

Juridical Review Invitation of General Meeting of Shareholders (GMS) at PT. Main Partner Grace (Analysis of Central Jakarta District Court Decision Number 108/Pdt.P/2014/PN.JKT.PST.)

Rahmat Lubis^{1*}, Bastari², Utary Maharany Barus³, Maria⁴, Jefri Ardiansyah⁵
Universitas Sumatera Utara

Corresponding Author: Rahmat Lubis rahmatlubis18@gmail.com

ARTICLE INFO

Keywords: Juridical, Invitation, GMS, Main Partner Grace

Received : 22 September

Revised : 23 October

Accepted: 24 November

©2022 Lubis, Bastari, Barus, Maria, Ardiansyah : This is an open-access article distributed under the terms of the [Creative Commons Atribusi 4.0 Internasional](https://creativecommons.org/licenses/by/4.0/).



ABSTRACT

This study uses normative legal research using statutory approaches (Statute Approach) and case approaches (Case Approach) and data collection in this study uses library research (Library Research). In this study there are 3 (three) main points of discussion. First, the summons for the General Meeting of Shareholders (GMS) by the shareholders at PT. Mitra Utama Award is in accordance with the provisions of the Limited Liability Company Law. Second, regarding the consideration of the panel of judges, it has fulfilled the principles of legal certainty and justice. Third, the legal consequences of the Board of Directors not holding a General Meeting of Shareholders and violating the fiduciary duty principle where if a loss occurs due to negligence by the Board of Directors, the Board of Directors is fully responsible personally and jointly. For this reason, it is hoped that the settlement of this case is through deliberation efforts and following the regulations in the implementing regulations of Law Number 40 of 2007 concerning Limited Liability Companies.

INTRODUCTION

Limited Liability Company is a legal entity, and as a legal entity, Limited Liability Company is like the human body biologically, has organs to carry out metabolism. A legal entity that does not have organs such as a Board of Directors or Board of Commissioners will only become a pile of junk. Requests for the holding of a GMS by shareholders are submitted to the Board of Directors by registered letter accompanied by reasons, a copy of which is submitted to the Board of Commissioners. In this case, the Board of Directors is obliged to hold the requested GMS within a period of no later than 15 days from the date of the request for the holding of the GMS. If the Board of Directors does not hold the GMS, the shareholders must submit another request to the Board of Commissioners. In this case the GMS has the right to be held independently by the Board of Commissioners, within a period of no later than 15 days from the date of request for holding of the GMS.

However, if the request for holding the GMS is not heeded by the Board of Commissioners, then the shareholder may request the holding of a GMS by submitting an application to the Chairman of the District Court whose jurisdiction covers the domicile of the company. If it can be granted according to the consideration of the Head of the District Court, the Head of the District Court issues a stipulation granting permission to the applicant to conduct the GMS himself. The determination of the Head of the District Court giving the permit is final. This means that it is not possible for the defendant to appeal or cassation. However, if the Head of the District Court refuses to issue the stipulation of the permit, then the applicant has the right to file a legal remedy, but not through appeal, but directly by filing a cassation. then the Chairperson of the District Court issues a stipulation granting permission to the applicant to conduct the GMS himself.

The determination of the Head of the District Court giving the permit is final. This means that it is not possible for the defendant to appeal or cassation. However, if the Head of the District Court refuses to issue the stipulation of the permit, then the applicant has the right to file a legal remedy, but not through appeal, but directly by filing a cassation. then the Chairperson of the District Court issues a stipulation granting permission to the applicant to conduct the GMS himself. The determination of the Head of the District Court giving the permit is final. This means that it is not possible for the defendant to appeal or cassation. However, if the Head of the District Court refuses to issue the stipulation of the permit, then the applicant has the right to file a legal remedy, but not through appeal, but directly by filing a cassation. Summons for the GMS are made by registered letter no later than 14 days before the GMS is held. The aim is to ensure that the call has been made and addressed to the shareholder's address. Calls for GMS for Public Companies are made in two daily newspapers.

The summons for the GMS includes the date, time, place and agenda of the meeting accompanied by notification that the material to be discussed at the GMS is available at the limited liability company's office from the day the GMS summons is made until the day the GMS is held and the company is required to provide a copy of the material to be discussed to the shareholders free of charge

-only. In the event that the summons is not in accordance with the provisions, the GMS and its decisions are considered legally flawed and can be rescinded. Basically, those who function and are authorized to hold annual GMS and EGMS are the Directors. This is confirmed in Article 79 paragraph (1) UUPT. The holding of a GMS is entirely the initiative of the Board of Directors. It is possible that the annual GMS or EGMS is held at the request of the shareholders themselves, as stipulated in Article 79 paragraph (2) of the Company Law in accordance with these terms and conditions. PT. Mitra Utama Award is located at the Mega Kemayoran Super Block, Jalan Angkasa Kav. B/6, Kota Baru Bandar Kebayoran, Gunung Sahari Selatan Village, Kemayoran District, Central Jakarta. (hereinafter referred to as PT. KAMU) has shareholders, namely:

1. Multi Skies Nusantara Limited has a share value of 9,900 shares with a nominal value of Rp.990,000,000.- (nine hundred and ninety million rupiah).
2. Mr. Steve Iwan shares value of 100 shares with a nominal value of IDR 10,000,000 (ten million rupiah).

PT. KAMU has a management structure within the Company it consists of:

- | | | |
|-----------------------|---|------------------------------|
| a. President Director | : | Mr. Hansretired |
| b. Director | : | Mr SteveIvan |
| c. Director | : | Sir Farmer's Point |
| d. Director | : | Mister IshmaelAzmisyam Sabri |
| e. Director | : | Sir Budiarto |
| f. Commissioner | : | Mister HendrikAtmadja |

PT. KAMU is a privately owned business entity. therefore, the capital and management are entirely the responsibility of the private sector. This case began in 2010 the Directors of PT. KAMU did not carry out the Annual GMS for the 2010 financial year report until the 2013 financial year, and on April 3 2014 finally Multi Skies Nusantara Limited as the majority shareholder (99%) submitted a Summons to the Directors of PT. KAMU to immediately hold a General Meeting of Shareholders (GMS) of PT. YOU no later than 15 days after the subpoena was received but was not heeded. Whereas then Multi Skies Nusantara Limited again sent a Summons on April 22, 2014 to the Commissioner of PT. KAMU, who also requested that a General Meeting of Shareholders (GMS) of PT. YOU no later than 15 days after the subpoena was received but the subpoena was also ignored.

Article 78 paragraph (2) jo. 79 paragraph (1) UUPT, the obligation of the Board of Directors to hold an annual GMS no later than 6 (six) months after the end of the financial year, which is preceded by a call for a GMS, where Article 79 paragraph (5) UUPT requires calling a GMS within a maximum period of 15 (fifteen) days from the date the request for holding a GMS was received. Article 80 of the Company Law stipulates that a shareholder requesting the holding of a GMS may submit a request to the chairman of the District Court whose jurisdiction covers the Company's domicile to stipulate the granting of permission to the Applicant to conduct the summons for the GMS himself. Article 80 paragraph (1) UUPT, the right of open shareholders to submit a "Request" to the Chairman of the District Court requesting the holding of a GMS:

1. If the Board of Directors or Board of Commissioners does not call for a GMS within 15 (fifteen) days from the date of receipt of the request letter,
2. The form is the application that is stated in the application letter, not a lawsuit.
3. Submitted to the Chairman of the District Court in accordance with the principle of actor sequitor forum rei, ie whose jurisdiction covers the domicile of the Company,
4. Fill in the request for the Application, so that the Chairperson of the District Court determines the granting of permission to the Petitioner to conduct the summons for the GMS himself.

Based on Article 80 of the Company Law, Multi Skies Nusantara Limited filed an application on May 9 2014 which was received and registered with the Central Jakarta District Court Registrar on May 9 2014 with register No.108/Pdt.P/2014/PN.JKT.PST. Where in the application for Multi Skies Nusantara Limited as the applicant and giving power of attorney to Arief Hidayat, SH, Hutami Simatupang, SH, Harry FM Sitorus, SH and Zaenal Abidin, SH and the entire management of PT. YOU as the respondent and authorize Petrus Selestinus, SH, Nino Sukmana, SH.MH, and Silvester Nong, M, SH. The intention of the Petitioner is to request permission to be granted to the Chairperson of the Central Jakarta District Court in terms of calling the General Meeting of Shareholders of PT. YOU, namely with the agenda:

1. Financial statements for 2010, 2011, 2012 and 2013 which include 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 statement of changes in equity, as well as notes to the financial statements;
2. Reports on the company's activities in 2010, 2011, 2012 and 2013;
3. Social and environmental responsibility reports for 2010, 2011, 2012 and 2013;
4. Details of problems that arose during 2010, 2011, 2012 and 2013;
5. Approval of transferring the rights to all shares owned by Mr. Steve Iwan to Mrs. Sri Tjintawati Hartono; and
6. Changes in the composition of the management of the company; In its stipulation, the entire application of the applicant can be granted by the Central Jakarta District Court.

THEORETICAL REVIEW

Within this conceptual framework, several definitions are disclosed which will be used as the basis for legal research, in order to avoid differences in interpretation of the terms used, in addition to being used as a guide in the process of this research. To answer the problems in this study several basic concepts must be defined, so that operationally the results obtained in this study are in accordance with the stated objectives, namely:

- a) Limited Liability Company is a legal entity to run a business that has capital consisting of shares, the owners of which have as many shares as the shares they own.

- b) The General Meeting of Shareholders is a company organ that has powers that are not granted to the Board of Directors or the Board of Commissioners within the limits specified in this Law and/or the articles of association.
- c) Invitation to the GMS is an activity carried out by the Board of Directors or the Board of Commissioners inviting shareholders to provide an assessment and make decisions on the Directors' reports regarding the company's activities and results in the past year and plans for subsequent activities, or to discuss and make decisions on issues that arise suddenly and requires immediate treatment.
- d) Judge's considerations (Ratio Decidendi) are legal reasons used by judges to arrive at a decision.
- e) The District Court is a judicial institution within the General Court environment which is domiciled in the regency or city capital. As a Court of First Instance, the District Court functions to examine, decide, and resolve criminal and civil cases for people seeking justice in general.
- f) Request to Conduct GMS Himself is a request made by a shareholder to the chairman of the district court to call for a GMS in the event that the Board of Directors or Board of Commissioners does not call for a GMS..

METHODOLOGY

Research Specifications

Legal research is basically a scientific activity based on certain methods, systematics and thoughts that aim to study one or several certain legal phenomena by analyzing them. Apart from that, an in-depth examination of these legal facts was also carried out in order to then seek a solution to the problems that arise in the phenomenon in question. This study uses normative legal research because:

- a) Only examines the laws and regulations related to summons for the General Meeting of Shareholders.
- b) The research that will be carried out by the authors is to analyze a decision of the panel of judges.

The nature and research material used is analytical descriptive research, namely the authorship method used to discuss a problem by researching, processing data, analyzing, interpreting, written matters with regular and systematic discussion, which leads to normative research, namely legal research conducted by examining secondary data. Types of normative legal research used include:

1. Positive Legal Inventory Research because in this research all laws and regulations related to the invitation of the General Meeting of Shareholders are first inventoried.
2. Research on Legal Principles because it is carried out to find legal principles or *rechtbeginselen* which are carried out against written positive laws that have been inventoried.
3. In Concreto (concrete) research is research conducted to find the right rule of law for a concrete case. This research is also an attempt to find out whether the

law is appropriate to be applied in concreto to resolve a legal case and where the sound of legal regulations can be found.

The type of research used in this study is normative legal research or document or doctrinal research which is also referred to as library research, namely by collecting and using legal materials, namely primary, secondary, tertiary legal materials. The three legal materials can be broken down as follows:

1) Primary Legal Materials

- a) Central Jakarta District Court Decision File Number: 108/Pdt.P/2014/PN.JK T.PST. September 16, 2014.
- b) Law Number 40 of 2007 Concerning Limited Liability Companies.

2) Secondary Legal Materials

Namely legal materials that provide explanations regarding primary legal materials, both in the form of books and research results related to the issues discussed.

3) Tertiary Legal Materials

Namely legal materials that provide explanations and/or instructions on primary legal materials and secondary legal materials, both in the form of dictionaries and journals.

Approach Method

This research uses the following approach:

a) Statute Approach

This approach is carried out by examining all laws and regulations that are related to the problems (legal issues) that are being faced. This statutory approach, for example, is carried out by studying the consistency/compatibility between the Constitution and laws, or between one law and another, and so on.

b) Case Approach

This approach is carried out by examining cases related to the legal issues at hand. The cases reviewed are cases that have obtained court decisions with permanent legal force. The main thing that is studied in each of these decisions is the consideration of the judge to arrive at a decision so that it can be used as an argument in solving the legal issues at hand.

Data Collection Tool

The tool used to collect data in this research is a documentation study (Library Research) in the form of collecting data from literature or scientific writing according to the object under study.

Data Retrieval and Collector Procedures

Data collection procedures and data collection were obtained from literature studies which aim to find concepts, theories, opinions or findings that are closely related to the main issues.

Data Analysis

The data obtained is in the form of a decision file from the Central Jakarta Court No.108/Pdt.P/2014/PN.JKT.PST which is then studied carefully based on the main problem to then be presented in a descriptive manner in a series of clear and detailed sentences. The author then compares the presentation and as mentioned above based on the applicable laws and regulations with the theoretical concepts put forward by experts in the literature through a comprehensive and integrated discussion to find out the correlation between the theory and its pragmatic application. In the end, the author can draw conclusions deductively by starting with general matters as contained in laws and regulations or principles, then moving on to specific matters as contained in the Central Jakarta District Court's Determination file. No 108/Pdt.P/2014/PN.JKT.PST.

Data Types and Sources

In this case, the type of research used is descriptive qualitative research. Data from a survey conducted by Deli Serdang Regency regarding the management of tax revenues from Land and Building Rights Acquisition Fees (BPHTB) in Regional Financial Services are as follows: Collected. For this study, data was collected through interviews with informants, namely the Head of BPHTB, Regional Financial Services, Deli Serdang Regency. 2) secondary data is data obtained to complement and support primary data, the data is in the form of documents in the form of notes, rules, decisions, reports, books, archives, internet related to research questions;

Data Analysis Technique

In the field of data analysis technology, I am interested in the analysis of the problem of shifting real estate taxes from the former central tax to local taxes. In addition, researchers conducted in-depth interviews with reporters regarding the BPHTB tax administration process. Data collection was carried out through questions using interview guidelines. Responses from the results of the interviews were processed and stored to produce an understanding of the object under study. The qualitative research process is not a linear process like quantitative research. According to Prasety Irawan (2007), the research process in qualitative research consists of five stages: determining the focus of the problem, developing the theoretical framework, determining the methodology, analyzing data, and making decisions. Descriptive qualitative understanding is research that uses descriptive data in the form of written or spoken words from observable people or actors to understand phenomena or social manifestations by focusing on the overall picture of the phenomenon being studied. Variables that are interrelated to better understand the description or explanation of the tax administration process Cost of Acquisition of Land and Building Rental Rights (BPHTB) in Deli Serdang Regency Increased Regional Original Income (PAD).

RESULTS AND DISCUSSIONS

Accountability of the Board of Directors in the Annual GMS

The Board of Directors carries out the management of the Company for the benefit of the Company and in accordance with the aims and objectives of the Company, in good faith and with full responsibility and prudence. The Board of Directors has a position as a trustee or fiduciary in carrying out their duties. According to common law experience, this relationship can be based on the theory of fiduciary duty. The fiduciary duty relationship is based on trust and confidentiality, which in this role includes thoroughness, good faith and candor, and is based on a relationship of trust with high standards. The main obligation of the Board of Directors is to the Company as a whole, not to individuals or groups of shareholders.

The full responsibility of the Board of Directors for the management of the Company is the fiduciary duty of a Board of Directors, which is to be responsible for the Company, not other organs of the Company, either the General Meeting of Shareholders or the Board of Commissioners. In carrying out their duties, the Board of Directors is burdened with various obligations in connection with the management of the Company, in this case including holding a General Meeting of Shareholders. Shareholders are entitled to hold a GMS, attend it and vote at the GMS. Article 78 paragraph (1) of the Company Law divides the GMS into Annual GMS and other GMS. The holding of the Annual GMS is routine in nature, while other GMS, which in practice is often known as the Extraordinary GMS, can be held if the interests of the Company require it, so that it is incidental in nature.

The Annual GMS must be held no later than 6 months after the end of the financial year. Extraordinary GMS is not required to be held, but can be held if the interests of the Company require it. In its development, the application of the fiduciary duty principle has raised deep concerns for the Board of Directors in making business decisions, especially speculative decisions. This will become a problem when it turns out that the decision is detrimental to the Company. Therefore, to protect the Directors who have good intentions, the principle of the business judgment rule has emerged. The principle of this Business Judgment Rule provides protection for Directors who make calculated business decisions not to be penalized if later their business decisions, which have been made in the sole interest of the Company, harm the Company.

Principles of Fiduciary Duty of Directors in the Management of the Company

As an artificial person, it is impossible for the Company to act alone without the help of its organs, as in Indonesia it is known as the GMS, the Board of Directors and the Board of Commissioners. In carrying out its daily activities and activities, the Company has certain interests which are contained in each deed of establishment and the articles of association of the Company. Every action of the Board of Directors has a dual role, namely on the one hand it shows the existence or existence of the Company, and on the other hand it becomes a limitation on the Company's ability to act. In company law, fiduciary duty implies that in carrying out their duties and authorities to manage the company, the board of directors must start from the basis that the duties and authorities obtained are based on two

principles. The two principles are the trust given by the company and the principles that refer to the ability and prudence of the board of directors' actions.

The Board of Directors is only entitled and authorized to act on behalf of and for the benefit of the Company within the limits permitted by the applicable laws and regulations and the articles of association of the Company. The Board of Directors has limitations (restrictions) in acting on behalf of and for the benefit of the Company. In relation to this, the Board of Directors of the Company in carrying out their management duties must always:

- a. Act in good faith.
- b. Taking into account the interests of the Company solely and not the interests of the shareholders.
- c. Carry out the management of the Company properly, in accordance with the duties and authorities given to him, with a reasonable level of accuracy, provided that the Board of Directors is not allowed to expand or narrow the scope of his own activities.
- d. Not in a situation that could result in the interests and or obligations of the Company conflicting with the interests of the Company, except with the knowledge and approval of the Company.

The four matters mentioned above are important because they reflect an interdependence relationship between the Company and the Board of Directors, in which the activities and activities of the Company depend on the Board of Directors as the organ entrusted with managing the Company. The existence of the Company is the reason for the existence of the Board of Directors, so that without the Company, the Board of Directors will never exist. This relationship is called a fiduciary relationship, which in turn creates a fiduciary duty for the Board of Directors towards the Company which has appointed him as administrator and representative for the Company. Even though a shareholder holds 99.99% of the shares, the shareholder cannot immediately implement his wishes for the company. Any wishes from shareholders for the company must be proposed through the media of the general meeting of shareholders. Regarding the relationship between the obligations of the directors towards the company and the GMS organs, Article 28 paragraph (2) jo. 29 paragraph (1) of the UUPT indeed requires directors to hold an annual GMS no later than 6 (six) months after the end of the financial year, which is preceded by a summons for a GMS, where Article 79 paragraph (5) requires directors to call for a GMS within a maximum period of no later than 15 (fifteen) days from the date the request for holding a GMS is received.

If they do not hold an annual GMS, the directors are deemed to have neglected their fiduciary duties towards the company. However, making accountability to the assignor is one of the burdens that must be carried out by an assignee. In its development, the legal institutions of trust which gave birth to the concept of fiduciary duty have successfully interacted with civil law state law, so that many provisions of civil law state law have begun to apply the fiduciary duty concept in their company law. Nevertheless, some legal experts consider that fiduciary duty so far this is a concept that is quite familiar in among civil law

law practitioners, namely the statutory duty of good faith, namely the obligation of every person in dealing with others to act in good faith towards them in doing everything that is ordered by law.

Whereas in principle the Annual General Meeting of Shareholders is held to ratify the legal actions of the Board of Directors, work plans, allocation of funds, as well as company activity reports, balance sheets, and so on. The UUPT does not really mention what if 6 (six) months have passed after the end of the financial year and no Annual GMS is held. But logically, if there is no ratification, it means that the company's responsibilities have not been completed for that year. Therefore, if it has passed 6 (six) months after the end of the financial year, the Annual GMS may no longer be held. Thus, the accountability report, the use of company assets and others carried out by the Board of Directors in that year cannot be ratified. The responsibilities of the Board of Directors who do not carry out fiduciary duties apply jointly and severally to each member of the board of directors. The exception of joint responsibility by members of the board of directors occurs if they can prove:

- a. The loss was not due to his fault or negligence.
- b. Has carried out management in good faith and prudence for the benefit and in accordance with the aims and objectives of the company.
- c. Does not have a conflict of interest, either directly or indirectly, for management actions that result in losses.
- d. Have taken action to prevent the loss from arising or continuing.

Accountability of the Board of Directors in the Extraordinary GMS

The responsibilities of the Board of Directors are basically based on two important principles that arise because of the duties and positions entrusted to them by the Company based on fiduciary duties, namely the duty of loyalty and the duty of care. These two principles require the Board of Directors to act in good faith and with full care and prudence, solely for the benefit of the Company. The general principle in Company law is that the fiduciary duty theory of the Board of Directors applies, both in the position of the Board of Directors in carrying out management duties as the management of the Company, as well as in carrying out representative duties to represent the Company in and out of court. Fiduciary duty is a mandatory element in Company law. In principle, the Board of Directors is burdened with the principle of fiduciary duty to the Company, not to shareholders. Therefore, only the Company can force the Board of Directors to carry out the fiduciary duty through the GMS forum. UUPT gives authority to GMS in terms of:

- a. Determination of amendments to the articles of association.
- b. Share buyback.
- c. Determination addition Company capital.
- d. Determination subtraction Company capital.
- e. Agreement annual report and approval of annual calculations.
- f. Determination of the use of profits.
- g. Appointment/dismissal/distribution of duties and authorities of the Board of Directors and Board of Commissioners.

- h. Agreement transfer/ guarantee of the Company's assets.
- i. Approval of the merger, consolidation, acquisition and separation of the Company.
- j. Liquidation of the Company.

Furthermore, to review the implementation of the fiduciary duties of the Board of Directors in holding an Extraordinary GMS, it must be seen the relationship between the responsibilities of the Board of Directors to the Company and the GMS. The responsibilities of the Board of Directors in relation to the General Meeting of Shareholders are part of the duties and authorities of the Board of Directors towards the Company, which can be described as follows:

- a. Because the duties and authorities of each member of the Board of Directors as well as the amount and type of income of the Directors are determined by the GMS and the Directors themselves are appointed and dismissed by the GMS, the Directors are responsible to the GMS to provide an accountability report regarding all implementation of their duties and authorities to the Company.
- b. The Board of Directors is obligated and responsible for making the Minutes of the GMS.
- c. The Board of Directors is responsible for calling for and organizing the GMS
- d. Annually to submit an accountability report as stipulated in the Limited Liability Company Law and for the benefit of the Company is authorized to hold an Extraordinary GMS.
- e. The Board of Directors carries out all GMS decisions that have been ratified at the meeting.
- f. The Board of Directors is obliged to notify the shareholders of the resolutions of the GMS.
- g. The Board of Directors is required to seek approval from the GMS to transfer or make collateral for all or most of the Company's assets;
- h. The Board of Directors must convene and seek approval from the GMS for amendments to the articles of association, increase in the Company's capital, merger, consolidation, acquisition, separation and dissolution of the Company.
- i. Each member of the Board of Directors is personally responsible if the person concerned is guilty or negligent in carrying out his duties. Shareholders, on behalf of the Company who represent at least 1/10 (one tenth) of the total number of shares with valid voting rights, may file a lawsuit in a district court against a member of the Board of Directors who due to their mistake or negligence causes losses to the Company.

The responsibility of the Board of Directors in relation to the GMS is an obligation carried out by the Board of Directors from the authority and duties stipulated by law and the Company's articles of association, namely carrying out the GMS, implementing the resolutions of the GMS and providing accountability to the GMS. The GMS decision is a reference for the Board of Directors to carry out and carry out tasks for the benefit of the Company. The Board of Directors, as the recipient of the power of attorney from the Company to manage and represent the

Company, is required to prepare and provide an accountability report to the party giving the power of attorney, namely the Company, in the GMS forum. As a form of this responsibility, the Board of Directors submits an annual report to the GMS.

Furthermore, the concern is regarding the implementation of the Extraordinary GMS. Extraordinary GMS are meetings among the Company's shareholders, which can be held at any time. Extraordinary GMS is held specifically to discuss certain matters deemed necessary by shareholders. Extraordinary GMS is incidental in nature, and can be held at any time if the interests of the Company require it. The Extraordinary GMS is held in connection with several matters of the Company's actions which are of an indefinite nature, but require the approval of the GMS in its implementation, which in the Limited Liability Company Law are as follows:

- a. Make changes to the articles of association.
- b. Providing company guarantees.
- c. Material guarantee/collateral provision, sale or transfer of most of the assets of PT.
- d. Mergers, consolidations, acquisitions and separations.
- e. Application for bankruptcy and dissolution of PT.

The Board of Directors of the Company is authorized by the Company Law to hold an Extraordinary GMS at the initiative of the Directors themselves and can also be carried out at the request of:

- a. 1 (one) person or more shareholders who collectively represent 1/10 (one tenth) or more of the total shares with voting rights, unless the articles of association determine a smaller amount; or
- b. Board of Commissioners; preceded by the obligation of the Board of Directors to call for an Extraordinary GMS within a period of no later than 15 (fifteen) days from the date the request for the holding of an Extraordinary GMS was received, or within a period of no later than 14 (fourteen) days prior to the date the Extraordinary GMS was held without taking into account the date of the summons and the date of the Extraordinary GMS, in the event that the Extraordinary GMS is held at the initiative of the Board of Directors itself.

Extraordinary if the interests of the Company require it. Even though UUPT has stipulated it, the obligation to hold an Extraordinary GMS has its roots in the principle of fiduciary duty, moreover its nature is solely for the benefit of the Company. In this regard, appoint the provisions of Article 92 paragraphs (1) and (2) and Article 97 paragraphs (1) and (2) UUPT as a legal basis for the Board of Directors to manage the Company in good faith and full responsibility for the interests of the Company, in accordance with the aims and objectives of the Company. Even though it has been stipulated in the UUPT so that it can be categorized as the statutory duty of the Board of Directors, this provision is rooted in the principle of fiduciary duty which obliges the Board of Directors, as a trustee in a trust agreement, to manage the interests of the Company based on a trust, with good faith and loyalty to the Company accompanied by with skill and diligence. In this case, the law only provides a written legal basis, as well as by emphasizing

several special provisions or prohibitions for the Board of Directors in the framework of regulating and enforcing the principles of the fiduciary duty of the Board of Directors. The provisions of the law will relate to issues of legitimacy, interpretation, sanctions, and jurisdiction which make the fiduciary duty arrangements of the Board of Directors, as part of the Company's legal system, function properly.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Implementation of calling the General Meeting of Shareholders (GMS) at PT. Mitra Utama Award has not been implemented properly. This can be seen from the non-implementation of the annual GMS and the non-implementation of the financial statements and profit and loss balance sheet of PT. Mitra Utama Award from 2010 to 2013, even though PT. Multi Skies Nusantara Limited has sent a subpoena for summons to the GMS to the Directors and Commissioners for the implementation of the GMS but the Directors and Commissioners do not heed it. The Annual GMS of PT. Karunia Anugerah Mitra Utama due to unclear ownership of PT Karunia Anugerah Mitra Utama shares. Thus, the Petitioner's subpoena to conduct a GMS of PT. Mitra Utama Award has no clear legal basis.

The judge's considerations in civil cases no. 108/Pdt.P/2014/PN.JKT.PST after seeing the Petition, Answers, Replik, Duplicate, Evidence, Evidence submitted by the Petitioner and the Respondent from PT. Multi Skies Nusantara Limited and PT. Mitra Utama Award, because the evidence and witnesses presented by the Respondent could not support the Respondent's arguments. So the Central Jakarta District Court stated that it granted all requests from PT. Multi Skies Nusantara Limited. In principle, the Annual GMS is held to ratify the legal actions of the Board of Directors. Therefore, if it has passed 6 (six) months after the end of the financial year, the Annual GMS may no longer be held. Thus, the accountability report, the use of company assets and others carried out by the Board of Directors in that year cannot be ratified. Responsibilities of Directors who do not carry out fiduciary duty applies jointly and severally to each member of the board of directors.

Recommendations

It is hoped that in the legal settlement between the shareholders of PT. Multi Skies Nusantara Limited and PT. The gift of Anugerah Mitra Utama is by deliberation and following the regulations in the implementing regulations of Law No. 40 of 2007 concerning Limited Liability Companies, because deliberation will produce better things and no one goes to court, with deliberations it looks more like a family and also with deliberations it is an easier way, simple does not use high costs and does not take a long time and can live a harmonious relationship so that misunderstandings do not occur between shareholders and also the management of the company, namely the Directors or Commissioners. It is hoped that the Judge in resolving the case against the Summons of the GMS can decide by the Implementing Regulations of Law No. 40 of 2007 concerning Limited Liability Companies and can provide sanctions

that can be given to company management if they commit acts of arbitrariness or injustice to shareholders in Company management. In the future, clear and definite rules regarding sanctions for Directors who violate their Fiduciary Duty are formed by not holding a GMS.

FURTHER STUDY

Observations were made by researchers from the initial procedure to the final procedure. This observation cannot be carried out optimally, there are more researchers get the data from the interview process. For this reason, it is hoped that the settlement of this case is through deliberation efforts and following the regulations in the implementing regulations of Law Number 40 of 2007 concerning Limited Liability Companies. In this case, the law only provides a written legal basis, as well as by emphasizing several special provisions or prohibitions for the Board of Directors in the framework of regulating and enforcing the principles of the fiduciary duty of the Board of Directors. The provisions of the law will relate to issues of legitimacy, interpretation, sanctions, and jurisdiction which make the fiduciary duty arrangements of the Board of Directors, as part of the Company's legal system, function properly.

ACKNOWLEDGMENT

Our thanks go to the Faculty of Law, University of North Sumatra, especially Dr. Bastari MM., BKP, Mrs. Dr. Utary Maharany Barus SH., M.Hum, and Mrs. Dr. Maria SH., M.Hum Si for her willingness to guide my thesis.

REFERENCES

- Achmad Ali, 2009, *Revealing Legal Theory (Legal Theory) and Judicial Prudence, Including Interpretation of Laws (Legisprudence)*, First Edition, Second Printing, Kencana, Jakarta.
- Ahmad Yani and Gunawan Widjaja, 2006. *Business Law Series: Limited Liability Company*, PT Raja Grafindo Persada, Jakarta.
- Astim Riyanto, 2002, *Legal Philosophy*, Yapemdo, Bandung.
- Bambang Sunggono, 2009. *Legal Research Methodology*, Rajawali Press, Jakarta.
- BPHN, 1997/1998, *Compilation of the Dutch-Indonesian General Law Dictionary*, BPHN-Ministry of Justice and Human Rights of the Republic of Indonesia, Jakarta.
- Darmadji, Tjiptono; Hendy, M, Fakhruddin, 2001. *Capital Markets in Indonesia*, Salemba Empat, Jakarta.
- Gatot Supramono, 2007. *Limited Liability Company Law*, 4th Printing, Djangan, Jakarta.
- Gunawan Widjaja, 2008. *Individual & Collective Rights of Shareholders*, Friends Forum, Jakarta.
- Gunawan Widjaja, 2008, *Legal Risks as Directors, Commissioners & Owners of PT*, Friends Forum, Jakarta.
- Handri Raharjo, 2009. *Corporate Law*, Yustisia Library, Yogyakarta.
- Hendra Setiawan Boen, 2008, *Bianglala Business Judgment Rule*, Tatanusa, Jakarta.
- IGRAi Widjaja, 2005. *Company Law Limited Liability Company*, Kesaint Blanc, Jakarta.
- LJ Van Apeldoorn in Darji Darmodiharjo and Shidarta (2) 1996, *Translation of Pancasila Values in the Indonesian Legal System*, Rajawali Press, Jakarta.
- M. Dhiauddin Rais, 2001, *Islamic Political Theory*, Gema Insani Pess, Jakarta.
- Moh. Taufik Makarao, 2009. *Fundamentals of Civil Procedure Law*, 2nd Cet, Rineka Cipta, Jakarta.
- M.Yahya Harahap, 2009. *Limited Liability Company Law*, Smar Graphic, Jakarta.

- M. Yahya Harahap, 2008. *Civil Procedure Law Concerning Lawsuits, Trials, Confiscations, Evidence, and Court Decisions*, 8th Cet, Sinar Graphic, Jakarta.
- R. Otje Salman S, 2010, *Legal Philosophy (Problem Development and Dynamics)*, Second Print, Refika Aditama, Bandung.
- Rachmadi Usman, 2004. *Legal Dimensions of a Limited Liability Company*, PT. Alumni, Bandung.
- Ronny Hinitij Soemitro, 1990. *Research Methodology and Jurimetry*, Ghalia Indonesia, Jakarta.
- Rudhi Prasetya, 2011. *Theory and Practical Limited Liability Company*, Sinar Garfika, Jakarta.
- R. Soepomo, 2004. *Civil Procedure Code of the District Court*, 16th Cet, Pradnya Paramita, Jakarta.
- R. Soeroso, 2006. *Practice of Civil Procedural Law*, 7th Cet, Sinar Graphic, Jakarta.
- Theo Hujibers, 1995, *Legal Philosophy in Historical Tracks*, Kanisius, Yogyakarta.
- Sudikno Mertokusumo, 1993, *Chapters on Legal Findings*, Citra Aditya Bakti, Bandung.