24.

given to the Board of Directors or Commissioners, as described in Articles 13 to 143 of the Law on Limited Liability Companies, namely, among others,³ Approving legal acts on behalf of the Company carried out by the Board of Directors, Approving the annual work plan if the Articles of Association so regulate, Approving the annual report if the Articles of Association so regulate, Appointing members of the Board of Directors, Appointing members of the Commissioners. Manusela Prima Mining Limited Liability Company (hereinafter referred to as PT. MPM) is a Limited Liability Company established based on Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) as Deed Number 31 dated November 28, 2006 made by a Notary, PT MPM was established and ratified by the Decree of the Minister of Law and Human Rights of the Republic of Indonesia number: W18-00035 HT.01.01-TH.2007.

Based on the Minutes of the Meeting of PT Manusela Prima Mining (MPM) as Deed No. 174 dated March 14, 2018 made by the Notary, the Transfer of Shares in the company by selling all shares owned by JFAK as many as 500 Series A shares in the Company PT. Manusela Prima Mining was sold to PT. Bina Sewangi Raya then transferred shares in the company by selling some of the shares owned by FOG as many as 3000 (three thousand) Series A Shares in the Company PT. Manusela Prima Mining, sold to PT. Build a Raya Building. Sale of Shares in the name of JFAK in accordance with Deed Number 175 dated March 14, 2018 made by the Notary and Sale of Shares in the name of FOG in accordance with Deed Number 176 dated March 14, 2018 made by the Notary.

On December 3, 2020, based on the Company Profile of PT MPM obtained officially from the Directorate General of General Legal Administration at the Ministry of Law and Human Rights, there have been changes to the Articles of Association, and changes to the company data of PT Manusela Prima Mining in the form of changes in the composition of the members of the Board of Directors and Commissioners, and the composition of shareholders of PT Manusela Prima Mining. Which was made and occurred based on the Deed of Statement of Resolution of the Meeting of PT Manusela Prima Mining Number 01 dated October 1, 2020 made before a Notary ("Deed Number 01/2020"). The amendment to the Articles of Association, the composition of the members of the Board of Directors and Commissioners and shareholders of PT MPM based on Deed Number 01/2020 was made without a Notice of the General Meeting of Shareholders (GMS) to PT Bina Sewangi Raya and without the approval of PT Bina Sewangi Raya as the Controlling and Majority Shareholder (with voting rights) in PT MPM Based on Deed Number 174/2018. Based on what is described above, at this time PT Bina Sewangi Raya as a Shareholder cannot hold a GMS because the term of office of the Directors and Commissioners appointed based on Deed Number 174/2018 has been since March 14, 2018 and the term of office for both of them has been completed on March 14, 2023.

METHODS OF THE RESEARCH

The methods used in this study are normative juridical with *Case Approach*, *Historical Approach*, *Comparative Approach*, *Conceptual Approach*, and using primary, secondary and tertiary legal materials.

³ Evangelista, Octavianna, and Daly Erni. "Kedudukan Hukum Akta Notaris dalam Rapat Umum Pemegang Saham (RUPS) Melalui Telekonferensi." *PALAR: Pakuan Law Review* 7, no. 2 (2021). p. 542.

RESULTS AND DISCUSSION

A. Mechanism for the Implementation of the General Meeting of Shareholders by Shareholders in Ensuring the Validity of Actions Taken After the End of the Term of Office of the Board of Directors and the Board of Commissioners

The General Meeting of Shareholders (hereinafter referred to as the "GMS") is one of the organs in a company. In this GMS organ, a company policy is determined and made or created. This can be seen from the definition given by the UUPT stating that the GMS, which is an organ of the company that has authority that is not given to the board of directors or the board of commissioners within the limits specified by the Law and/or the Articles of Association.⁴ The duties and authorities possessed by the GMS in relation to the request for approval from it before the directors can carry out certain legal acts as stipulated in Article 102 of the Constitution, are interpreted as one of the controls of the GMS in order to ensure that the company is duly appointed by the board of directors, as planned in the company's work plan and budget.⁵ The authority given by the UUPT to the General Meeting of Shareholders (GMS) is, Stipulating Amendments to the Articles of Association, Determining capital increases and reductions, Ratifying annual reports and use of profits, Appointing and dismissing the Board of Directors and Board of Commissioners, Giving approval regarding the transfer, guarantee of the company's assets as determined by law, Giving approval regarding the merger, merger, takeover and separation and dissolution of the company limited. This authority is an exclusive authority that cannot be handed over to others. Then the Types of General Meeting of Shareholders in the Limited Liability Company Law are known as 2 types of GMS, namely the Annual General Meeting of Shareholders and other General Meeting of Shareholders.

There are several mechanisms for the General Meeting of Shareholders: a) Mechanism for Requesting a GMS: In order for a GMS to be held legally, before the GMS is held, the Board of Directors must summon the GMS to all shareholders; b) Mechanism for the Holding of the General Meeting of Shareholders: in the implementation of the GMS, the Board of Directors is obliged to summon shareholders before the GMS, in certain cases the invitation can be made by The Board of Commissioners and shareholders are based on the determination of the Chairman of the District Court. The invitation of the GMS is the obligation of the Board of Directors, if the Board of Directors does not hold a GMS, the invitation of the GMS can be made by the Board of Commissioners as specified in Article 79 Paragraph 6 of the Constitution. The invitation of the GMS shall be made within a period of no later than 14 (fourteen) days before the date of the GMS being held without taking into account the date of the invitation and the date of the GMS. If the summons is not in accordance with the provisions referred to in the provisions and the summons is not in accordance with the provisions, the decision of the GMS shall remain valid if all shareholders with voting rights are present or represented at the GMS and the resolution of the GMS and the decision is approved unanimously.

Actions taken after those taken after the term of office of the board of directors and board of commissioners ends: 1) Mechanism for the implementation of the GMS because the Directors and Commissioners are obstructed: The provisions of the right of shareholders to

⁴ Evi Hartanti, *Tindak Pidana Korupsi Edisi II*, (Jakarta: Sinar Grafika, 2014), p. 5.

⁵ Siti Hajar, Budiman Ginting, Bismar Nasution, and Sunarmi. "Pemberhentian Direksi Perseroan Terbatas Tanpa Melalui Mekanisme Rapat Umum Pemegang Saham Luar Biasa" *PAMALI: Pattimura Magister Law Review* 4, no. 2 (2024).

be able to carry out the GMS, this can be carried out if the Board of Directors is unable to carry out the GMS. The obstruction of the Board of Directors in the implementation of the GMS, the obligation to implement the GMS lies with the Board of Commissioners. Based on the fact that the Board of Commissioners is also obstructed in the implementation of the GMS, the right to hold the GMS lies with the shareholders. However, this provision must be determined by the District Court. Article 80 Paragraph (1) states that in the event that the Board of Directors or the Board of Commissioners does not convene the GMS within the period as referred to in Article 79 Paragraph (5) and Paragraph (7) of the Constitution, the shareholders who request the holding of the GMS may submit an application to the Chairman of the District Court whose jurisdiction includes the company's domicile to determine the granting of permission to the applicant to convene the GMS himself; 2) The implementation of the GMS by the shareholders because the Board of Directors has expired: Based on the Explanation of Article 94 Paragraph (3) of the Constitution, it is regulated that if a member of the Board of Directors has expired, then he cannot automatically continue the position of the Board of Directors. This has the effect that at the end of the term of office of the Board of Directors, he no longer has the right to act for and represent the name of the PT, except after being reappointed by the GMS. Thus, it will be a great risk for the PT if all the Board of Directors of the PT has expired and has not been reappointed by the GMS. This is because with the expiration of the term of office of all Board of Directors, the PT is in a condition where no party can act for and on behalf of the PT, including to carry out its daily business activities. Legally, such a position of a PT creates legal uncertainty, and certainly makes the business partner or counterpart of the PT avoid doing business or transactions with a PT whose term of office of directors has ended.

Because the term of office of the Board of Directors and Commissioners is vacant, so that the Board of Directors cannot act either in or out of court as referred to in Article 98 Paragraph (1) of the Constitution, or at least the Board of Directors and Commissioners no longer have the authority or position as an organ that is fully responsible for the management of the company and supervise the implementation of the duties of the Board of Directors, the Extraordinary General Meeting of Shareholders ("EGMS") cannot be held by The Board of Directors and Commissioners in accordance with the provisions of Article 79 Paragraph (5) and Paragraph (7) of the Constitution.

B. Binding Power to Appointment of Directors and Board of Commissioners Without Shareholder Consent

The GMS as an organ of the Company that represents the interests of the shareholders should have something that the Board of Directors and the Board of Commissioners do not have within the limits determined by the Law and Articles of Association. The authority of the GMS regulated in the Constitution includes: a) Amending the Company's articles of association; b) Approve the form of shareholder deposit in any other form, other than money; c) Buying back the issued shares; d) Increasing the Company's capital; e) Reducing the Company's capital; f) Approve the Company's annual work plan; g) Approve the annual report including the ratification of financial statements and the supervisory task report of the Board of Commissioners; h) Using net profit including determination of the amount of allowance for the reserve. The GMS is also authorized to determine that part or all of the net profit will be used for the distribution of dividends to shareholders, reserves and/or other distributions such as *tantiem*, bonuses for employees; i) Appointing the Board of Directors;

j) To establish regulations on the division of duties and management authority among the members of the Board of Directors; k) Appointing other parties in the event that all members of the Board of Directors and the Board of Commissioners have a conflict of interest with the Company; l) To approve the transfer or use of the Company's assets as debt collateral; m) To approve the Board of Directors to file a bankruptcy application for the Company itself to the District Court; n) Dismiss members of the Board of Directors; o) Revoke or strengthen the decision to temporarily dismiss members of the Board of Directors by the Board of Commissioners; p) Appointing the Sharia Supervisory Board; q) Appointing a Board of Commissioners; r) Appointing an Independent Commissioner; s) Authorizing the Board of Commissioners to carry out the Company's management actions under certain circumstances for a certain period of time; t) Dismiss members of the Board of Commissioners on a permanent or temporary basis; u) Approve the Company's proposed merger; v) Approve the takeover of the Company; w) Dissolving the Company; x) Provide repayment and exemption to the liquidator for the liquidation of the Company carried out by him.

Therefore, the appointment of the Board of Directors and Commissioners should be approved by the Shareholders, through the mechanism of the General Meeting of Shareholders. So that if the term of office of the board of directors has expired, a GMS must be held to appoint the directors. Outside the GMS, the appointment of directors is invalid. However, if a GMS has been held, it does not produce any decision, then what should be done is through a voting mechanism based on voting rights owned by shareholders according to the number of shares owned. So that if there is a vacancy on the board of directors, the board of commissioners cannot immediately appoint a temporary director outside the GMS.⁶ Based on the Deed of Statement of Resolution of the Meeting of PT MPM Number 01 dated October 1, 2020 made before a Notary ("Deed Number 01/2020") which was made without a Notice of the General Meeting of Shareholders (GMS) to PT Bina Sewangi Raya and without the approval of PT Bina Sewangi Raya as the Controlling Shareholder and Majority (with voting rights) in PT MPM Based on Deed Number 174/2018 is invalid and null and void. Thus, based on the PT Law, there is no binding power of the Board of Directors and Commissioners who are appointed without the consent of the Shareholders in the GMS.

CONCLUSION

The mechanism for the implementation of the GMS by the Shareholders in ensuring the validity of the action taken if the Board of Directors and the Board of Commissioners have ended their term of office, if the GMS is held with the permission of the court, then other shareholders can attend the GMS. Then the appointment of the Board of Directors and Board of Commissioners without the consent of the Shareholders and not appointed through the appropriate GMS is invalid and null and void for the sake of law so that it does not have binding force.

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⁶ *Ibid.*

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