



Analysis of Decisions of The General Meeting of Shareholders That Have a Balanced Percentage of Share Ownership

Zaky Zhafran King Mada ¹

¹Master of Law, Postgraduate Program at University of Indonesia, E-mail: zakyzhafran200@gmail.com

ARTICLE INFO

ABSTRACT

Keywords:

Decision; General Meeting of Shareholders; Percentage; Shareholders.

How to cite:

Zaky Zhafran King Mada. (2023). Analysis of Decisions of The General Meeting of Shareholders That Have a Balanced Percentage of Share Ownership. *Veterans Law Review*. 6 (1). 74-91.

Received: 2022-08-16

Revised: 2023-05-03

Accepted: 2023-06-14

*This Legal Research is entitled Analysis of the decisions of the General Meeting Of Shareholders (GMS) that have a balanced percentage of ownership. If there is a Limited Liability Company in which there are only 2 (two) shareholders who have a balanced percentage of ownership so that there is a problem, namely that one of the shareholders does not attend the GMS or one of the shareholders does not agree on a GMS decision. The provisions regarding the quorum of the GMS and the decisions of the GMS have been determined with certainty, but in reality problems regarding this are still encountered. This research based on by 2 (two) problem formulations, the first is how to regulate shareholders who have a balanced percentage of ownership in the legislation, then the second is how the legal steps should be taken by shareholders. The **First** results of this study are if the two shareholders still have different interests then the Company is unlikely to continue. Because the two shareholders are decision makers, and if the deadlock continues then this will have an impact on the Company. In this case, the district court may dissolve the Company on the grounds that it is impossible for the Company to continue. And the **Second**, is a legal step that can be taken by one of the shareholders is to apply for an application to the district court, namely by requesting a quorum and the decision of the GMS.*

1. Introduction

Shareholders are given proof of share ownership for the shares they own.¹ The proof of ownership is in the form of a certificate issued by a Limited Liability Company (referred to as Corporate). In addition, shareholders are also given the right to attend and vote at the General Meeting of Shareholders (referred to as GMS), receive dividend payments and the remaining assets resulting from liquidation, and exercise other rights based on Law no. 40 of 2007 jo. Law No. 11 of 2020 concerning Job

¹ Undang-Undang Republik Indonesia Nomor tentang Perseroan Terbatas Ps. 51.

Creation (referred to as the Corporate Law).² Shareholders, either alone or represented by a power of attorney, have the right to attend the GMS and use their voting rights in accordance with the number of shares they own.³ However, this does not apply to shareholders of shares without voting rights.⁴

This case is rare to find in a Corporate where the distribution of shares of the same amount is the same in composition. The share percentage distribution is not just a number, but has an impact on each shareholder's position in the company. An example is a Corporate which consists of two persons/entities with a share distribution of 50%:50%. Both shareholdings are the same size, neither smaller nor larger. Both of them also share roles as directors and commissioners, the position of both is equal and there is no majority shareholder. Such a Corporate will find it difficult to reach consensus at the GMS when a difference of opinion arises because there is no superior shareholder meaning that shareholder has greater control than other shareholders. Both assume that they have a big share in the company's capital, a GMS can be held to discuss the transfer of shares between the two. However, if both of them insist on maintaining their share ownership, it will be difficult to reach a common ground, while all Corporate decisions are contained in the GMS. If it is like this, the GMS will also experience a deadlock. Because of the deadlock, the word consensus will be a difficult goal to achieve. If the two shareholders have different visions, there will be many conflicts in running Corporate. Therefore, before establishing a Corporate, these things must be considered. And it would be better if there were more than 2 (two) shareholders, even though in the Limited Liability Company Law the minimum number of establishments was only two persons/entities. This is to minimize the potential for deadlocks in making a decision.⁵

Article 7 paragraph (1) of the Limited Liability Company Law which reads "The company is established by 2 (two) or more persons with a notarial deed drawn up in Indonesian". In this article, the minimum number of founders of Corporate is only two people. The two people will deposit their capital into the company, and the capital will be divided into shares and the shares will be owned by the shareholders. Indeed, there is a revision in the Limited Liability Company Law regarding the minimum number of shareholders in Corporate. In the addition to the article there is an Individual Company, namely the minimum establishment of only 1 (one) person, this is contained in Article 1 paragraph (1) of the Corporate

² Undang-Undang Republik Indonesia tentang Perseroan Terbatas Ps. 52 ayat (1).

³ Undang-Undang Republik Indonesia tentang Perseroan Terbatas Ps. 85 ayat (1).

⁴ Undang-Undang Republik Indonesia tentang Perseroan Terbatas Ps. 85 ayat (2).

⁵ Smart Legal ID. (2020). Ini Potensi Masalah PT anda jika komposisi pembagian saham 50:50. Retrived 14 August 2022 Pukul 21.00 WIB. <https://smartlegal.id/pendirian-usaha/pendirian-pt/2020/03/09/ini-potensi-masalah-pt-anda-jika-komposisi-pembagian-saham-50-50/>

Law jo. Law No. 11 of 2020 concerning Job Creation Law (in Indonesia as known as UU Cipta Kerja) however, individual companies must meet the criteria, namely the scale of micro and small businesses, and are established by individuals not legal entities. However, if it does not meet the requirements for a micro-small business or a shareholder of more than 1 person, it must create an ordinary Corporate, namely one established by at least 2 (two) persons/legal entities.⁶

In the establishment of a Corporate with a minimum number of 2 (two) persons/entities, there are no further rules regarding the amount of share ownership by each shareholder. The provisions regarding the obligation to establish a Corporate by 2 (two) persons do not apply to, firstly, a Persero whose shares are wholly owned by the state, in this case a state-owned enterprise, then secondly, a company that manages the stock exchange, clearing and guarantee institution, depository and settlement institution and other institutions.⁷

Article 7 paragraph (2) of the Limited Liability Company Law states "Every founder of the Company is obliged to subscribe to shares at the time the Company is established." The article only mentions that it is mandatory to take a share of the shares and it is not determined how much is taken from the 2 (two) founders of the Corporate because this allows the ownership of a balanced number of shares, namely 50%:50% in a Corporate that only has two shareholders. This resulted in the absence of majority and minority shareholders in the Corporate, even though in the decision-making process in a GMS, if a decision cannot be made by deliberation, a decision will be taken which is accepted by the majority.

The GMS has powers that are not given to the Board of Directors or Commissioners within the limits specified in the law or the articles of association.⁸ In the GMS forum, shareholders are entitled to obtain the widest possible information as long as it is related to the company's business activities from the board of directors or commissioners, which is related to the meeting agenda and does not conflict with the interests of the company.⁹ The GMS is not entitled to make decisions if the quorum requirements are not met. This means that the presence of shareholders or being represented at the GMS is a determining requirement for the GMS to be held and make decisions or not.¹⁰

⁶Peraturan Pemerintah tentang Modal Dasar Perseroan Serta Pendaftaran Pendirian, Perubahan, Dan Pembubaran Perseroan Yang Memenuhi Kriteria Untuk Usaha Mikro Dan Kecil, Ps. 2 ayat (1).

⁷ Undang-Undang Republik Indonesia tentang Perseroan Terbatas Ps. 7 ayat (7).

⁸ Undang-Undang Republik Indonesia tentang Perseroan Terbatas Ps. 75 ayat (1).

⁹ Undang-Undang Republik Indonesia tentang Perseroan Terbatas Ps. 75 ayat (2).

¹⁰ Undang-Undang Republik Indonesia tentang Perseroan Terbatas. Ps. 75 ayat (3).

There are 2 (two) shareholders with the same share size, namely 50%. A balanced shareholder composition of 50%:50% indicates that there is no majority shareholder or minority shareholder, because there is no difference in the number of shares held between one shareholder and another. Because this means that the control of the company is in the hands of both shareholders. They are the ones who have the right to appoint the company's management and control the company and make important decisions for the company; including determining the salaries and benefits of the company's directors and board of commissioners and deciding how much profit may be distributed as dividends.¹¹

Based on the above background, the author finds a problem that is indirectly contradictory to Article 7 of the Limited Liability Company Law which states that at least the establishment of a company is two people and divided into shares whose shares are not clearly regulated so that it does not rule out the possibility of the 2 (two) founders. have the same shares, namely 50%. This can lead to legal problems and require resolution if it contradicts Articles 42, 87, 88, and 89 of the Company Law regarding the GMS decision if the two shareholders have different interests. In these articles it has been determined that the number of decisions must be above 50%, if there is no agreement then the GMS decision will not be invalid. The reason for not attending may be due to differences in interests between the two shareholders.

2. Methods

The legal research method used is normative-empirical, namely by combining the study of legal norms and the application or implementation of normative law on certain legal events and the results are studied in a comprehensive analytical manner, and the results of the study are presented in a complete, detailed, clear, and systematic way. The data used in this study are secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. From the existing materials then analyzed descriptively, comparatively, qualitatively and then deduced to answer the problems studied.

3. Results and Analysis

3.1 Arrangements regarding shareholders who have a balanced percentage of ownership in the laws and regulations

The problem regarding shareholders who have the same percentage of ownership, namely 50% 50% which consists of only 2 (two) shareholders is a very rare problem. This is because in Corporate, most of the

¹¹ Dianne Eka, Sunaryo, Syofia Gayatri. (2018) 'Perlindungan Hukum terhadap Pemegang Saham Minoritas pada Perusahaan Terbuka di Indonesia'. *Jurnal Hukum Unila*. Hl. 171.

shareholders have more than 2 (two) shareholders and there is no conflict of interest between the shareholders. Even if there are only 2 (two) shareholders and there is no conflict of interest, then there will be no problems. Corporate itself is a legal entity, legal entities are legal subjects like humans, namely supporters of rights and obligations.¹²

Humans are legal subjects because humans can take legal action. In addition, there are other legal subjects, namely everything that according to law can have rights and obligations, namely legal entities.¹³ However, the term legal entity is not fully described in general regulations or the Civil Code. The term *rechtspersoon* is also not found in Chapter IX Book III of the Civil Code, although it means, among other things, to regulate *rechtspersoonlijkheid* or legal personality, namely that a legal entity has a position as a legal subject. This can be seen from the theories that examine the existence of legal entities, such as the fictional theory of Von Savigny, the theory of objective wealth from Brinz, the theory of organs from Von Gierke, the theory of *leer van het ambtelijk vermogen*, the theory of shared wealth, the theory of juridical reality, the theory of Leon Duguit.¹⁴

The fictional theory pioneered by Friedrich Carl Von Savigny, explains that legal entities are solely made by the government or the state. Legal entities are only fiction, but humans create in the shadow of a legal actor (Legal Entity) as a legal subject that is calculated the same as humans.¹⁵ Based on Savigny's opinion, it can be concluded that legal entities can be equated with humans as legal subjects only because there are humans as supporters of the existence of these legal entities, which can be seen from human involvement in legal entities.

The theory of wealth put forward by A. Brinz, determines that only humans can be legal subjects. Legal entities are not legal subjects, therefore in essence the rights granted to legal entities are rights that are not legal subjects, so that the assets of legal entities are assets that are bound by a purpose and regardless of who holds them.¹⁶ This view concludes that legal entities are not legal subjects, so that the rights of legal entities are separated from the personal rights of each individual.

The third theory is the organ theory, proposed by *Otto Von Gierke*. This theory explains that legal entities are like humans, who become real incarnations in legal relationships. The legal entity becomes a body that

¹² Abdulkadir Muhammad. (2000). *Hukum Perdata Indonesia*. PT Citra Aditya Bakti. Hlm. 27.

¹³ *Ibid.*, hal. 27.

¹⁴ Chidir Ali. (2010). *Badan Hukum*. Alumni. Hlm. 14.

¹⁵ *Ibid.*, hal. 31.

¹⁶ *Ibid.*, hal. 34.

forms its will through the intermediary of the tools or organs of the body. The legal entity is not an abstract one.¹⁷

The fourth theory is the theory of Shared Wealth. This theory is explained by *Rudolf Von Jhering* who states that a legal entity is a collection of humans and is not an abstraction or organization, where the rights and obligations of a legal entity are the rights and obligations of members together, both the responsibilities and property rights of the company are joint property of all members. .¹⁸

The fifth theory is the Juridical Theory of Reality. The theory was first presented by EM Meijers who explained that legal entities are a reality, concrete and real, although they cannot be touched and are not imaginary. But a juridical fact, namely that legal entities are equated with humans only in the legal field.¹⁹

Judging from the various theories described above, Indonesia itself more or less adheres to fictional theory because of the relevance of this fictional theory to companies in Indonesia. Corporate as a company with its status as a legal entity is only a forum that aims to carry out the activities of company organs with the status as legal subjects with legal actions that can only be carried out by each legal subject in it. The legal entity in this case is not merely a government formation, but if there is no legal subject in it, then the legal entity can no longer be called a legal entity. A legal entity will not operate if there are no people who run the legal entity within the legal entity. Because legal entities are inanimate objects, they cannot be equated with humans.

However, legal entities can carry out certain legal actions that can be likened to humans. For example, a legal entity may enter into an agreement with another legal entity. But there are some legal actions that cannot be carried out by legal entities, for example, getting married. In an individual, marriage is a legal act. Limited Liability Company is a legal entity that can carry out legal actions and the company is filled by people to achieve company goals. To achieve this goal, the people in the company must jointly advance the company.

Limited Liability Company is a legal entity whose capital consists of shares. These shares are owned by individuals or legal entities which are commonly called shareholders. The nature of the limited liability company as a " *legal entity* " has the effect of providing guarantees to the company's

¹⁷ *Ibid.*, hal. 32.

¹⁸ *Ibid.*, hal. 34.

¹⁹ *Ibid.*, hal. 35.

creditors for the company's assets, because the company's assets are truly owned by the company, and become the responsibility of the company for the company's debts. The company's assets cannot be withdrawn by the shareholders, and the company's assets cannot be used as collateral for the debts of the company's shareholders.²⁰

The founders of the Corporate will become shareholders in the established company, and shareholders are the determinants of the company's policy direction so that the company achieves the goals desired by the founders or shareholders. The founders of Corporate are legal subjects who individually bind themselves to take legal actions to achieve the goals to be achieved, namely the establishment of Corporate. Because the founders of the limited liability company are at least 2 (two) people, a problem arises as to how the obligations and responsibilities are for legal actions taken by one founder against the other. Until now there is no provision that explicitly regulates the nature of this connection. However, the nature of the legal relationship between the founders of a limited liability company can be understood from the goal of the founders, namely to form a company with the status of a legal entity, because every action taken by the founder is to achieve the same goal.²¹

The Limited Liability Company Law states : "The company is established by 2 (two) or more persons with a notarial deed drawn up in the Indonesian language." In this article, the minimum number of founders of a limited liability company is only 2 (two) persons. , which of the two people will deposit their capital into the company, and that capital will become shares and be distributed to shareholders. However, from the minimum number of 2 (two) people, there are no further rules regarding their share ownership. Article 7 paragraph (2) states "Every founder of a company is obliged to take part in shares at the time the company is established." The definition of founder according to law is people who take part intentionally to establish a company. Furthermore, in the context of the establishment, these persons take necessary steps to realize the establishment in accordance with the conditions stipulated in the legislation.²²

Article 7 paragraph (2) only states that it is mandatory to subscribe to shares and does not specify the amount taken from the 2 (two) founders of the Company so as to allow ownership of the same number of shares in a

²⁰ Rachmadi Usman. (2004). *Dimensi Hukum Perusahaan Perseroan Terbatas*. Alumni. Hlm. 148.

²¹ Tri Budiyo. (2011). *Hukum Perusahaan, Telaah Yuridis terhadap UU No. 40 Tahun 2007 tentang Perseroan Terbatas*. Penerbit Griya Medika. Hlm. 38.

²² Muhammad Hatta Bj, Bambang Winarno, Imam Ismanu. (2015). "Kajian Yuridis terhadap Jumlah Persentase Kepemilikan Saham dalam Perseroan Terbatas". *Jurnal Hukum Brawijaya*. Hlm. 12.

CORPORATE that only has 2 (two) shareholders. This resulted in the absence of the majority shareholder and minority shareholder in the company, whereas in the decision-making process at a GMS, if a decision cannot be made by deliberation, a decision will be taken which is accepted by the majority.

In Corporate Law jo. Article 1 number 1 of the Job Creation Law , are: Limited Liability Company, hereinafter referred to as Company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares or individual Legal Entities that meet the criteria for Micro and Small Businesses as stipulated in the laws and regulations concerning Business. Micro and Small” .

The elements of a Limited Liability Company are:

1. Limited Liability Company is a legal entity.
2. Limited liability of shareholders.
3. Based on the agreement.
4. Conduct business activities.
5. Capital is divided into shares.
6. The period of time can be unlimited.
7. Individual Legal Entity
8. Micro Small Business Criteria

Based on the above understanding which states that a limited liability company is established based on an agreement, it means that the establishment of the company is carried out consensual and contractually based on Article 1313 of the Civil Code. Establishment is carried out by the founders upon agreement, wherein the founders bind themselves to each other to establish the Company. ²³Regarding the individual legal entity, it can be established by one person but who meets the requirements of micro and small businesses.

Article 7 paragraph (1) of the Limited Liability Company Law relating to the number of shareholders that allows only 2 (two) shareholders with the same number of shares in the Corporate. So in this case problems will arise, such as difficulties in making decisions at the GMS. If in the decision making there is 1 (one) shareholder who disagrees with the other shareholders, the decision cannot be implemented. Because the shareholders are only 2 (two) people. Then another problem regarding the quorum of the GMS which must be present at the GMS is more than 50% of the shareholders. Meanwhile, if there are only 2 (two) shareholders, the GMS cannot be held. The Limited Liability Company Law regulates the minimum number of attendance at the GMS. The Articles of Association

²³ M. Yahya Harahap. (2009). *Hukum Perseroan Terbatas*. Sinar Grafika. Hlm. 163.

of the company in this case may only regulate the quorum of the GMS more than what is determined by the Law on Corporate. In addition, the resolutions of the GMS can also be implemented when the voting results are 50% more than the number of shareholders present at the GMS.

Article 1 point 4 of the Limited Liability Company Law explains that "The General Meeting of Shareholders is an organ of the company which has the authority that is not given to the Board of Directors or the Board of Commissioners within the limits specified in this Law and/or the Articles of Association". However, the authority granted by the Act to the GMS does not mean that the GMS can carry out the duties and authorities granted by the Law to the Board of Directors and Commissioners.

Based on the understanding of the GMS in Article 1 point 4 of the Company Law, it can be concluded several things, namely:

1. This organ is in the form of a meeting, the thing that must be observed is that the meeting forum is different from that of individual shareholders. So, even if a person is, for example, the majority shareholder, the individual does not hold the (supreme) power in the company. The highest power only appears if a meeting is held and the meeting must meet certain formality requirements that have been regulated in the Law on Corporate.²⁴
2. The authority or authority possessed by this meeting forum is the remaining authority based on the residual theory. This authority is basically born from the ownership status of the company which is in the hands of the shareholders. Shareholders are (part) owners of the company. Theoretically, as the owner, the shareholder holds the right to take any action against the object he owns.²⁵
3. The authority in this meeting forum can be delegated to other organs, namely the Board of Directors and the Board of Commissioners. The discretion of the delegated authority can be regulated in the Limited Liability Company Law and/or the Corporate Articles of Association or through a GMS decision. The delegated authority is actually what is temporary and some is permanent.²⁶ Delegation authority that is permanent, for example the management of the company (in general) and the function of representation (representing the company inside and outside the court). Meanwhile, temporary delegation can be revoked at any time.

²⁴ Tri Budiyo. *Hukum Perusahaan, Telaah Yuridis terhadap UU No. 40 Tahun 2007 tentang Perseroan Terbatas*. Hlm. 148-149.

²⁵Fuady, Munir. (2014). *Doktrin-doktrin Modern dalam Corporate Law dan Eksistensinya Dalam Hukum Indonesia*. Bandung, PT Citra Aditya Bakti. Hlm. 25.

²⁶ Rudhi Prasetya. (2015). *Perseroan Terbatas Teori dan Praktek*. Sinar Grafika. Hlm. 76.

In this case, the GMS is the highest forum of the company, where the forum is held to determine the policy direction of the company, the merger of the company, the dissolution, and the annual meeting of the company. Because the GMS is a Corporate organ that has authority not given to the Board of Directors or the Board of Commissioners within the limits specified in this Law and/or the Articles of Association.

Article 88 paragraph (1) of the Limited Liability Company Law explains that: "The GMS to amend the articles of association can be held if at the meeting at least $\frac{2}{3}$ (two thirds) of the total shares with voting rights are present or represented at the GMS and the decision is valid. if approved, at least $\frac{2}{3}$ (two-thirds) of the total votes cast, unless the articles of association specify a quorum for attendance and/or provisions for a larger GMS decision." Article 88 paragraph (2) of the Company Law "In the event that the quorum of attendance as referred to in paragraph (1) is not reached, a second GMS may be held. Furthermore, Article 88 paragraph (3) of the Company Law "The second GMS as referred to in paragraph (2) is valid and has the right to make decisions if at the meeting at least $\frac{3}{5}$ (three fifths) of the total shares with voting rights are present or represented at the GMS and a decision is valid if it is approved by at least $\frac{2}{3}$ (two thirds) of the total votes cast, unless the articles of association specify a quorum for attendance and/or provisions regarding a larger GMS decision.

Article 89 paragraph (1) of the Company Law "GMS to approve a Merger, Consolidation, Acquisition, or Separation, submission of application for the bankruptcy of the Company, extension of the period of establishment, and dissolution of the Company can be held if in a meeting at least $\frac{3}{4}$ (three quarters) part of the total number of shares with voting rights are present or represented at the GMS and the resolution is valid if approved by at least $\frac{3}{4}$ (three quarters) of the total votes cast, unless the articles of association specify a quorum for attendance and/or provisions regarding the requirements for decision-making in the GMS the greater one."

Article 89 paragraph (3) of the Company Law "The second GMS as referred to in paragraph (2) is valid and has the right to make decisions if at the meeting at least $\frac{2}{3}$ (two thirds) of the total shares with voting rights are present or represented at the GMS and the decision is valid if it is approved by at least $\frac{3}{4}$ (three quarters) of the total votes cast, unless the articles of association specify a quorum for attendance and/or provisions regarding the requirements for a larger GMS decision. If seen in the above provisions, the quorum of the GMS and the resolutions of the GMS must be above 50% of the shareholders.

The above provisions also relate to the application of the super majority principle to important actions in the company, such as changes to its articles of association. Therefore, supervision over the enactment of such provisions at that time was very effective, namely by not ratifying the articles of association which contradicted the principles that had been outlined. By super majority principle, what is meant is that in a general meeting of shareholders, new decisions can be made when the votes that approve it exceed a certain number, for example more than 2/3 or 3/4 of the valid votes. So a quorum or voting with an ordinary majority (more than half the vote or more votes in favor of it) is not considered sufficient.

If this continues to happen, it will have an impact on the Corporate, such as the board of directors not being able to run the Corporate properly and of course there will be obstacles with the existence of these problems. In other words, if the two shareholders still have different interests, it is impossible for the Company to continue. Because the two shareholders are decision makers, and if the deadlock continues then this will have an impact on the Company. In this case, the district court may dissolve the Company on the grounds that it is impossible for the Company to continue.²⁷

3.2 Legal Steps To Be Taken By Shareholders

Limited Liability Company Law stipulates the provision of “*one share one vote*”, unless otherwise stipulated in the Articles of Association of Corporate (Article 84 paragraph (1) of Law on Limited Liability Companies). However, because the shares owned by one shareholder are different from the other, then there is a majority shareholder and a minority shareholder. Each shareholder has the right to vote according to the number of shares owned. The Company Law provides protection for shareholders who are entitled to cast votes in accordance with the number of shares owned in the company. The Limited Liability Company Law provides protection for minority shareholders. In this case, the minority shareholder still has a stake in the company because of the principle of one share, one vote.²⁸

The implementation of protection for minority shareholders is regulated in several articles in the Limited Liability Company Law, namely:²⁹

1. The shareholder's authority to file a lawsuit against the company if it is harmed as a result of the decision of the GMS, the Board of Directors

²⁷ Indonesia, Undang-Undang Nomor Tentang Perseroan Terbatas Penjelasan Ps. 146 ayat (1) huruf C.

²⁸ Asmawati. (2014). “Perlindungan Hukum Pemegang Saham Minoritas akibat Merger Bank”. *Jurnal hukum Universitas Jambi*. Hlm. 30.

²⁹ Lintang Agustina Roesadi, Budiharto, Rinitami Njatrijani. (2017) “Perlindungan Pemegang Saham Minoritas dalam terjadi Pengambilalihan Saham pada anak Perusahaan (Kasus PT. Sumalindo Lestari Jaya Tbk)”. *Jurnal hukum Universitas Diponegoro*. Hlm. 4.

and/or the Board of Commissioners. It is regulated in Article 61 paragraph (1) of the Limited Liability Company Law which reads: "Every shareholder has the right to file a lawsuit against the Company to the district court if he is harmed by the Company's actions which are considered unfair and without reasonable reason as a result of the decision of the GMS, the Board of Directors, and/or the Board of Commissioners."

2. The authority of the shareholder in requesting the Persero that its shares may be repurchased as a result of the shareholder's disapproval of the company's actions regarding the amendment of the Articles of Association, the transfer or guarantee of the company's assets whose value is more than 50% and the merger, consolidation, acquisition or separation. It is regulated in Article 62 of the Limited Liability Company Law which reads: in paragraph (1) "Every shareholder has the right to request the Company that its shares be purchased at a reasonable price if the person concerned does not approve of the Company's actions that harm the shareholders or the Company in the form of: Amendment to the articles of association, Transfer or guarantee of the Company's assets concerning the excess value and 50% (fifty percent) of the Company's net assets, and Merger, Consolidation, Acquisition, or Separation. Paragraph (2) In the event that the shares requested to be purchased as referred to in paragraph (1) exceed the limit of the provisions for repurchasing shares by the Company as referred to in Article 37 paragraph (1) letter b, the Company is obliged to ensure that the remaining shares are purchased by a third party.
3. The authority of the shareholders to hold the GMS, without the authority to decide on the holding of the GMS. It is regulated in Article 79 paragraph (2) of the Limited Liability Company Law which reads: paragraph (2) The holding of the GMS as referred to in paragraph (1) may be carried out at the request of: (one) or more shareholders who jointly represent 1/10 (one tenth) or more than the total number of shares with voting rights, unless the articles of association specify a smaller amount; or the Board of Commissioners.
4. The authority to represent the company to file a lawsuit against a member of the board of directors causing a loss to the company. It is regulated in Article 97 paragraph (6) of the Limited Liability Company Law which reads: "On behalf of the Company, shareholders who represent at least 1/10 (one tenth) of the total shares with voting rights may file a lawsuit through a district court against a member of the Board of Directors who errors or omissions cause losses to the Company."

Article 114 paragraph (6) of the Company Law: "On behalf of the Company, shareholders who represent at least 1/10 (one tenth) of the total shares with voting rights may sue a member of the Board of

Commissioners who due to his/her mistake or negligence causes losses to the Company to the District Court."

5. The authority of the shareholder to conduct an audit of the company, on suspicion of the occurrence of harmful unlawful acts committed by the company, the Board of Directors or the Board of Commissioners.

Article 138 Paragraph (3) Company Law: An application for examination of the Company may be submitted by:

- a. 1 (one) shareholder or more representing at least 1/10 (one tenth) of the total shares with voting rights;
- b. other parties who based on laws and regulations, the articles of association of the Company or an agreement with the Company are authorized to submit a request for examination; or
- c. Public Prosecutor's Office.

In Corporate, there are majority shareholders and minority shareholders. The majority shareholder owns the largest share of the company's shares, the number of shares is usually above 50%. But it does not rule out the number is less than 50% or 40%. For example, the number of other shareholders is not more than 40%, only 10% or 15%. Minority shareholders are the opposite of majority shareholders. Minority shareholders own the smallest share of the company's shares, for example, they only own 10% of the company's shares. In addition to these differences between majority and minority shareholders, there are also other differences. Where the majority shareholder can have full control over the company. They are the ones who have the right to appoint the company's management and control the company and make important decisions for the company including determining the salaries and facilities of company officials and deciding how much profit can be distributed as dividends. On the other hand, minority shareholders have no control over the company.³⁰

The interests of shareholders in a limited liability company often conflict with each other. *Minority shareholders* or minority shareholders are often only used as a complement in a Corporate. ³¹In the decision-making mechanism within the Corporate, it is certain that the minority shareholder will always lose to the majority shareholder, because the decision-making pattern is based on the large percentage of shares owned. This will certainly be a problem when the company only has 2 (two) shareholders and both have the same number of shares, so there is no majority shareholder and minority shareholder .

³⁰ Dian Apriliani. (2015). "Penerapan Prinsip Keadilan dalam Good Corporate Governance terhadap Pemenuhan hak-hak Pemegang Saham Minoritas". *Jurnal hukum Universitas Tadulako*. Hlm. 3.

³¹ Muhammad Hatta Bj, Bambang Winarno, Imam Ismanu. *Kajian Yuridis terhadap Jumlah Persentase Kepemilikan Saham dalam Perseroan Terbatas*. Hlm. 6.

Shareholders in Corporate can be categorized based on the composition of the number of shareholdings. The category most often used to distinguish shareholders in a Corporate is based on the number of shareholdings. In addition to the number of shareholdings, another difference between the majority shareholder and the minority shareholder is the ability to control the Company, the shareholder composition is classified as small or minority, but can control the operation of Corporate.³² However, in this case, there is no majority or minority shareholder, both of whom have the same number of shares and there is no superior among shareholders.

Furthermore, regarding the quorum of the GMS, a GMS can be held if 2/3 (two thirds) of the total shares with voting rights are present. If this is not achieved, the second GMS must require a quorum of 3/5, both of which are also more than 50%. Thus, those present at the GMS must have more than 50% of the voting rights of the shareholders. The articles of association determine otherwise, namely regarding the determination of the quorum of attendance and/or provisions regarding the decision making of a larger GMS. Thus, the articles of association may determine otherwise the number of quorums in the GMS, but it must be more than what is stipulated by the Law on Limited Liability Companies . And in that article the decision of a GMS is also above 50% or must be more than 50%. If there are only two shareholders and both have the same share ownership, namely 50%, then automatically if one of the shareholders is not present, the GMS will not be held. Or if one of the parties does not agree with the decision, the decision cannot be carried out. Even though the limited liability company at that time needed a change and had to carry out the GMS. However, it was hampered to be unable to carry out the GMS due to insufficient quorum.

Regarding this matter, there has been a court decision Decision No.: No. 770/Pdt.P/2012/PN.Mlg regarding the determination of the number of quorum for the GMS at Corporate Kasih Bunda Mulia, in which the Corporate has neither a majority shareholder nor a minority shareholder, because there are only 2 (two) shareholders and these shareholders have the same amount of shares. Both have the power to determine the direction of the company's policies. If one of them does not agree in determining the direction of the company's policy, then the policy cannot be carried out by the directors or commissioners of the company.

In the Determination of the Malang District Court against the Determination of No. 770/Pdt.P/2012/PN.Mlg are:

³² Riska Fitriani. (2011). "Gugatan Derivatif oleh Pemegang Saham Minoritas pada Perseroan Terbatas". *Jurnal hukum Universitas Riau*. Hlm. 3.

1. Granting the Petitioner's Application in its entirety;
2. Give permission to the Applicant to make the invitation to the GMS by himself;
3. Granted permission to hold the (third) annual GMS of Corporate Kasih Bunda Mulia with the following agenda:
 - a. Report on the accountability of the board of directors for the finances of Corporate Kasih Bunda Mulia for the 2011 fiscal year and the accountability for the temporary suspension of the Board of Directors;
 - b. Termination of Mr. Velly as Director of Corporate Kasih Bunda Mulia Appointment of new management of Corporate Kasih Bunda Mulia
4. The (third) annual GMS of Corporate Kasih Bunda Mulia is legally held with a quorum of 1/2 part of the total shares with voting rights present,
5. The (third) annual GMS of Corporate Kasih Bunda Mulia legally took the decision to dismiss Mr. Velly Sumartini as Director and appointment of new management with a quorum of 1/2 part of the total shares with voting rights present.

In point 4 (four) of the decision the judge determined that "the (third) annual GMS of Corporate Kasih Bunda Mulia is validly held with a quorum of 1/2 part of the total number of shares with voting rights present."

Regarding legal steps with the explanation previously described because there will be a deadlock , Article 80 of the Limited Liability Company Law states "In the event that the Board of Directors or the Board of Commissioners does not summon the GMS within the period as referred to in Article 79 paragraph (5) and paragraph (7), the shareholders requesting the holding of the GMS may submit an application to the chairman of the district court whose jurisdiction covers the domicile of the Company to determine the granting of a permit to the applicant to make the summons for the GMS himself.) which reads:

1. Paragraph (5) "In the event that the quorum for the second GMS as referred to in paragraph (4) is not reached, the Company may request the chairman of the district court whose jurisdiction covers the domicile of the Company at the request of the Company to establish a quorum for the third GMS"
2. Paragraph (6) "The summons for the third GMS must state that the second GMS has been held and has not reached a quorum and the third GMS will be held with a quorum that has been determined by the chairman of the district court."
3. Paragraph (7) "The determination of the chairman of the district court regarding the quorum of the GMS as referred to in paragraph (5) is final and has permanent legal force"

In this case, one of the parties may submit an application to the district court as is the case with the court 's decision. Decision No.: No. 770/Pdt.P/2012/PN.Mlg above, in addition to the GMS quorum request, the application must also include the GMS decision. Because if not, the Corporate can be dissolved in accordance with the explanation of Article 146 paragraph (1) letter C in the Corporate Law.

As explained above in the first formulation of the problem, in this case the Court can dissolve the Company because there are only 2 (two) shareholders, because if there are only 2 (two) shareholders and there is a deadlock in decision making either in the GMS or before the GMS in the absence of one of the parties due to the absence of one of the parties, the GMS cannot be held. The court may dissolve the company due to the reason that the company is not possible to continue. If the two shareholders have different interests, the company cannot carry out the two different interests. So in this situation the company cannot carry out its business activities.

Thus, the legal step that can be taken by shareholders is to apply for an application to the district court, if it is seen from the court's decision above, there is a valid GMS held if only 1 (one) shareholder is present. However, the decision does not accommodate the GMS decision, it only accommodates the GMS quorum so that if one of the shareholders who were previously absent, and was present at the GMS in the GMS decision, one of those who did not attend did not agree with the GMS decision, so that the decision could not be implemented. by Corporate. Therefore, in applying to the District Court in addition to the GMS quorum, it must also be based on the GMS decision. Because if the decision is not appealed to the court, it will still be a problem.

4. Conclusion

In the resolutions and quorum of the GMS, it must be more than 50% of the shares owned by the shareholders. Not only the GMS decisions cannot be taken during a deadlock , but the GMS quorum can also be due to the absence of one of the parties. In other words, if the two shareholders still have different interests, it is impossible for the Company to continue. Because the two shareholders are decision makers, and if the deadlock continues then this will have an impact on the Company. In this case, the district court may dissolve the Company on the grounds that it is impossible for the Company to continue.

Legal steps that can be taken by one of the shareholders is to apply for a request to the district court, namely by requesting a quorum and a resolution of the GMS if one of the shareholders who was previously

absent, and was present at the GMS in the decision of the GMS, one of the absent members disagrees. there is a GMS decision, so that the decision cannot be carried out by Corporate. Because if the decision is not applied to the court, it will still be a problem for the Corporate.

References

- Abdulkadir, Muhammad. (2000). *Hukum Perdata Indonesia*. Bandung: PT Citra Aditya Bakti.
- Asmawati. (2014). "Perlindungan Hukum Pemegang Saham Minoritas akibat Merger Bank". *Jurnal hukum Universitas Jambi*. 1(2).
- Chidir, Ali. (2010). *Badan Hukum*. Bandung: Alumni.
- Dian, Apriliani. (2015). "Penerapan Prinsip Keadilan dalam Good Corporate Governance terhadap Pemenuhan hak-hak Pemegang Saham Minoritas". *Jurnal hukum Universitas Tadulako*. 1(3).
- Tri, Budiyo. (2011). *Hukum Perusahaan, Telaah Yuridis terhadap UU No. 40 Tahun 2007 tentang Perseroan Terbatas*. Salatiga: Penerbit Griya Medika.
- Fitriani, Riska. (2011). "Gugatan Derivatif oleh Pemegang Saham Minoritas pada Perseroan Terbatas". *Jurnal hukum Universitas Riau*. 1(2).
- Fuady, Munir. (2014). *Doktrin-doktrin Modern dalam Corporate Law dan Eksistensinya Dalam Hukum Indonesia*. Bandung: PT Citra Aditya Bakti.
- Gayatri, Syofia dan Dianne Eka, Sunaryo. (2018). "Perlindungan Hukum terhadap Pemegang Saham Minoritas pada Perusahaan Terbuka di Indonesia". *Jurnal Hukum Universitas Lampung*. 2 (1).
- Harahap, M. Yahya. (2009). *Hukum Perseroan Terbatas*. Jakarta: Penerbit Sinar Grafika.
- Imam Ismanu, Muhammad Hatta Bj, Bambang Winarno. (2015). "Kajian Yuridis terhadap Jumlah Persentase Kepemilikan Saham dalam Perseroan Terbatas". *Jurnal Hukum Universitas Brawijaya*. 1(1).
- Njatrijani, Rinitami, Lintang Agustina Roesadi, Budiharto. (2017). "Perlindungan Pemegang Saham Minoritas dalam terjadi Pengambilalihan Saham pada anak Perusahaan (Kasus PT. Sumalindo Lestari Jaya Tbk)". *Jurnal hukum Universitas Diponegoro*. 2 (6).
- Peraturan Pemerintah No. 8 Tahun 2021 tentang Modal Dasar Perseroan Serta Pendaftaran Pendirian, Perubahan, Dan Pembubaran Perseroan Yang Memenuhi Kriteria Untuk Usaha Mikro Dan Kecil.
- Prasetya, Rudhi. (2015). *Perseroan Terbatas Teori dan Praktek*. Jakarta: Sinar Grafika.
- Smart Legal ID. <https://smartlegal.id/pendirian-usaha/pendirian-pt/2020/03/09/ini-potensi-masalah-pt-anda-jika-komposisi-pembagian-saham-50-50/>.
- Undang- Undang No. 40 Tahun 2007 tentang Perseroan Terbatas (Lembaran Negara Tahun 2007 Nomor 106, Tambahan Lembaran Negara Nomor 4756).
- Undang No. 11 Tahun 2020 tentang Cipta Kerja (Lembaran Negara Tahun 2020 Nomor 245, Tambahan Lembaran Negara Nomor 6573).

Usman, Rachmadi. (2004). *Dimensi Hukum Perusahaan Perseroan Terbatas*.
Bandung: Alumni.