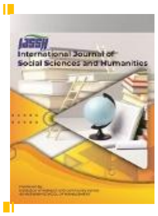

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# Responsibility of the Director of a Limited Liability Company who has resigned from the implementation of the EGMS based on Law No. 40 of 2007 concerning Limited Liability Companies

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***Abstract***

Limited Liability Companies as a legal entity that adheres to a three-tier board system consisting of the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners require clear legal certainty regarding the division of authority and responsibility of each organ. One of the legal issues that often arise in practice is regarding the status and responsibilities of the Board of Directors who have submitted their resignation in relation to the holding of the Extraordinary General Meeting of Shareholders (EGMS). This study aims to analyze the legal responsibility of the Board of Directors who have resigned from the implementation of the EGMS and to examine the legal certainty for shareholders on the EGMS held by the Board of Directors during the transition period, based on Law Number 40 of 2007 concerning Limited Liability Companies. This study uses a normative legal research method with a statute approach and a case approach. The results of the study show that the resignation of the Board of Directors does not necessarily relieve the person concerned from his legal obligations and responsibilities. During the transition period until the GMS accepts or decides on the resignation, the Board of Directors remains obliged to carry out its duties, including facilitating the implementation of the EGMS; Negligence in this case can give rise to civil liability that cannot be avoided by taking refuge behind the doctrine of the Business Judgment Rule. Legal certainty for majority shareholders is realized through the guarantee of the validity of EGMS resolutions held by the Board of Directors during the transition period as long as all formal and procedural requirements are met, while legal certainty for minority shareholders is realized through protection instruments in the form of the right to sue for annulment of the GMS resolution, appraisal rights, and alternative EGMS implementation mechanisms through the Board of Commissioners or court determinations.



**Contents**



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## Introduction

The development of the business world in the era of globalization and digitalization has undergone a very rapid transformation, characterized by increasing global market integration, the development of information technology, and changes in business models that are increasingly data-based and digital networks. This transformation encourages companies to carry out continuous innovation in order to be able to maintain competitiveness in the midst of increasingly complex and dynamic competition (Porter & Heppelmann, 2014; Vial, 2019; Verhoef et al., 2021; Kraus et al., 2022). Digitalization not only changes the production and distribution patterns of goods and services, but also affects corporate governance structures, decision-making patterns, and corporate strategies in the face of the uncertainty of the global business environment (Nambisan et al., 2019; George et al., 2021). In this context, the phenomenon of the formation of corporate groups or concerns has developed significantly both at the national and international levels because it is considered to be able to increase efficiency, expand business networks, and strengthen the company's position in facing global competition (Morck et al., 2005; Khanna & Yafeh, 2007; Almeida & Wolfenzon, 2006; Claessens et al., 2000). Therefore, the need for an effective corporate governance system is increasingly important to ensure the sustainability and accountability of corporate activities.

In lIndonesia, lthe lcompany's llegal ldevelopment lis la lresponse lto lthe ldynamics lof lthe lnational land lglobal leconomy lthat lcontinues lto ldevelop. lBased lon lthe lexplanation lof lLaw lNumber l1 lof l1995 lconcerning lLimited lLiability lCompanies, lthe lregulation lwas lborn las lan leffort lto lreplace lthe lprovisions lin lthe lCommercial lLaw l(KUHD) lwhich lare lconsidered lno llonger ladequate lin lanswering lthe lneeds lof lthe lmodern lbusiness lworld. lThe lpresence lof lthe llaw lis lpart lof lthe leconomic llaw lreform lthat laims lto lcreate llegal lcertainty lfor linvestors, lstrengthen lthe linvestment lclimate, land limprove lthe lefficiency lof lbusiness lactivities lin lthe lface lof leconomic lglobalization l(La lPorta let lal., l1998; lDjankov let lal., l2008; lCoffee, l2007; lArmour let lal., l2017). lOne lof lthe lsubstantive lchanges lintroduced lis lthe lobligation lto lfully ldeposit lthe lissued lshares lto lensure lthe lcompany's lsustainability land lfinancial lhealth. lFurthermore, lwithin ltwelve lyears, lLaw lNo. l1 lof l1995 lwas lreplaced lby lLaw lNo. l40 lof l2007 lconcerning lLimited lLiability lCompanies lwhich lcame linto leffect lon lAugust l16, l2007. lThe lpresence lof lthe l2007 lPT lLaw lis la lform lof lrefinement lof lprevious lregulations lto lbe lmore ladaptive lto lthe ldevelopment lof lbusiness llaw, ltechnology, linvestment, land lmodern lcorporate lgovernance lpractices lthat lare ldeveloping lat lthe lglobal llevel l(Aguilera let lal., l2015; lBebchuk l& lWeisbach, l2010; lTricker, l2019).

In lthe lstructure lof la lLimited lLiability lCompany, lthe lregulation lregarding lthe lcompany's lorgans lhas la lvery limportant lposition lbecause lit lis ldirectly lrelated lto lthe lcompany's lmanagement, lsupervision, land ldecision-making lmechanism. lThe lcompany's lorgans las lstipulated lin lLaw lNumber l40 lof l2007 lconsist lof lthe lGeneral lMeeting lof lShareholders l(GMS), lthe lBoard lof lDirectors, land lthe lBoard lof lCommissioners. lThis ldivision lof lauthority lreflects lthe lprinciples lof lgood lcorporate lgovernance lwhich lemphasizes lthe limportance lof laccountability, ltransparency, lresponsibility, lindependence, land lfairness lin lcorporate lmanagement l(OECD, l2023; lShleifer l& lVishny, l1997; lSolomon, l2020; lMallin, l2019). lBased lon lArticle l1 lNumber l(4) lof lthe l2007 lPT lLaw, lthe lGMS lis lan lorgan lof lthe lcompany lthat lhas lauthority lthat lis lnot lgiven lto lthe lBoard lof lDirectors lor lthe lBoard lof lCommissioners lwithin lthe llimits ldetermined lby lthe llaw land lthe larticles lof lassociation. lThe lprovision lshows lthat lalthough lthe lthree lorgans lof lthe lcompany lhave lan lequal lposition lin lthe lcompany's lorganizational lstructure, leach lhas ldifferent lfunctions land lauthorities. lIn lthe lGMS lforum, lshareholders lhave lthe lright lto lobtain lrelevant linformation lregarding lthe lcompany's lconditions land lactivities lfrom lthe lBoard lof lDirectors land lthe lBoard lof lCommissioners las llong las lit ldoes lnot lconflict lwith lthe linterests lof lthe lcompany. lThe lright lto linformation lis lone lof lthe limportant linstruments lin lprotecting lshareholders land lstrengthening lcorporate lsupervision lmechanisms l(Jensen l& lMeckling, l1976; lFama l& lJensen, l1983; lAdams let lal., l2010).

The lGMS lconsists lof lthe lAnnual lGMS land lOther lGMS lwhich lin lpractice lare lknown las lthe lExtraordinary lGMS las lstipulated lin lArticle l78 lparagraph l(1) lof lthe l2007 lPT lLaw. lThe lAnnual lGeneral lMeeting lof lShareholders lmust lbe lheld lno llater lthan lsix lmonths lafter lthe lend lof lthe lfinancial lyear land lis lthe lmain lforum lfor lthe laccountability lof lthe lBoard lof lDirectors lto lshareholders. lIn lthe lmeeting, lan lannual lreport lcontaining lfinancial lstatements, lreports lon lthe lcompany's lactivities, lreports lon lthe limplementation lof lsocial land lenvironmental lresponsibilities, lsupervisory lreports lof lthe lBoard lof lCommissioners, land linformation lon lthe lremuneration lof lthe lBoard lof lDirectors land lBoard lof lCommissioners lmust lbe lsubmitted. lThe lobligation lto lprovide lsuch linformation lreflects lthe lapplication lof lthe lprinciples lof ltransparency land laccountability lwhich lare lthe lmain lfoundations lof lmodern lcorporate lgovernance l(Bushman l& lSmith, l2003; lHealy l& lPalepu, l2001; lBeekes let lal., l2016). lMeanwhile, lthe lExtraordinary lGMS lmay lbe lheld lat lany ltime lbased lon lthe lneeds lof lthe lcompany lat lthe lrequest lof lone lor lmore lshareholders lrepresenting lat lleast lone-tenth lof lthe ltotal lnumber lof lshares lwith lvoting lrights lor lat lthe lrequest lof lthe lBoard lof lCommissioners. lAlthough lit lis lcalled lthe lGeneral lMeeting lof lShareholders, lthe limplementation land lholding lof lthe lGMS lis lin lprinciple lthe lauthority lof lthe lBoard lof lDirectors las laffirmed lin lArticle l79 lparagraph l(1) lof lthe l2007 lPT lLaw. lThis lprovision lshows lthat lthe lBoard lof lDirectors lplays la lcentral lrole lin lensuring lthe limplementation lof lan leffective lcorporate lgovernance lmechanism lin laccordance lwith lthe lapplicable llegal lprovisions.

The lstrategic lrole lof lthe lBoard lof lDirectors lin lthe limplementation land lmanagement lof lthe lcompany lcannot lbe lseparated lfrom lthe lconcept lof lfiduciary lduty lwhich lis lone lof lthe lfundamental lprinciples lin lmodern lcorporate llaw. lBased lon lArticle l1 lnumber l(5) lof lthe l2007 lPT lLaw, lthe lBoard lof lDirectors lis lfully lresponsible lfor lthe lmanagement lof lthe lcompany lfor lthe linterests land lpurposes lof lthe lcompany. lThe lconcept lof lfiduciary lduty lcomes lfrom lthe lLatin lterm lfiducia lwhich lmeans ltrust, lso lit lmeans lthat lthe lBoard lof lDirectors lreceives la lmandate lto lact lin lthe linterests lof lthe lcompany land lits lshareholders. lIn lcorporate llaw ltheory, lfiduciary lduty lrequires lthe lBoard lof lDirectors lto lcarry lout ltheir lduties lwith la lduty lof lgood lfaith, lduty lof lcare, lloyalty, land lavoid lconflicts lof linterest lthat lcan lharm lthe lcompany l(Macey, l2008; lEisenberg, l1993; lVelasco, l2009; lBainbridge, l2008; lKeay, l2014; lKershaw, l2012). lThe lfiduciary lduty lis lalso lin lline lwith lagency ltheory lwhich lexplains lthat lthe lBoard lof lDirectors las lan lagent lmust lact lto lmaximize lthe linterests lof lshareholders las lprincipal land lminimize lpotential lconflicts lof linterest lthat lcan lcause llosses lto lthe lcompany l(Jensen l& lMeckling, l1976; lDaily let lal., l2003; lFilatotchev l& lNakajima, l2014). lTherefore, lan lunderstanding lof lthe lrelationship lbetween lthe lauthority lof lthe lBoard lof lDirectors lin lthe lholding lof lthe lGMS land lthe limplementation lof lfiduciary lduties lis limportant lto lensure lthe lrealization lof lgood lcorporate lgovernance land lthe lprotection lof lthe linterests lof lthe lcompany land lshareholders.

## Methods

This research uses normative legal research methods, which are research that focuses on the study of legal norms contained in laws and regulations, legal doctrines, and various other secondary legal sources. Normative legal research aims to find, study, and analyze the principles, rules, and legal concepts that govern a certain legal problem (Marzuki, 2021). In this study, the study focuses on the provisions of Law Number 40 of 2007 concerning Limited Liability Companies along with various regulations and jurisprudence related to legal protection of shareholders in Limited Liability Companies. The prescriptive nature of normative legal research allows researchers not only to describe the applicable legal provisions, but also to provide an assessment of the application of legal norms in practice (IRAC, 2020). To obtain a comprehensive analysis, this study uses a statute *approach* and a *case approach*. The legislative approach is carried out through the review of various relevant legal provisions as the main basis for analyzing research problems, while the case approach is used to examine the application of legal norms in concrete legal decisions or events. Through these two approaches, this research is directed to understand, interpret, and explain the substance and purpose of legal norms that govern legal protection for shareholders, so that a deeper understanding can be obtained regarding the implementation and effectiveness of applicable legal arrangements (Soekanto & Mamudji, 2019).

## Results and Discussions

### 1. Organs of the Company and the Responsibilities of the Board of Directors who Resigned for the Implementation of the EGMS

A Limited Liability Company (PT) is a legal entity formed based on an agreement, carries out business activities with capital divided into shares, and fulfills the requirements as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies (PT Law 2007). As a legal entity, a Limited Liability Company has a position as a separate legal entity from its shareholders, so it has its own rights, obligations, assets, and legal responsibilities. This characteristic is one of the main foundations of modern corporate law because it allows for a clear separation between the interests of the company and the personal interests of the shareholders (Jensen & Meckling, 1976). From a corporate legal perspective, the existence of a legal entity also serves to provide legal certainty for investors while encouraging economic growth through a safer and more structured investment mechanism (La Porta et al., 2000). According to Ahmad Yani and Gunawan Widjaja, a Limited Liability Company is a legal entity established to run a company with a certain capital divided into shares, where shareholders participate through share ownership and legal actions carried out on behalf of the company. Therefore, the existence of a university is not only seen as an economic instrument, but also as a legal institution that has a complex organizational structure and governance mechanism.

Based on Article 1 number 3 of the 2007 PT Law, the organizational structure of the Limited Liability Company consists of the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners. The structure shows that the Indonesian corporate legal system adheres to *a three-tier board system* model that separates the decision-making, management, and supervision functions of the company. This model is in line with the principle *of checks and balances* which is one of the main elements in the implementation *of good corporate governance* (Shleifer & Vishny, 1997; Aguilera et al., 2015). The GMS is an organ that accommodates the interests of shareholders and has the highest authority in determining the direction of the company's policies. The Board of Directors is an organ that carries out the function of managing and representing the company in its daily activities, while the Board of Commissioners is tasked with supervising and providing advice to the Board of Directors. The division of authority aims to prevent excessive concentration of power in one organ and ensure that all of the company's activities run in accordance with the company's objectives and applicable legal provisions (Mallin, 2019; Tricker, 2019).

In this system, the GMS has a very strategic position because it is an organ that has authority that is not given to the Board of Directors or the Board of Commissioners as affirmed in Article 1 number 4 and Article 75 paragraph (1) of the 2007 PT Law. The GMS is a forum for shareholders to take various important decisions related to the sustainability of the company, such as amendments to the articles of association, appointment and dismissal of the Board of Directors and Board of Commissioners, ratification of annual reports, and approval of certain corporate actions that have a significant impact on the company. Article 78 paragraph (1) of the 2007 PT Law distinguishes the GMS into two forms, namely the Annual GMS and the Extraordinary GMS (EGMS). The Annual General Meeting of Shareholders must be held no later than six months after the end of the financial year, while the EGMS can be held at any time if there is an urgent need related to the interests of the company. In modern business practice, EGMS is often used as a means of resolving strategic problems that cannot wait for the implementation of the Annual GMS, including when there is a vacancy in the position of the Board of Directors, internal conflicts of the company, organizational restructuring, and other corporate actions that require immediate decisions (OECD, 2023; Bebchuk & Weisbach, 2010).

The Board of Directors as the company's management organ plays a central role in the implementation of the GMS and EGMS. Based on Article 1 number 5 of the 2007 PT Law, the Board of Directors is an organ of the company that is authorized and fully responsible for the management of the company for the interests and purposes of the company and represents the company both inside and outside the court. This authority places the Board of Directors as the party that best understands the company's condition, business needs, and strategic steps that need to be taken to maintain business sustainability. In carrying out its duties, the Board of Directors is bound by the principle *of fiduciary duty*, namely the obligation to act in good *faith*, duty *of loyalty*, and duty *of care* for the best interests of the company (Eisenberg, 1993; Bainbridge, 2008; Keay, 2014). This principle emphasizes that the Board of Directors must not use their positions for personal interests or certain parties that can harm the company. Therefore, Article 97 paragraph (3) of the 2007 PT Law emphasizes that each member of the Board of Directors is personally responsible for the company's losses if proven guilty or negligent in carrying out their duties.

Legal problems arise when the Board of Directors submits their resignation but at the same time it is still necessary to hold an EGMS for the benefit of the company. Normatively, Article 79 paragraph (1) of the 2007 PT Law gives authority to the Board of Directors to summon and hold the GMS. Thus, as long as the resignation is not effective based on the decision of the GMS or the provisions of the company's articles of association, the Board of Directors concerned still has legal standing as an organ of the company and still bears the responsibilities attached to its position. During the transition period, the Board of Directors is still obliged to ensure the implementation of the EGMS if there is an urgent need or a legitimate request from shareholders. If the Board of Directors deliberately neglects these obligations, for example by not convening a meeting or hindering its implementation, then the action can be categorized as a *breach of fiduciary duty* which has the potential to give rise to legal liability (Macey, 2008; Coffee, 2007). However, based on Article 97 paragraph (5) of the 2007 PT Law, the Board of Directors can be exempted from liability if it is able to prove that the losses incurred are not due to its fault or negligence, have acted in good faith and prudence, do not have a conflict of interest, and have taken steps to prevent losses from occurring. This provision shows that Indonesian company law accommodates the doctrine of *business judgment rule*, which is legal protection for the Board of Directors who make decisions rationally and in the interests of the company (Velasco, 2009; Kershaw, 2012).

Thus, the responsibility of the Board of Directors who have submitted their resignation does not necessarily end from the time the resignation letter is submitted. As long as the resignation has not been approved or has not been effective according to the law, all obligations and responsibilities attached to the position of the Board of Directors remain valid. Therefore, the holding of EGMS by the Board of Directors who have submitted their resignation remains legally valid as long as it is carried out in accordance with the provisions of the 2007 PT Law and meets all applicable formal requirements. In the context of a public company, this provision must also pay attention to the Financial Services Authority Regulation Number 15/POJK.04/2020 regarding the plan and implementation of the GMS of a public company. Violations of established procedures can result in formal defects that lead to the cancellation of the GMS decision. Therefore, compliance with legal procedures is the main requirement to ensure the validity of the EGMS in the transition period of the leadership of the Board of Directors.

## 2. Legal lCertainty lof lShareholders lon lthe lImplementation lof lEGMS lHeld lby lthe lBoard lof lDirectors lwho lhave lresigned

Legal certainty is one of the fundamental goals of law that functions to provide guarantees regarding the rights, obligations, and legal consequences of an action. According to Sudikno Mertokusumo, legal certainty is a protection for the community against arbitrary actions so that a person can obtain what is his right under certain conditions. Meanwhile, Gustav Radbruch placed legal certainty as one of the basic values of law in addition to justice and utility. In the context of corporate law, legal certainty is very important because it concerns the protection of shareholder rights, the validity of the actions of the company's organs, and the stability of business activities carried out by the company. Legal certainty is also one of the factors that affect the level of investor confidence in a country's legal system (Djankov et al., 2008; La Porta et al., 2000). Therefore, every provision that regulates the relationship between shareholders, the Board of Directors, and the Board of Commissioners must be clearly formulated so as not to give rise to multiple interpretations in its application.

In the legal system of Indonesian companies, all shareholders have the same position before the law regardless of the amount of shareholding. The 2007 PT Law provides various forms of legal protection to shareholders, including the right to attend and vote in the GMS, the right to obtain dividends and the remaining liquidation proceeds, the right to request the holding of the GMS, the right to obtain information about the company, the right to file a lawsuit against the company, and the right to request a share buyback *(buyback)*) if it does not approve of certain corporate actions. These rights are a form of implementation of the principle of *investor protection* which is one of the important indicators in modern corporate governance (Claessens & Yurtoglu, 2013; OECD, 2023). The existence of these rights shows that Indonesian company law seeks to create a balance between the interests of majority and minority shareholders. The most crucial issue of legal certainty in this study is regarding the validity of the EGMS held by the Board of Directors who have submitted their resignation. From a positive legal perspective, the validity of the actions of the Board of Directors is determined by its legal status as an organ of the company. As long as the resignation is not effective, the Board of Directors still has legal legitimacy to exercise all its authority, including holding the EGMS. Therefore, the decisions made in the EGMS remain valid and binding as long as they comply with the provisions regarding the invitation of meetings, quorum of attendance, and decision-making procedures as stipulated in the 2007 PT Law. For the majority shareholders, this condition provides legal certainty because it ensures the continuity of the company's decision-making process without being disturbed by administrative issues related to the resignation of the Board of Directors. However, for minority shareholders, legal certainty must also be interpreted as a guarantee that the EGMS mechanism is not used as a means to carry out actions that are detrimental to their interests.

In the perspective of modern corporate governance, the protection of minority shareholders is one of the most important aspects. The potential for *minority shareholder oppression* can still arise if majority shareholders use their vote dominance to make decisions that are detrimental to minority groups. Therefore, the formal validity of an EGMS should not be separated from the principle of substantive justice. As Gustav Radbruch put it, a law that is only oriented towards formal certainty without regard for justice can give birth to legalized injustice (*gesetzliches Unrecht*). In this context, the protection of minority shareholders must be realized through the guarantee of the right to obtain information, the right to file objections, the right to sue for adverse decisions, and the right to request the repurchase of shares if they do not agree to certain corporate actions. Thus, legal certainty is not only understood as compliance with procedures, but also as a guarantee of protection for all shareholders in a fair and proportionate manner.

Based on this description, it can be understood that the legal certainty for the implementation of the EGMS held by the Board of Directors who have submitted their resignation basically depends on two main aspects, namely procedural validity and substantive protection of shareholder rights. As long as the Board of Directors still has a valid legal standing and all procedures for the implementation of the EGMS are fulfilled in accordance with the provisions of the 2007 PT Law, the resulting decision has binding legal force. However, the validity must still be balanced with the protection of the interests of shareholders, especially minority shareholders, so that the legal objectives of certainty, justice, and benefits can be realized in a balanced manner. This approach is in line with the principles *of good corporate governance* which emphasizes transparency, accountability, responsibility, independence, and fairness in the implementation of modern companies (Tricker, 2019; Solomon, 2020; Mallin, 2019).

## Conclusion

Based on the results of the research and discussion that has been described, it can be concluded that the organ system of Limited Liability Companies in Indonesian law adheres to a *three-tier board system* consisting of the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners. The three organs have different functions, authorities, and responsibilities, but they complement each other in realizing *good corporate governance*. In relation to the holding of the Extraordinary General Meeting of Shareholders (EGMS), the Board of Directors plays a central role because it has the authority to summon and hold meetings. Therefore, the resignation of the Board of Directors does not necessarily remove the legal obligations and responsibilities inherent in his position. As long as the resignation is not effective or has not received a decision from the GMS, the Board of Directors concerned is still obliged to carry out the company's management duties, including facilitating the implementation of the EGMS if necessary for the benefit of the company. Negligence in carrying out these obligations can give rise to legal liability, especially if it results in losses for the company and shareholders.

In addition, legal certainty for shareholders in the implementation of EGMS conducted by the Board of lDirectors who have submitted their resignation is basically determined by the fulfillment of all formal and procedural requirements as stipulated in Law Number 40 of 2007 concerning Limited

Liability Companies. For the majority shareholders, legal certainty is realized through guaranteeing the validity of EGMS decisions that remain binding as long as they are implemented in accordance with the provisions of laws and regulations. Meanwhile, for minority shareholders, legal certainty is realized through various available legal protection instruments, such as the right to file a lawsuit against adverse GMS decisions, the *right to appraisal* to request the repurchase of their shares, and the right to request the holding of the EGMS through the Board of Commissioners or through a court determination if the Board of Directors does not carry out its obligations. Thus, Indonesian company law has provided a mechanism that aims to maintain a balance between legal certainty, protection of shareholder rights, and the sustainability of the company's management.

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