

## LEGAL CONSEQUENCES OF AGREEMENTS MADE BY DIRECTORS WHOSE TERM OF OFFICE HAS ENDED

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The appointment of the Board of Directors for the first time is carried out by the Founder of the Company through the Deed of Establishment. Article 94 paragraph 3 of the Indonesian Company Law does not stipulate the terms of office of the Directors, it only states that the Directors are appointed for a certain period and they can be reappointed. In practice, the Board of Directors is first appointed through a Deed of Establishment for a period of 3 (three) or 5 (five) years. The term of office of the Company's Board of Directors that has expired cannot be automatically extended but must be reappointed. Since the expiration of their period, the former Directors of the Company are no longer entitled to act for and on behalf of the Company. However, in practice there are still many companies not aware of the terms of office of the Directors, so they are negligent in re-appointing members of the Board of Directors. The purpose of this study is to find out the provisions for reappointing members of the Board of Directors and the legal consequences of agreements made by the Board of Directors whose terms of office have ended. The type of research in this study is normative juridical with statutory and conceptual approaches. The results of the study show that the reappointments of former Directors whose term of office has expired can be carried out through a GMS or Circular Decision (decisions of shareholders that are binding outside the GMS), which are outlined in a Notary Deed and notified to the Ministry of Law and Human Rights of the Republic of Indonesia to be recorded in the Company Register to obtain approval. The agreement signed by the former Board of Directors on behalf of the company whose term of office has ended is invalid because it does not fulfill the subjective element as required for a valid agreement (Article 1320 of the Indonesian Civil Code) which results in the agreement being canceled by one of the parties. If not canceled by one of the parties, then the agreement is personally binding on the Directors, not the company. Therefore, before the term of office of the Board of Directors ends, it is better for the company to re-appoint it through the GMS or Circular Decision and ratification to the Indonesian Ministry of Law and Human Rights so that the agreement is made by the Directors on behalf of the company can bind the company.

Keywords: Directors, Board of Directors, Term of Office, Agreement

### 1. INTRODUCTION

Limited Liability Company (PT) is a legal subject that is equated with people, so that they are capable of carrying out legal actions and legal relations with other parties, which give rise to rights and obligations. Based on Article 1 number 1 of the Limited Liability Company Law Number 40 of 2007 (hereinafter referred to as UUPT):

"Limited Liability 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 and fulfills the requirements stipulated by this Law and its implementing regulations."

Limited liability companies are basically established with the aim of seeking profit by entering into legal relations with third parties. As an independent legal subject, of course in entering into legal relations requires an organized management to represent the company in carrying out its activities in legal traffic both outside and in court (Agus Budiarto, 2009).

As an artificial person, it is impossible for a company to act alone. The company does not have the will to run itself. In company law, to run the company, the company is divided into organs, where



each organ has its own duties and authorities (Gunawan Widjaja, 2008). The Company's organs in UUPT consist of GMS, Directors and Commissioners.

Of the three types of organs in the company, the law gives rights and obligations to the Board of Directors to carry out management and representative activities for and on behalf of the company, and for the benefit of the company, under the supervision of the Board of Commissioners. Nevertheless, the organs of the company itself are also fictitious. To make it something concrete, these organs are equipped with members who are people who have a will, who will run the company in accordance with the aims and objectives of the company's establishment. This means that basically the company is also run by individuals who sit and serve as company management (directors) who are in one container/organ known as the Board of Directors (Gunawan Widjaja, 2008).

The Board of Directors is an organ of the company whose duty is to represent the company in entering into legal relations with third parties, for example making agreements with third parties whose contents bind the company as a guarantor. An agreement is a legal relationship carried out by two or more parties based on an agreement between them to cause legal consequences (Sudikno Mertokusumo, 2008). The agreement is made to accommodate a business transaction carried out by the community as a basis for settlement if problems arise in the future so that the parties are protected and obtain legal certainty regarding the implementation of the rights and obligations of the parties.

The appointment of members of the Board of Directors is carried out for the first time by the Founder in the deed of Establishment of the Company. Based on the provisions of Article 94 paragraph 3 UUPT, it does not stipulate the term of office of the Board of Directors, it only states that members of the Board of Directors are appointed for a certain period and can be reappointed. The term of office of a member of the Board of Directors of a Company that has expired cannot be automatically extended immediately. Since the expiration of this period, the former PT Directors are no longer entitled to act for and on behalf of the Company. However, in practice there are still many PTs that do not know that there is a term of office for the Board of Directors in the articles of association of the PT, so they neglect to re-appoint members of the Board of Directors and continue to make agreements with other parties on behalf of PT.

Therefore, the formulation of the problems in this study are: (1) How to reappoint members of the Board of Directors in a Limited Liability Company and (2) What are the legal consequences of agreements made by Directors whose term of office has ended. This is important to research, because many PTs do not know that the management of the Board of Directors in a company has a term, so there are still many agreements made on behalf of the company carried out by Directors whose term of office has expired.

## 2. METHOD

The type of research used in this study is Normative Juridical. Normatively, research refers to the norms and legal principles contained in laws and regulations. This legal research is also known as library research or document study, because this research is conducted or aimed only at written regulations or other legal materials Elisabeth Nurhaini Butarbutar, 2018). The approach used is the Statute Approach (Statute Approach) which is a normative legal research that uses a statutory approach, because what is studied is the various legal rules that are the focus and are the central theme of a study (Johnny Ibrahim, 2016), which the researcher focuses on namely in the Civil Code (KUHPdata),

## 3. RESULTS AND DISCUSSION

### **Procedure for Reappointment of Members of the Board of Directors in the Company.**

The Board of Directors is a company organ that is fully responsible for managing the company for the interests and objectives of the company and represents the company both inside and outside the court in accordance with the provisions of the AD. The Board of Directors is fully responsible for managing the company for the interests and objectives of the company and represents the company both inside and outside the court (Article 1 Law Number 4 of 2007). In the event that the members of the board of directors consist of more than 1 (one) person, each member of the board of directors is



authorized to represent the company unless otherwise specified in the UUPT and or the Articles of Association. The authority of the directors to represent the Company is unlimited and unconditional, unless otherwise stipulated in UUPT, articles of association or resolutions of the General Meeting of Shareholders (GMS).

For the first time, the appointment of members of the Board of Directors was carried out by the founder in the deed of establishment. Based on the provisions of Article 94 paragraph 3 UUPT does not stipulate the term of office for the Board of Directors, it only states that members of the Board of Directors are appointed for a certain period and can be reappointed. In practice, in the company's articles of association, the term of office of the Board of Directors is determined, which is three to five years. The term of office of a member of the Board of Directors of a PT that has expired cannot be automatically extended immediately, but must be reappointed in two ways:

### **General Meeting of Shareholders (GMS).**

The General Meeting of Shareholders (GMS) is the organ of the company that holds the highest authority in the company and holds all authority that is not delegated to the directors and commissioners (Article 1 paragraph 3 of Law Number 40 of 2007). The appointment, replacement and dismissal of the directors is based on a GMS decision in accordance with the provisions of Article 94 paragraph (5) of the Company Law. The GMS has all the authority that is not given to the Board of Directors or commissioners within the limits specified in the UUPT and or the Articles of Association. The GMS as the highest organ of the PT has quite broad authority, but that does not mean that the GMS in carrying out its authority acts without limits, the GMS in carrying out its duties must comply with the Company Law and the Articles of Association of PT.

1. Determination of amendments to AD (Article 14 UUPT);
2. Determination of capital reduction (Article 37 UUPT);
3. Examine, approve, and ratify the annual report (Article 60 UUPT);
4. Determination of the use of profits (Article 62 UUPT);
5. Appointment and dismissal of Directors and Commissioners (Articles 80, 91 and 92 UUPT);
6. Determination regarding mergers, consolidations and acquisitions (Article 105 UUPT);
7. Determination of the dissolution of PT (Article 114 UUPT).

The GMS is held at the domicile of the company or where the company carries out its main business activities. The GMS must be convened by summons to shareholders no later than 14 (four) days prior to the date the GMS is held, and carried out by registered letter and/or by advertising in newspapers. The summons for the GMS include the date, time, place and agenda of the meeting accompanied by notification that the materials to be discussed at the GMS are available at the Company's office from the date the call for the GMS is made until the date the GMS is held. The GMS agenda depends on the interests of the company. The implementation of the GMS can be carried out at the request of:

- 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.

### **Board of Commissioners.**

Requests for summons to the GMS are submitted by shareholders to the Board of Directors by registered letter accompanied by reasons and a copy of which is submitted to the Board of Commissioners. The names of the members of the Board of Directors are listed in the Company's Articles of Association, so the GMS to appoint members of the Board of Directors is carried out based on Article 88 paragraph (1) of the Company Law, namely:

"The GMS to amend the articles of association can be held if at the meeting at least 2/3 (two-thirds) of the total shares with voting rights are present or represented at the GMS and decisions are valid if approved by at least 2/3 (two-thirds) of the the number of votes cast, unless the articles of



association determine the attendance quorum and/or provisions regarding decision-making at a larger GMS.”

Based on these provisions, to appoint the Board of Directors, a GMS must be held to amend the Articles of Association by fulfilling the provisions mentioned above, namely:

2/3 of the total shares with voting rights must be present or represented; and

Decisions are valid if approved by at least 2/3 of the total votes cast.

These provisions apply unless the Articles of Association stipulate a quorum for attendance or provisions for decision-making at a larger GMS.

### **Circular Resolution**

Shareholders may also make decisions regarding the Appointment of Directors which are binding outside the GMS provided that all shareholders with voting rights agree in writing by signing the relevant proposal (Article 91 of Law Number 40 of 2007). Decisions outside the GMS are called Circular Resolutions, by way of circulating proposals to other shareholders. The approval of all shareholders is an absolute requirement for the validity of circular decisions. There may not be one shareholder who rejects or disagrees with the decision, if one shareholder agrees it will result in an invalid circular decision.

Re-appointment of members of the board of directors through a GMS or Circular Decision is categorized as a change in company data, must be included or stated in a Notary deed in Indonesian, for then the company's directors or appointed by the GMS or Circular Decision authorize a notary to submit a request for notification of changes in company data to the Ministry Law and Human Rights of the Republic of Indonesia (Kemenkumham RI). The purpose of notification to the Minister is to be recorded in the register of companies within a period of no later than 30 days from the date of the GMS decision or Circular Decision.

Changes to the Company's data by filling in the Change Form on the SABH. must also be accompanied by supporting documents submitted electronically. Notification of changes to company data for members of the Board of Directors aims to:

To be recorded in the Company Register by the Minister (Article 29 paragraph (1) UUPT).

Entering company change data regarding changes in members of the Board of Directors into the Company Register (Article 29 paragraph (3) letter c UUPT).

Submission of changes to company data based on Article 18 of Regulation of the Minister of Law and Human Rights Number 4 of 2014 concerning Procedures for Submitting Applications for Legal Entity Authorization and Approval of Amendments to Articles of Association and Submission of Notifications of Amendments to Articles of Association and Changes to Limited Liability Company Data (Permenkumham 4/2014) as amended by Regulation of the Minister of Law and Human Rights Number 1 of 2016 (Permenkumham 1/2016). If notification is not made (no later than 30 days after the GMS or Circular Decision), the Minister will reject any application submitted or notification submitted to the Minister by directors who have not been registered with the company. As a result, the appointment of members of the board of directors does not apply to third parties. Therefore,

### **Legal Consequences of Agreements Made by Directors Ending Their Term of Office**

An agreement is a legal relationship between two or more parties based on an agreement to cause juridical consequences (Sudikno Mertokusuma, 2009). The agreement must fulfill the legal terms of the agreement based on Article 1320 of the Civil Code, namely agreement for those who bind themselves; skills in making an engagement; a certain thing and a lawful reason. Terms of agreement and competence are subjective conditions whereby if one or both of the two conditions are not met then the agreement can be canceled in the sense that the new agreement is considered canceled after a request for cancellation from a party. Conditions regarding a certain matter and lawful causes are objective conditions, which if one or both are not met, then the agreement is deemed null and void.

Proficiency in terms of legal agreements is the ability to carry out legal actions independently that bind themselves. A person is said to be mature so that he is competent before the law if he is 21



years old or less than 21 years old but is already married as explained in Article 330 of the Civil Code. However, looking back at the law that regulates legal actions to be carried out by the parties, for example marriage, the maturity of the parties refers to the age provisions specified in the marriage law. Proficiency is not only about age provisions, but also someone's ability to act as a party to making an agreement.

PT legal entities can bind themselves with other parties through agreements. Even though the form of a PT is an entity, in practice, the legal entity acts as represented by its management. PT as an independent legal subject is separate and different from shareholders and management, inherent contractual responsibility (contractuele aansprakelijkheid, contractual liability) for agreements or transactions made for and on behalf of PT. Contractual responsibility is born and inherent in the PT itself and the agreements it makes with other parties (Yahya Harahap, 2009).

A limited liability company is a form of legal entity. this gives the meaning that the company can have rights and obligations to perform an act like a human being, have its own wealth, be sued and sue before the court (Ridwan Khairandy, 2009). The only organ of the company authorized to represent the company is the board of directors.

The authority of the board of directors of a company is based on the principle of fiduciary duty, namely the directors carry out their duties both in carrying out their duties, namely in leading the company and as a representative of the company or representing the directors inside and outside the court. Therefore, the principle of representing the company causes the company as a legal entity to be bound by transactions or contracts made by the directors on behalf of and for the benefit of the company (Munir Fuady, n.d.).

The Board of Directors in carrying out their duties and authorities needs to pay attention to the term of office. The ability to act refers to general authority, meaning the general authority to make an agreement or to take legal action in general. The authority of the directors in making agreements on behalf of the PT, is contained in the UUPT and the articles of association of PT. If the term of office of the Board of Directors has ended, then the authority of the Board of Directors to represent PT in making agreements with third parties has ended, so that the Board of Directors is said to be incapable of making agreements. Thus, the company has no rights and obligations to the agreement. The legal action of the Board of Directors whose term of office has expired is a personal action that binds his rights and obligations personally, if the agreement is still to be continued by the parties, due to the non-fulfillment of the subjective element, namely proficient in making agreements representing PT in acting. Failure to fulfill the subjective element (skills) in the agreement results in the agreement being canceled by the parties. Companies or third parties can apply for cancellation of the agreement signed by the directors on behalf of the company to the court.

#### 4. CONCLUSION

Directors of the company whose term of office has expired cannot be automatically renewed. Since the expiration of this period, the former PT Directors are no longer entitled to act for and on behalf of the Company. Re-appointment of former Directors whose term of office has expired can be carried out through a GMS or a Circular Decision (decisions of shareholders that are binding outside the GMS), which are set forth in a Notary Deed and notified to the Ministry of Law and Human Rights of the Republic of Indonesia to be recorded in the Company Register in order to obtain approval and the Directors can resume management of PT in accordance with UUPT and Articles of Association, as well as representing PT both inside and outside the court. The agreement signed by the former Board of Directors on behalf of the PT whose term of office has ended is invalid, because it does not fulfill the subjective element, namely being able to act on behalf of the PT as required by a valid agreement (Article 1320 of the Civil Code) which results in the agreement being canceled by one of the parties. If not canceled by one of the parties, then the agreement is personally binding on the Directors, not PT. Therefore, before the term of office of the Board of Directors ends, it is better for the PT to re-appoint it through the GMS or Circular Decision and ratification to the Indonesian Ministry of Law and Human Rights so that the agreement made by the Directors on behalf of the PT can bind the company.



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