

CIVIL LIABILITY FOR THE CONDUCTING OF EXTRAORDINARY GENERAL MEETINGS WITHOUT THE ATTENDANCE AND KNOWLEDGE OF SHAREHOLDERS

(Analysis of Decision Number 92/Pdt.G/2020/PN. Yyk)

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ABSTRACT

The Company may be examined for information or reports if it is suspected that the Company has committed an unlawful act that is detrimental to shareholders or other people or members of the board of directors or commissioners, an unlawful act and is detrimental to shareholders and other people. The obligation to hold an extraordinary general meeting without the presence and knowledge of shareholders in Decision Number 92 / Pdt.G / 2020 / PN.Yyk is a case that can be imposed by a judge with sanctions for the organizer to and return one hundred shares) NV *Javaasche Bioscoop en Bouw Maatschappij* filed an appeal after 14 days of the judge reading the decision.

Keywords: Civil Liability, Extraordinary GMS, Shareholders .

A. INTRODUCTION

Article 78 Paragraph (1): “The General Meeting of Shareholders (GMS) consists of an annual GMS and an additional GMS.” In its explanation: “In practice, what is called an alternative GMS is called an extraordinary GMS.” Paragraph (4) of Article 78 states: “A general meeting may be held at any time for the benefit of the company.”

According to two articles of the Limited Liability Company Law No. 40 of 2007, an Extraordinary General Meeting of Shareholders (EGMS) can be considered a method of holding a General Meeting of Shareholders (GMS). Unlike an annuity GMS, which cannot be held annually, an EGMS can be held when the company generates revenue. For example, if a company wishes to change the composition of its board of directors and board of directors, change its name , location, founding date, or other matters requiring shareholder approval.

According to Article 79 paragraph (1) of the Limited Liability Company Law No. 40 of 2007, the board of directors has the duty and authority to hold meetings before the GMS is held. However, the EGMS can be available based on the request of officials or managers. As in one example of the capture of the EGMS held by a company, but at the time of the capture of the EGMS there was

one shareholder who was not included, resulting in a lawsuit resulting in the EGMS being no longer valid and can be canceled. As one of the legal processes, namely in the case of Decision No. 92 / Pdt.G / 2020 / PN.Yyk.

The attitude of the EGMS does not comply with the laws and regulations of the company's organization, the practice is carried out unilaterally or without the knowledge of one of the shareholders, it can be said that the actions are against the law, so that the parties in the company's EGMS must be held legally accountable for their actions, as well as potential liability, namely civil legal liability that exists for the perpetrators of criminal acts who organize the EGMS.

B. LITERATURE REVIEW

1. Civil Liability

Under civil law, basic liability is divided into two categories: fault and accident. These are known as *non-liability based on fault* and *non-liability based on known fault* , which is also called accident liability or total liability (*strict liability*).

2. limited liability company

A limited liability company, like a trading company, is a legal entity (*rechtsperson* , private legal entity). A limited liability company or PT is called a *Naamloze Vennootschap* or NV. *Naamloze* means

anonymous, meaning that the company name given does not use the name of one of the company's members, but rather a company name that is used according to the company's purpose .

3. General Meeting of Shareholders (GMS)

A general meeting of shareholders is an annual meeting of the board of directors of a company held in the best interests of the company or at the request of shareholders in accordance with the company's articles of association.

C. RESEARCH METHODS

The search type used was a standard search. The research used by the author in compiling this thesis was characteristic. The type of information in this study falls into the library research category . Qualitative data analysis was conducted in this study.

D. RESULTS AND DISCUSSION

1. Legal Provisions for the Implementation of an Extraordinary General Meeting of Shareholders

The General Meeting of Shareholders (GMS) is the legal entity that holds the highest authority in a company. All decisions regarding the company's affairs are made by the GMS, subject to terms and conditions. The GMS is a forum where shareholders meet and discuss various matters for the benefit of the company. All organizational decisions, including the appointment or dismissal of management and directors, are made through the GMS. The GMS holds the majority of voting rights, which influence company decisions.

An Extraordinary General Meeting of Shareholders (EGMS) may be held at any time at the company's request with a special agenda, namely events not included in the Annual General Meeting of Shareholders (AGMS). In general, company actions that

require the approval of a general meeting of shareholders (AGMS), especially for limited liability companies, include :

- a. A project that requires approval from *the General Assembly of Government Services* (GMS) as specified in the company charter.
- b. Projects that require *General Staff Council* (GMS) approval in accordance with applicable provisions.
- c. Actions deemed important by the company must also be carried out with the approval of the General Board of Directors (GMS), even though this is not required by statutory regulations and is subject to the company's bylaws.

EGMS is a GMS that does not have to be held every year, but can be held at any time if the company's interests require a GMS. Based on Article 78 paragraph (4) of the Limited Liability Company Law No. 40 of 2007 concerning trust companies and the GMS scheme, it is not included in the annual report of the Board of Directors but is not limited to:

- a. Changes in membership of the Board of Directors and/or Directors, or as a result of changes in membership of the Board of Directors and/or members of the Board of Directors who are dismissed or whose term of office will end, resign personally, die, are temporarily dismissed by the GMS, are dismissed by the Ad Hoc Committee responsible for reporting changes to the Minister of Law and Human Rights.
- b. Certain changes to the Constitution to be approved by the Minister of Law and Human Rights or changes to the Constitution to be notified to the Minister of Law and Human Rights.
- c. Approvals relating to mergers, amalgamations, acquisitions and divisions of the Company.
- d. Dissolution and removal of the legal status of the Company.

The definition of a GMS is specifically regulated in Article 79 paragraph (1) and paragraph (2) of the Limited Liability Company Law No. 40 of 2007, where a GMS can be held in accordance with these provisions. For example, the management itself, upon request by 1 (one) or more persons representing 1/10 (one tenth) or more of the total number of voting rights in the request, excluding paragraphs. the institution determines the minimum number, or upon request of the Commissioner.

The management is required to hold an additional GMS within 15 (fifteen) days from the date of receipt of the request for an additional GMS. If the management does not hold a separate GMS.

- a. If shareholders request a special GMS , it must be returned to the board of directors.
- b. If the Board of Directors requests this, the Board of Commissioners itself will contact the GMS personally.

The management is required to hold an informal GMS within a maximum of 15 (fifteen) days after receiving the request for another GMS. If within that time period the management or commissioners do not resolve the deviation, they may request an order from the district court domiciled in that location. The depositor submits an informal GMS. The company grants permission to the applicant to hold the GMS itself.

The presiding judge of the district court, after the appeal and hearing, the Board of Trustees and/or the Board of Commissioners will decide whether to grant a special GMS if the applicant briefly states that the requirements require the applicant to have a legal interest in calling a special GMS. The decision of the presiding judge of the district court also includes:

- a. A separate GMS, a separate GMS schedule at the request of officials, time, and/or instructions of the GMS, unusual GMS decisions, and unusual decisions

related to the appointment of the chairman, applicable laws and regulations. Limited Liability Company Law No. 40 of 2007.

- b. Orders that require the involvement of Management and/or Management in the GMS.

The decision of the Chief Justice of the District Court to grant the invalid request for a GMS has final and permanent legal consequences. There is no appeal, trial, or judicial review of this decision. This program is specifically designed to avoid delays in holding a GMS. The Chief Justice of the District Court will reject the request if the plaintiff cannot prove that the requirements have been met and the applicant has a legitimate interest in holding another GMS. If the District Court Judge rejects the request, the sole legal remedy is an appeal to the District Court (MA).

There is a separate GMS for emergency discussions and decisions that must be addressed immediately because they will disrupt the company's operations. The EGMS is a public consultation meeting regarding several matters deemed necessary by government officials. Only the predetermined agenda may be discussed at each GMS meeting. Therefore, meeting participants have the right to receive information about the company from the board of directors and/or executive committee, as long as it is in accordance with the meeting agenda and does not conflict with the company's interests. The GMS is not authorized to propose alternative actions and decisions unless they are included in the meeting agenda and approved by all participants present and/or represented by the GMS. Therefore, decisions regarding *sticky schedules* must be agreed upon by all parties.

The format of the EGMS is the same as the annual GMS. The planning obligations of the Company's Board of Directors begin with the preparation of the EGMS, which

requires the Board of Directors to prepare and submit the EGMS plan to the Company's office as of the date the EGMS is promulgated. to the EGMS. After the board of directors has prepared the matters to be discussed at the EGMS, the board of directors must summon officials. Article 79 paragraph (1) Article 81 paragraph (1) of the Limited Liability Company Law Number 40 of 2007 concerning Limited Liability Companies still regulates the provisions regarding the appointment of all shareholders. The EGMS will be held on the day, date, time and place specified in the invitation.

The difference between an annual GMS and an EGMS lies only in the preparation and the Ministry's preparation of the GMS. Officials, for example, prepare the Minutes/Minutes of the EGMS annually, but the Minutes/Minutes of the EGMS are rarely presented by the Clerk of the Court, as the taking of the Minutes of the EGMS is usually an internal decision of the Company, which is responsible for the Minutes. However, in some cases, the Notary's role in the implementation of the EGMS is to participate directly or indirectly in the meeting to make decisions on behalf of the EGMS.

Services in kind are required as a result of the GMS' determination of matters requiring approval and/or notification/reporting to the Minister of Law and Human Rights. If such provisions are still included in the Minutes of the EGMS, the EGMS must authorize one of the Directors to announce the EGMS's decisions in writing to the clerk and authorize them to participate in signing the required documents before a notary. This deed is known as the PKR Deed.

The GMS requires shareholders to be physically present to make necessary decisions related to the company's interests. However, it is difficult to motivate shareholders when a GMS decision is needed to resolve a problem. Therefore, Law No. 40 of 2007 on Limited Liability Companies

provides a solution by allowing the GMS to make circular decisions.

This friendly rule can be found in Article 91 of the Limited Liability Company Law. Article 40 of 2007:

If all shareholders agree in writing, shareholders can issue a decision other than the GMS signing the decision.

Under these conditions, the mandatory requirement is 100% approval from the company owners. Limited Liability Company Law No. 40 of 2007 does not regulate the procedures for this written arbitration. However, in practice, the official discusses matters related to the written decision, which will be announced in a "Press Decree." The written decision must be signed by all officials and will be effective if all officials have signed it.

After the implementation of the GMS, if the minority shareholders do not agree with the decision of the special meeting agenda, then provide a form of protection in accordance with the provisions of Article 62 Paragraph 1 of Law. 40 of 2007 applies to limited liability companies. Law No. 40 of 2007 concerning limited liability companies states that everyone has the right to ask the company to buy back its shares at a fair price if the company's actions are detrimental to the shareholders or the company, does not agree:

- a. make changes to the articles of association;
- b. transfer or pledge company assets whose value exceeds 50% (fifty percent) of the company's assets; or
- c. Combine, merge, get, or divide .

Law Limited Liability Company No. 40 of 2007 does not precisely define fair value, but defines fair value. (2) Limited Liability Company Law No. 40 of 2007: "Based on the definition determined by market price or does not meet the premium calculation. this company". Explanation of Paragraph (2) of Article 34 of Law 40 concerning Limited Liability Companies also

explains the value of paid-up shares. determined by market price. In the absence of market value, the most appropriate method for estimating fair value is based on the nature of the bank's investment, based on the best available information.

2. Basis for Holding an Extraordinary General Meeting of Shareholders

Shareholders are the owners of a closed company, among the rights of shareholders is the right to vote in the GMS and as determined by the share basis of Article 84 of the Limited Liability Company Law No. 40 of 2007. determined otherwise by the company. Article 48 of Law No. 40 of 2007 concerning Limited Liability Companies states that the ownership requirements of a public company can be determined by 'the requirements of authorized officials by taking into account the provisions of the law.

In general, the GMS is a forum where shareholders can discuss all matters related to the company's business, because in the GMS the owner as the owner of the company is responsible for the management of the company by the board of directors. Through the GMS, shareholders must receive information about the company from the board of directors and/or directors, if it is related to the board of directors' agenda and not for the benefit of the company. The GMS to represent other plans in the GMS and to approve the addition of management, the decision to add management must be approved by the articles in the GMS as in Article 75 of the Limited Liability Company Law No. 40 of 2007.

Article 3 of the Limited Liability Company Law No. 40 of 2007 states that shareholders are not personally liable for services rendered on behalf of the company or for losses of any company other than the shareholders. If this option fails:

- a. The company's requirements as a legal entity are complete or incomplete;
- b. Shareholders who are affected directly or indirectly use the company in good faith for their own benefit;
- c. The relevant stakeholders are involved in the company's illegal activities; or
- d. Shareholders who are directly or indirectly affected consume the company's assets so that they do not have enough company assets to cover the company's liabilities.

The number of voting rights depends on the number of shares held and whether the shareholder is unable to attend the meeting, and voting rights can be transferred. Generally, decisions at public official meetings are delegated to the commissioners, who oversee the directors, to develop a management plan. Generally, there are two types of shares issued: common stock and preferred stock.

Shareholders have the right to sue the company. Services may be sought for the purpose of obtaining information or information if provided:

- a. The company carries out illegal activities that are detrimental to shareholders or other parties; one of
- b. A director or member of the board of directors commits an unlawful act that is detrimental to the company or shareholders or other people.

The assessment is carried out by submitting a written request with the facts to the district court responsible for the company's residence. The application can be accepted by 1 (one) or more people representing 1/10 (one tenth) of the total number of voting rights holders . The application is sent when the candidate asks for information or information from the company at the GMS and the company does not provide such information or information.

Requests for information or information about a company, or inquiries to

obtain such information or information, must be based on reasonable grounds and in good faith. Related provisions can be found in Article 138 of the Limited Liability Company Law, Law No. 40 of 2007 concerning Corporate Responsibility.

Each Lender has the right to file an appeal with the district court if the decision of the GMS, the Board of Directors, and/or the Board of Commissioners is deemed unfair and unreasonable. This matter is brought to the district court with jurisdiction over the company's residence. The lawsuit primarily requests the company to stop this harmful practice, address its consequences, and avoid similar practices in the future. This protection is regulated in Article 61 of the Limited Liability Company Law No. 40 of 2007.

For legal entities in the form of a company, shareholders have the right to sue in the district court. The constituent parts of the company are the Board of Directors and the Board of Directors. These provisions are Article 97(6) Article 97 and Article 114(6) of Law Number 40 concerning Company Responsibilities. 40 of 2007. Paragraph (6) of Article 97 of the Limited Liability Company Law. 40, 2007 on behalf of the company to start the process by distributing at least 1/10 (ten) years of business to all shareholders who meet the voting requirements. charged by board members to the detriment of the company due to errors or inaction.

Article 114 paragraph (6) of Law No. 40 of 2007 also states that for a company, shareholders holding at least 1/10 (one tenth) of the total number of shares voted on must be members of the board of directors. Management holding at least 1/10 (one tenth) can be sued in district court for errors or negligence that are detrimental to the company.

3. Civil Liability for Holding an Extraordinary General Meeting Without the Attendance and

Knowledge of Shareholders in Decision Number 92/PDT.G/2020/PN.Yyk

Responsibility is defined as the state of being responsible for something (if something happens, you can be sued, blamed, held accountable) and so on. Performance rights are exempt from the nature of one's role or other roles. The responsibilities examined in this research are legal obligations, so the term obligation is often associated with the term legal obligation.

The principle of accountability is a crucial issue in law. In violations of public rights, it is important to consider which party is responsible, and which parties can be prosecuted. Several sources of law, such as statutory provisions and civil law contracts, impose limitations on rights violations.

Regarding the accountability in this investigation related to the case stated in Decision No.92/Pdt.G/2020/PN.Yyk, as the perpetrator in this case held a Special GMS of the Company without the knowledge of the shareholders, so that as a result of this criminal act, the shareholders represented by their heirs, demanded in this case to the Judge :

- a. Accept and fully grant the Applicant's demands;
- b. Declaring that the plaintiff is the rightful owner of 100 (one hundred) shares of NV. Javanese film and construction company.
- c. NV ordered the Defendant to return the 100 (one hundred) rupiahs of Javasche Bioscoop En Bouw Maatschappy which is the Plaintiff's right within 14 (fourteen) days after the verdict was read by the Editorial Judge of the Yogyakarta District Court.
- d. Sentencing the defendant to pay 1,000,000,000,000,000,000,000 dwangsom per day if he does not carry out point 3 above within 14 (fourteen) days after the District Court Judge's decision is read out.

- e. Declaring and deciding that the Defendant has committed an unlawful act by unlawfully holding a RULBPS claiming to be the owner of 300 (three hundred) NV. Javasche Bioscoop En Bouw Maatschappy, carrying out secret and clandestine liquidation, and ordering Notary Rio Custianto Vironegoro, SH, M.Hum. (Applicant) to carry out unconditional further execution of RULBPS letter 5 dated December 26, 2000, the defendant in this case.
- f. RULBPS Decree No. 26 December 2000 Notary Rio Custianto Vironegoro, SH, M.Hum. (both) are empty and useless.
- g. Approval of the RULBPS number for legal entities. On December 26, 2000, Notary Rio Custianto Vironegoro, SH, M.Hum. declared it invalid.
- h. Good By respondent RULBPS No. all legal actions carried out on the basis of letter number . By Notary Rio Custianto Vironegoro, SH, M.Hum Date 5-26 December 2000 Invalid .

Based on the decision, the Defendant as the perpetrator who held the Company's Special GMS without the knowledge of the shareholders must be held accountable for the actions carried out by the Defendant, so that the Defendant is punished by the Panel of Judges against himself or the person who has the right to submit/change 100 (one hundred) NV Shares. Javaasche Bioscoop en Bouw Maatschappy will pay the court 300 (three hundred) NV within 14 days after the jury reads the decision. Javaasche Bioscoop en Bouw Maatschappy filed this petition unilaterally and confidentially and ordered notary Rio Kustianto Vironegoro, SH, M.Hum RULBPS to prepare the document. December 26, 2000 .

The obligation imposed by the arbitrator in the Review Decision also cancels all documents arising from the holding of the Company's GMS itself which are not known to the authorities stating that RULBPS No. 5

On December 26, 2000, Notary Rio Custianto Vironegoro, SH, M.Hum. The order given (Joint Applicant) is contrary to the provisions of the RULBPS legislation. Document 5 dated December 26, 2000 Warionegoro, SH, M.Hum. Signed by a notary on January 26, 2000. Rio Custianto Vironegoro, SH, M.Hum.

The judge is also responsible for the actions of the Defendant as the private manager of the Company's GMS which was unknown to the shareholders by ignoring the lawsuit filed by the Plaintiff's heirs, who ordered the guilty party to pay Rp. 1,000,000 (One Million Rupees) Every Day the decision was late.

D. CONCLUSION

1. The provisions of the laws and regulations regarding the holding of informal meetings of public officials in limited liability companies (PT) are regulated in Article 78 paragraph (1) and paragraph (4) of the Limited Liability Company Law No. 40 of 2007. Annual shareholder meetings that are not held at any time for purposes other than in the interests of the company Article 79 paragraph (1) and (2); General Meetings through the Board of Directors themselves, at the request of 1 (one) person or more represented by 1 (one) member of general rights, unless there is a departmental decision that determines the number of minorities, or at the request of the Board of Directors.
2. The basis for holding informal shareholder meetings is based on the fact that shareholders have the right to sue the company. If a company is suspected of engaging in illegal activities that harm shareholders, third parties, or members of the board of directors, the company can be audited

- to obtain information or information detrimental to the company.
3. Civil liability for holding an informal meeting without the presence and knowledge of shareholders in Decision number 92/Pdt.G/2020/PN.Yyk, the responsibility given by the Judge is to order the organizer to return 100 shares of NV Javasche Bioscoop en Bouw Maatschappij to the plaintiff within 14 days after the judge reads the decision.

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