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LEGAL PROTECTION AGAINST MINORITY SHAREHOLDERS FOR THE IMPLEMENTATION OF A GENERAL MEETING OF SHAREHOLDERS (GMS) THAT EXPUSED TIME

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Abstract: *The General Meeting of Shareholders (GMS) must be held no later than 6 (six) months after the financial year ends (Article 78 Paragraph 2 of The Company Law). When a company does not hold an annual GMS on a regular basis it can cause legal problems and cause losses to shareholders, especially minority shareholders, minority shareholders can not find out information on the company's conditions, company financial reports, etc. related to the company. The problem that became the discussion in this study was how to protect the law for minority shareholders for the implementation of the GMS that went beyond the period and how the legal consequences for the company.*

The method used in this study is a normative juridical approach which emphasizes the legal literature source, namely legislation. The specifications of this study are in the research with descriptive analysis. The data collected in this thesis comes from books on law, especially relating and Limited Liability Companies, minority shareholders and Limited Liability Company Laws. The theory used in this thesis is the theory of legal protection and the theory of legal certainty.

The study results show that in the Law Number 40 year 2007 concerning Limited Liability Companies, there was little protection for minority shareholders if there was a delay in the implementation of the GMS, because there were no sanctions of any kind, so that it did not cause nay legal consequences for the company, although it can be said that if no GMS is implemented, the responsibility of the company has not been completed in that year. However, there are efforts that can be made by minority shareholders, namely by filling a lawsuit / or request to the head of the district court to obtain a determination to hold a GMS.

INTRODUCTION

Limited Liability Companies have been specifically regulated in Law Number 40 of 2007 concerning Limited Liability Companies. Based on Article 1 number (1) of Law Number 40 of 2007, what is meant by Limited Liability Companies, hereinafter referred to as a company, is a legal entity which is a capital partnership, established by virtue of an agreement, conducting business activities with authorized capital entirely divided into shares and fulfilling the requirements stipulated in this law and its implementing regulations. As a legal entity, the company is categorized as a legal subject that holds rights and obligations.

A company, when viewed from the perspective of its shareholders, can be divided into 2 (two) types, namely a closed company and a public company. A closed company is a company in which not everyone can participate in its capital by buying one or several shares. In a closed company, the share certificates are written entirely in the name, and what often happens is that only people who have a certain relationship such as family and so on become shareholders. Publicly listed companies according to article 1 number 7 UUPT 2007 are public companies or companies that make a public offering of shares, in accordance with the provisions of laws and regulations in the field of capital markets, while a public company according to article 1 number 8 UUPT 2007 is a company that meets the criteria for the number of shareholders. and paid up capital in accordance with the

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provisions of laws and regulations in the capital market sector. (Gunawan Widjadja, 2008).

There are two groups of shareholders, namely minority shareholders and majority shareholders. The definition of minority shareholder according to the provisions of Company Law No. 40 of 2007 Article 79 paragraph (2), namely one or more shareholders who together represent 1/10 of the total shares with valid voting rights, or a smaller amount as determined in the basic budget of the PT concerned.

According to Taqiyuddin Kadir (2007), minority shareholders are a group of shareholders who have a small share of shares in the company, so they cannot control the management of the company or do not have a decisive position in terms of choosing the company's directors, while the majority shareholder is a shareholder who owns or controls more of half of the company's shares.

In principle, the majority shareholder in terms of legal protection is sufficiently guaranteed, especially through the mechanism of the General Meeting of Shareholders (GMS), which if a deliberative decision cannot be made, it will be taken with a decision accepted by the majority shareholder. This is where the problem begins, namely if the decision is majority, what is the position of the minority vote. In fact, minority voices must also receive protection, although it does not have to be the party controlling the company. Indeed, minority shareholders are prone to exploitation.

If something happens that involves the majority shareholder, then usually the majority shareholder has anticipated the General Meeting of Shareholders, in this case the majority shareholder controls a superior vote, of course the majority shareholder will elect the people who will be the directors or the board of commissioners. consisting of people who side with the majority shareholder. Through this method, the majority shareholder will indirectly control the running of the company's management. Therefore, the majority shareholder is also known as the "controlling shareholder".

Dominant control by the majority shareholder through the management of the company can generally be seen in the policies of the management who take sides and always tend to benefit the majority shareholder. Intervention of the majority shareholder through the management of the company if carried out without control will have the potential to cause losses to shareholders and stakeholders. However, the company's policies originate from the resolutions of the General Meeting of Shareholders (GMS), while the decisions of the GMS are taken based on majority votes.

Related to this GMS in Article 78 paragraph (2) jo. Article 79 paragraph (1) Company Law requires the board of directors to hold an annual GMS no later than 6 (six) months after the end of the financial year, preceded by a summons for the GMS, where Article 79 paragraph (5) of the Company Law requires the board of directors to call a GMS within a period of time. no later than 15 (fifteen) days from the date the request for holding a GMS was received. If they do not hold the annual GMS, the board of directors is deemed to have neglected their fiduciary duties towards the company for the previous year. As a result, the Company's responsibility cannot be ratified.

The regulation regarding fiduciary duty is in Article 97 paragraph (2) of the PT. The management of PT must be carried out by every member of the Board of Directors in good faith (duty of loyalty) and with full responsibility (duty care). Good faith in this case, which means compliance with respect to the fulfillment of achievements and how to exercise rights and obligations, must comply with the norms of decency and decency. This duty to act in good faith contains an obligation for the Board of Directors to only prioritize the interests of the Company, and not to take advantage of its position as the Board of Directors to obtain benefits, either directly or indirectly, from the Company unfairly, as well as to avoid conflict. interests between the personal interests of the Board of Directors and the interests of the Company.

One of the problems in the implementation of the annual GMS is the provision of provisions for

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the timing of the annual GMS, namely in article 78 paragraph (2) of UUPT 2007 "Annual GMS must be held within 6 (six) months after the end of the financial year". According to the gramatical interpretation of the word "obligatory" in article 78, this is a sign that the provision is imperative (mandatory rule). So that when the Company does not submit an annual report or does not conduct an annual GMS on a regular basis, this can cause legal problems and cause losses for shareholders. In this case, shareholders cannot know the company's financial condition and cannot receive dividends, because shareholders also have the right to receive dividend payments. Dividends are the total net profit after deducting the allowance for reserves, which are distributed to shareholders, as long as the GMS does not determine otherwise. (M. Yahya Harahap, 2009).

Every and all obligations of a company should be carried out and resolved as well as possible, one of which is to achieve compliance with applicable laws and Good Corporate Governance. However, in reality the running of a company's business activities, there are often obstacles in the implementation of any and all of the company's obligations. One example is the implementation of the General Meeting of Shareholders (GMS), which in fact can be hampered by the failure of shareholders to attend the GMS according to the schedule determined by the company directors or there are errors or negligence of the directors in holding the GMS, even though the GMS is a an important element in a company, where almost all matters relating to the company are determined by the GMS. Things like this can cause losses and legal problems for shareholders, especially for minority shareholders. It is necessary to pay attention to that this is a concrete example of the urgency of protection and legal certainty for shareholders in the implementation of management activities of a company.

The 2007 UUPT itself does not currently regulate the sanctions for not implementing the obligation to hold an Annual GMS within 6 (six) months after the end of the financial year. However, the Board of Directors is still required to hold an Annual GMS as one of its obligations to carry out the management of the company as best as possible by providing the Company's annual report at the Annual GMS.

FRAMEWORK

1. Legal Protection Theory

Legal protection if explained literally can lead to many perceptions. Before parsing legal protection in its true meaning in legal science, it is also interesting to parse a little about the definitions that can arise from the use of the term legal protection, namely legal protection can mean protection given to the law so that it is not interpreted differently and is not injured by enforcement officials. law and can also mean the protection provided by law against something.

Legal protection is an act or effort to protect society from arbitrary actions by a ruler that is not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as human beings.

The principle of legal protection and justice as stated in the preamble of the 4th paragraph of the 1945 Constitution clearly and firmly states as follows:

> "Then rather than that, to form an Indonesian state government that protects the entire Indonesian nation and all the blood of Indonesia and to promote public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace and social justice, national independence is compiled. Indonesia is in the constitution of the Indonesian state, which is formed in the state structure of the Republic of Indonesia which is sovereignty of the People based on Almighty Godliness, fair and civilized humanity, Indonesian unity, and society led by wisdom in deliberation / representation. , as well as by realizing a social justice for all Indonesian people "

The real manifestation of the protection of the entire Indonesian nation and all of Indonesia's bloodshed is the assurance of security for all

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citizens and for all parts of Indonesia (Jimly Asshiddiqie, 2009).

According to Sudikno Mertokusumo (2009), legal protection can mean protection given to the law so that it is not interpreted differently and is not injured by law enforcement officials and also means protection provided by law for something. According to Satijipto Raharjo (2010), legal protection is to provide protection for human rights that is given to the community so that can enjoy all the rights granted by law. Law can be functioned to realize protection which is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.

Meanwhile, according to Philipus M. Hadjon, there are two kinds of means of legal protection, namely:

1. Means of Preventive Legal Protection

   In this preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government decision takes a defibitive form. The goal is to prevent disputes. Preventive legal protection means a lot to government actions based on freedom of action because with preventive legal protection the government is motivated to be careful in making decisions based on discretion.

2. Repressive Legal Protection Advice

   Repressive legal protection aims to resolve disputes. The handling of legal protection by the general courts and administrative courts of Indonesia is included in this category of legal protection. The principle of legal protection against government actions rests on and originates from the concept of recognition and protection of human rights because according to western history, the birth of the concepts of recognition and protection of human rights is directed at limiting and laying out the obligations of society and government. In connection with legal recognition and protection of human rights, recognition and protection of human rights has a primary place and can be linked to the objectives of a rule of law.

Thus the shareholders get the right to be treated the same regardless of the size of the number of shares. The principle of protection also balances the closeness of the shareholders to the company, the shareholders with the directors and commissioners who determine the progress of a company must be balanced by providing protection of interests to shareholders. A fair balance of rights among shareholders is essential in smoothing the company's functions. With the presence of legal protection provided by the government (state) to the community, it is hoped that in fact it can be applied in social life, and it is hoped that peace can be created in social life. So that in this case the role of the government is expected to protect the rights of minority shareholders in the company. Ensuring the rights of shareholders, especially minority shareholders, is one of the objectives of legal protection.

2. Legal Certainty Theory

The law has the task of creating legal certainty because it aims to create order in society. Legal certainty is a feature that cannot be separated from law, especially for written legal norms. Law without the value of legal certainty will lose its meaning because it can no longer be used as a code of conduct for everyone.

According to Hans Kelsen, law is a system of norms. Norms are statements that emphasize the "should" or das sollen aspects by including some rules about what to do. Norms are deliberative human products and actions. Laws containing general rules serve as guidelines for individuals to behave in social life, both in relationships with fellow individuals and in relations with society. These rules become a limitation for society in burdening or taking action against individuals. The existence of rules and implementation of these rules creates legal certainty.

Certainty in understanding has the meaning of a provision, or stipulation, whereas if the word certainty is combined with the word law it becomes legal certainty, which means a provision or legal provision of a country capable of guaranteeing the rights and obligations of every citizen. Normatively, legal certainty is when a regulation is made and

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promulgated because it regulates clearly and logically. It is clear in the sense that it does not cause doubts (multiple interpretations) and logically does not cause a clash and obscurity of norms in one norm system. The obscurity of norms that results from uncertainty of legal rules, can occur multiple interpretations of something in a rule.

In Gustav Radbruch's opinion, the meaning of legal certainty is that law is positive, which means:

1. That positive law is legislation.
2. Whereas law is based on facts, meaning that it is based on facts.
3. Whereas facts must be formulated in a clear manner so as to avoid confusion in meaning, as well as being easy to implement.
4. That positive law cannot be changed.

This opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically from legislation.

Gustav Van Radbrucht also stated that law in developing countries has two definitions of legal certainty, namely certainty by law, and certainty in or from the law. Then according to Van Radbrucht, the law must also contain 3 (three) identity values, namely as follows:

1. The principle of legal certainty (rechmatigedaad), this principle observes from a juridical point of view.
2. The principle of legal justice (gerecigheit), this principle looks at it from a philosophical point of view, namely where justice is equal rights for all people before the court.
3. The principle of legal usefulness (zwechmatigheid).

This doctrine of legal certainty is derived from juridical-dogmatic teachings which are based on a positivistic school of thought in the world of law, which tends to see law as autonomous, independent, because for those who adhere to this thought, law is nothing but a collection of rules. For adherents of this school, the purpose of law is nothing but to guarantee the realization of legal certainty. Legal certainty is manifested by law by its nature which makes only general legal rules. The general nature of these legal rules proves that the law does not aim at realizing justice or benefit, but solely for certainty.

The connection with this is, namely, what rules and practices can provide legal certainty for the legal consequences if the GMS is held late. The position of minority shareholders in the event of a General Meeting of Shareholders. In addition to that, in order to create a safe and peaceful atmosphere, hereby minority shareholders need assurance in the legal field of their rights in the company, and it is hoped that legal certainty is guaranteed so that their rights are not violated, it is necessary to provide protection with existing set of legal rules.

Each shareholder also has the right to file a lawsuit against the company to the District Court if they suffer losses due to the company's actions which are deemed unfair and without reasonable reasons as a result of the General Meeting of Shareholders, Directors and / or the Board of Commissioners. Therefore, Derivative Action was created.

Derivative Action or derivative rights, namely rights granted or owned by minority shareholders to be able to take certain actions in safeguarding or representing the company against the actions of other corporate organs in a limited liability company if the company's interests are harmed, namely by:

1. In accordance with Article 114 paragraph (6) of the Limited Liability Company Law, on behalf of the company, shareholders who represent at least 1/10 (one tenth) of the total shares with voting rights can sue members of the Board of Commissioners who due to their mistakes or negligence cause losses. at the company to court.
2. In article 80 paragraph (1) of the Limited Liability Company Law, in the event that the board of directors or the board of directors does not call the General Meeting of Shareholders within the period referred to in article 79 paragraph (5) and paragraph (7), the shareholders requesting the holding of the General Meeting of Shareholders may submit a

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request to the Chairman of the District Court whose jurisdiction includes the domicile of the Company to determine the granting of permission to the applicant to personally call the General Meeting of Shareholders (GMS).

RESEARCH METHODS

In conducting research, it is necessary to have a method that must be precise and in accordance with the type of research being carried out and must be systematic and consistent. The method that I use in this research is a normative juridical research method. juridical normative research methods, namely legal research conducted by examining library materials or secondary data alone, can be called normative law or library law research. In this case, research based on secondary data regarding the protection for minority shareholders when the holding of the General Meeting of Shareholders passes the period of time, as well as the legal consequences for the company, which is then reviewed and analyzed by adhering to existing regulations, namely the Limited Liability Company Law and other related regulations.

This research was conducted in the research specifications used not only at the descriptive level but also at the level of analysis. The research is carried out at the descriptive level, which only provides an overview of the object or event or reality, while at the analysis stage, it does not stop at the stage of describing the issues under study, namely the legal protection of minority shareholders in the event that the GMS is held over a period of time, but also intends to draw general conclusions from the object under study.

Sources of data in this study are collecting data through existing literature materials, data in the form of books, writings or articles in newspapers and magazines and regulations regulations which in essence relate to the legal protection of minority shareholders as secondary data which includes:

1) Primary legal materials, which consist of:

a. 1945 Constitution

b. Law Number 40 of 2007 concerning Limited Liability Companies

c. Code of Civil law

2) Secondary Legal Materials

Secondary legal materials are materials that are closely related to primary legal sources and can help analyze and understand primary legal materials, including:

a) Books, academic magazines, papers, and articles related articles on Corporate Law, as well as research methodology books.
b) Results Scientific work on legal protection of minority shareholders.

3) Tertiary Legal Materials

Materials provided instructions or explanations for primary and secondary legal materials. For example dictionaries, encyclopedias, lecture dictates that support writing and others.

Reference sources for all objects or all individuals or all symptoms or all events or all units to be studied are secondary data. Secondary data is data obtained by researchers from the literature in which the data is usually quoted. Secondary data can be in the form of legal materials and documents in order to answer the problems and research objectives. This research is based more on secondary data. The secondary data in this study is to use primary and secondary legal materials.

Analysis can be formulated as a systematic and consistent process of breaking down certain symptoms. The analysis of the research results contains a description of how the analysis describes how the data is analyzed and the benefits of the data collected to be used in solving research problems.

The analysis technique is basically descriptive analysis, starting with grouping the same data and information according to sub-aspects and then interpreting it to give meaning to each sub-aspect and its relationship to one another, then after that analysis or interpretation of all aspects is carried out to understand the meaning of the relationship between one aspect with another and with all aspects which are the subject matter of the research conducted on an indicative basis thus giving a complete picture of the result. A descriptive study, which is intended to provide

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data that is as accurate as possible about humans, conditions or other symptoms.

The research location for this thesis is in the Jayabaya University library in Jakarta.

RESULTS AND DISCUSSION

A. Forms of Legal Protection for Minority Shareholders for Organizing General Meetings of Shareholders Over Time

Legal protection is an activity to protect individuals by harmonizing the relationship of values or principles that translate into attitudes and actions in creating an order in the interaction of life among humans.

Legal protection means providing protection to human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights provided by law. Law can be functioned to realize protection which is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.

In the framework of legal protection, the Limited Liability Company Law provides certain rights to minority shareholders so that majority shareholders do not abuse their power to minority shareholders. The rights of the said minority shareholders are as follows:

1. Personal Right

Personal right is an individual right that is owned by shareholders as a legal subject to sue the negligence or error of the board of directors and the board of commissioners so as to cause loss to shareholders Individual rights are protected by law. Individual rights (persoonlijk recht) are relative.

In general, all people have the same position in law. Individual rights are protected by law. Minority shareholders as legal subjects have the right to sue the company, the Board of Directors and / or the Board of Commissioners if the Board of Directors and / or the Board of Commissioners have committed an error or negligence that has harmed minority shareholders to court.

Actions of the board of directors that may be deemed to be detrimental or violate the individual rights of minority shareholders include, among others, transactions for personal interests (self dealing). Self dealing contains elements of a conflict of interest, namely between the personal interests of the directors and the interests of the company, while the teachings of corporate opportunity state that directors or other company organs are not allowed to take the opportunity to gain profit for themselves if the opportunity is actually can be given to the company.

Then it has been explained earlier that Article 61 paragraph (1) of the Company Law gives shareholders the right to file a lawsuit against the company to the District Court if they are harmed due to the company's actions which are considered unfair and without reasonable reasons as a result of the decision of the GMS, the board of directors and / or the board. commissioner. Each shareholder as referred to in this article is limited to shareholders who own shares of at least 10% (ten percent) in the company.

So a shareholder can sue on behalf of himself and / or with other shareholders, except for the shareholder who is also being sued. Likewise, minority shareholders on their own behalf can sue the board of directors and / or commissioners, if the directors and / or commissioners have committed an error that is detrimental to the minority shareholders.

2. Appraisal Right

Appraisal Right is the right of minority shareholders to defend their interests in order to value share prices. This right is exercised by the shareholders when requesting the company that its shares be assessed and purchased with a reasonable heart because the shareholders do not approve of the company's actions that could harm or harm the company. The provisions of article 62 paragraph (1) give each shareholder the right to ask the company to purchase its shares at a fair price if the person concerned does not approve of the company's actions that are detrimental to the shareholders or the company, relating to amendments to the articles of association, transfer

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or guarantee of the company's assets. a value of more than 50% (fifty percent) of the company's net assets or merger, consolidation, acquisition or separation.

The provisions regarding the fair share price valuation are very important because the majority shareholder is more dominant in making decisions at the GMS, which of course could potentially harm the interests of minority shareholders. It is very possible that the minority shareholders sell their shares because of compulsion which is deliberately conditioned by the majority shareholder with bad faith.

3. Pre-emptive Right

Priority right is the right to ask for precedence or the right to pre-empt the shares offered. Companies usually issue new shares in order to increase capital. Pre-emptive rights are rights given to minority shareholders to be prioritized to own or purchase shares offered by the company.

In the event that the shares to be issued for additional capital are classified as shares that have never been issued, the rights to purchase first are all shareholders in accordance with the balance of the number of shares they own.

The share offering does not apply in the case of issuing shares:

1. Addressed to company employees
2. Addressed to holders of bonds or other securities which can be converted into shares, which have been issued with the approval of the GMS, or
3. carried out in the context of reorganization and / or restructuring that has been approved by the GMS.

4. Questionnaire Rights (Inquette Recht)

The right to inquiry (inquette recht) is the right to carry out an examination of the company. This inquiry right is granted to minority shareholders to apply for an examination of the company through the court, to conduct an examination due to allegations of fraud or other things being hidden by the directors, commissioners or majority shareholders. Minority shareholder inquiry rights are regulated, among others:

1. Article 97 paragraph (6) of the Company Law, that on behalf of the company, shareholders who represent at least 1/10 (one tenth) of the total shares with voting rights can file a lawsuit through the District Court against members of the board of directors who due to errors or his negligence which caused losses to the company.
2. The right to inquiry is granted in article 114 paragraph (6) which gives minority shareholders the right to sue members of the board of commissioners to the District Court who due to their mistakes or negligence cause losses to the company.
3. Article 138 paragraph (3) grants minority shareholders the right to file an application for examination of the company based on laws and regulations, the company's articles of association or an agreement in the event that there is a suspicion that the company, a member of the board of directors or a member of the company's commissioner has committed an illegal act that is detrimental to the company. or shareholders or third parties.

5. The right to file a derivative action (Derivative Action)

Derivative rights are the authority of minority shareholders to sue the directors and commissioners on behalf of the company. Minority shareholders have the right to defend the interests of the company through the authority of the judiciary. A lawsuit through the judiciary must be able to prove the fault or negligence of the board of directors or commissioners. With the lawsuit, if the lawsuit is won, the company entitled to receive compensation payments from the defendant is the company. This right also includes the right to demand that a GMS be held on behalf of the company.

According to Gunawan Widjaya, derivative right is a right given to one or more shareholders to act, for and on behalf of the company to take legal action in the form of filing a lawsuit against a member of the company's board of directors who has violated his fiduciary duites.

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Article 79 paragraph (2) gives minority shareholders the right to propose the holding of a GMS. Even shareholders with their derivative actions can request assistance from the District Court to force the directors to hold a GMS in connection with suspected actions that are detrimental to the company, or shareholders or third parties.

Basically, the derivative lawsuit involves two separate claims, namely the main claim from the company against a third party (board of directors) and the claim that shareholders must be allowed to act on behalf of or on behalf of the company. If seen from another point of view, derivative action is in principle a three-synergy of litigation, apart from involving the plaintiff's shareholders and the company as the plaintiff. Litigation also involves parties who are suspected of having committed a wrongdoing that has harmed the company or personally benefited from the company in an unjustified manner, who is the defendant. The lawsuit addressed to the defendant is of course an essential matter or the essence of the derivative lawsuit, and the company's interests in this case directly conflict with the interests of the defendant. Therefore it is common practice in common law countries that defendants in derivative action cases will be represented by their personal advocates and not by company lawyers or consultants.

The concept of derivative action is a breakthrough in corporate law which aims to prevent abuse of authority by directors or commissioners who are generally dominated by the majority shareholder. (Robert W. Hamilton, 2004)

Derivative action is a mechanism that can be used by shareholders, especially minority shareholders to enforce the company's rights when the board of directors violates their obligations, while the board of directors acts on behalf of the company on a daily basis. almost impossible to take action against the directors who commit these violations.

According to Ramsay, the concept of derivative action is basically intended to be able to provide a balance between the inevitability of the accountability of the directors and the inevitable freedom that is natural for him in running the company. From Ramsay's statement, it can be understood that the main objective of derivative action is to achieve management accountability. Therefore derivative action can act as a mechanism to maintain the trust of investors or shareholders. The same thing for management, of course, it is necessary to get protection against interference or hostility from minority shareholders, who when submitting derivative action does not act as a representative for the interest. company. In other words, derivative action is a mechanism that has the benefit of creating a deterrent effect on dishonest management.

Even though the Limited Liability Company Law already provides protection for shareholders (especially minority shareholders, in practice it is not easy to hold the board of directors and the board of commissioners accountable because all company data and documents are in the hands of the board of directors and commissioners) Moreover, in this case minority shareholders only have a small percentage of the total share ownership, so they have the authority to control the management of the company, and cannot defend their rights in the GMS.

As explained in the previous chapter, the annual GMS is a GMS which is obliged to be held annually within a period of no later than 6 (six) months after the end of the financial year. In the annual GMS, the board of directors must submit all documents from the company's annual report, which consists of the following points:

1. Financial reports
2. Company activity reports
3. Report on the implementation of social and environmental responsibility
4. Details of all problems that arose during the financial year which of course affected the company.
5. Report on supervisory duties carried out by the Board of Commissioners
6. Names of the members of the Board of Directors and the Board of Commissioners

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7. Salary allowances for members of the Board of Directors and the Board of Commissioners.

Based on the main points or agendas of the annual GMS, the urgency of holding a General Meeting of Shareholders (GMS) at the end of each financial year is evident. At each end for the financial year, it is fitting to evaluate the performance of the Board of Directors and the Board of Commissioners in terms of carrying out company activities. Of course, the points or agendas that will be discussed at the GMS are very important matters related to the continuity of activities in the company. Then, judging from the provisions of article 78 paragraph (2) of the Limited Liability Company Law, the annual GMS must be held no later than 6 (six) months after the financial year ends. It can be said that these provisions are imperative (mandatory rule). This is because in its formulation the word "obligatory" is firmly used. Therefore, considering the importance of the annual GMS and has been mandated in the provisions of article 78 paragraph (2) of the Limited Liability Company Law, the annual GMS must be held by the board of directors within the period stated in the law, which is no later than 6 (six) months after the financial year ends at the company.

In the event that if the annual General Meeting of Shareholders (GMS) is delayed, the rights of the shareholders to obtain information are violated, these rights are as follows:

1. The right to obtain information about the company.

The right to obtain information about the company at the General Meeting of Shareholders is the right obtained by shareholders to obtain information relating to the company from the Board of Directors and / or the Board of Commissioners, in matters relating to the meeting agenda, and not in conflict with the company's interests. With the delay in holding the General Meeting of Shareholders (GMS), the rights of shareholders to obtain information about the company have been violated, even though this information is very important for shareholders as investors, in order to know the sustainability of the company's running.

2. The right to determine the use of net income and / or dividend payments

If the company's retained earnings in the financial year ended is positive, then the company has an obligation to set aside net income as a reserve. This is done until the reserves reach at least 20% (twenty percent) of the total issued and paid up capital. The amount of net profit that is used as a reserve is the right of the shareholders obtained through the GMS mechanism. In addition, if there is any remaining net profit after the net profit is deducted by making an allowance for reserves, the shareholders have the right to receive the remaining net profit as dividends. As an investor, of course, it is very natural to expect to get a share of positive net income in the form of dividends.

Therefore, bearing in mind the importance of dividend distribution for shareholders, it is appropriate for the holding of a GMS as a medium for The dividend distribution is always carried out in a timely manner, of course in accordance with the time period specified in the Limited Liability Company Law Number 40 of 2007 concerning Limited Liability Companies.

B. Legal Consequences If the Company Holds a General Meeting of Shareholders Over the Term

The principles of good management, which have been accommodated in the provisions of Law number 40 of 2007 concerning Limited Liability Companies must be implemented responsibly by the company's organs, where the provisions of this law only describe the responsibilities of the board of directors in general based on the relationship. trust (fiduciary of relationship) between the board of directors and the company, which contains three important factors, namely:

1. The principle of prudence in acting for the board of directors (duty of skill and care)
2. The principle of good faith to act solely for the interests and responsibilities of the company (duty of loyalty)

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3. The principle of not taking advantage of an opportunity that actually belongs to or is intended for the company (no secret profit rule doctrine of corporate opportunity)

A board of directors is personally responsible for the company's losses if:

a. Guilty in carrying out their duties
b. Neglect to carry out his duties, as well
c. Management and representative duties performed by the directors irresponsibly and without good faith will result in the directors being fully responsible personally for the losses incurred.

In Law No.40 of 2007 concerning Limited Liability Companies, the board of commissioners has two powers, namely preventive authority, namely to anticipate errors in making a company decision and repressive authority, namely to take action after the company has made a mistake. The mistakes and omissions of the board of commissioners based on the provisions of Article 114 paragraph (3) of Law Number 40 of 2007 concerning Limited Liability Companies state that each member of the Board of Commissioners is personally responsible for the losses suffered by the company, if the person concerned is guilty or negligent in carry out its duties to supervise all company policies, the course of its management in general, both regarding the company and the company's business, as well as providing advice to the board of directors.

As has been explained above, in the case of holding a GMS, actually it must be carried out by the board of directors which is a form of responsibility to the company. Referring to article 78 paragraph (2) and article 79 paragraph (1) of the Limited Liability Company Law, the GMS must be held a maximum of six months after the company's financial year ends. This means that after that time the GMS can be said to be late in its implementation.

In the Limited Liability Company Law itself, there are actually no rules regarding sanctions if the annual GMS is not held within 6 (six) months after the end of the financial year. However, the directors are still required to hold a General Meeting of Shareholders which is one of their obligations to carry out the management of the company as well as possible by providing the company's annual report at the annual GMS. The annual report is submitted by the board of directors to the shareholders at the GMS as an illustration of the company's performance and the company's development for one year. The annual report must contain at least:

a. Financial statements consisting of at least the balance sheet at the end of the previous financial year in comparison with the previous financial year, profit and loss statement for the relevant financial year, cash flow statement, and changes in equity, and notes to the financial statements.
b. Reports on company activities, including reports on company results or performance.
c. Report on the implementation of social and environmental responsibility.
d. Details of problems arising during the financial year that affect the company's business activities.
e. Report on supervisory duties that have been carried out by the Board of Commissioners for the past one financial year.
f. The names of the members of the board of directors and members of the board of commissioners
g. Salaries and allowances for members of the board of directors and regular salaries, honoraria and allowances for members of the company's board of commissioners for the previous year.

The Limited Liability Company Law does not state what if it is past 6 (six) months after the financial year ends and an annual GMS is not held. According to the author, if the GMS is not held, it means that there is no endorsement of all legal acts committed by the company, which means that the company's responsibilities have not been completed in that year. It can also be said that if the GMS is not held in accordance with the timeframe determined by the company law, the responsibility of the company is still deemed not finished, then the delay in the implementation of the annual GMS is a form of indiscipline and the absence of good

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faith to act solely for the interests and responsibilities of the company (duty of loyalty) of the company's management in carrying out its duties. However, the transparency that is manifested through the General Meeting of Shareholders is a very important factor in advancing a company.

The lack of rules regarding sanctions for late holding of the GMS is certainly a problem in a company, because even though this is important, the implementation of the GMS is often neglected by the company's management. So this raises legal uncertainty. Whereas the task of law is to guarantee legal certainty in terms of existing relationships within society. If there is no legal certainty, the people will act arbitrarily against each other because they think that the law is uncertain and unclear.

Legal certainty is also very necessary to ensure order and order in society because legal certainty has the nature of external coercion (sanctions) from powerful officials who have the task of maintaining and fostering order in society. In addition, legal certainty is also a law that applies to anyone.

Based on the discussion about the legal consequences of the company when the company is late in holding the General Meeting of Shareholders which has been discussed by the author, the writer uses the theory of legal certainty to analyze and answer the problems in this study.

Conclusion

Based on the discussion and analysis results, the authors conclude as follows:

1. A form of legal protection for minority shareholders in the event that the company is late in holding the General Meeting of Shareholders (GMS) from the perspective of the Limited Liability Company Law Namely, shareholders can submit a request to the Chairman of the District Court whose jurisdiction includes the domicile of the company to determine permission for the shareholders to carry out the summons for the GMS themselves. However, due to the absence of sanctions in any form, whether in the form of fines, warnings and others against the company, this does not provide protection for shareholders.
2. The legal consequences for companies that hold GMS past the period of time, the Limited Liability Company Law does not mention the legal consequences or penalties if past 6 (six).

Suggestions

1. There is a need for a special supervisory agency to supervise the implementation and enforcement of the provisions in Law number 40 of 2007 concerning Limited Liability Companies, in particular concerning matters that must be carried out by companies and corporate organs. With the existence of a supervisory agency, it should be able to strengthen the implementation of the provisions in the Limited Liability Company Law.
2. It is necessary to regulate and determine mechanisms and sanctions in the event of holding an annual GMS that exceeds the period stipulated in Law Number 40 of 2007 concerning Limited Liability Companies, in order to achieve legal certainty and to protect the rights of shareholders.

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