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The Legal Validity of the General Meeting of Shareholders Convened Pursuant to a District Court Order Subsequently Annulled by the Supreme Court

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Abstract: This paper examines the legal paradox posed by the statutory finality of court orders authorizing the convening of General Meetings of Shareholders (GMS) under Article 80 (6) of Law No. 40 of 2007. Although the provision declares such orders is "final and has permanent legal force," interpretive tension emerges where an order is issued *ex parte* in violation of the fundamental contradictory principle notably *audi et alteram partem* and subsequently annulled by the Supreme Court. Employing statutory, conceptual, and case-analysis approaches, the study analyzes the legal consequences of the landmark dispute concerning a GMS convened pursuant to District Court Order No. 1759/Pdt.P/2019/PN Sby, subsequently declared invalid *ex post facto* by Supreme Court Judgment No. 3241 K/PDT/2022. The inquiry contends that statutory finality is conditional rather than absolute, asserting that an order procured through procedurally defective proceedings is devoid of substantive legitimacy and may therefore be lawfully overturned. The Supreme Court's annulment confirms that finality depends on observance of procedural guarantees and that annulment operates *ex tunc*, rendering resolutions adopted under the flawed Order void *ab initio* and stripping attendant notarial instruments of executorial force with significant implications for corporate governance, registry practice, and the balance between legal certainty and due process.

Keywords: GMS Petition, *Ex Parte* Proceeding, *Ex Tunc* Annulment, Conditional Finality, Legal Certainty.

INTRODUCTION

A Limited Liability Company (henceforth "LLC"), referred to in Indonesia as a *Perseroan Terbatas* (abbreviated as PT), is a corporate legal entity whose existence is recognized and legitimized by the State as an autonomous legal subject. This entity is explicitly regulated by Law Number 40 of 2007 concerning Limited Liability Company, known by its original name, *Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas* (Indonesian Company Law hereafter refer to as "ICL") (Sijabat & Harahap, 2023). An LLC is a capital partnership that must be established by at least two persons under a valid agreement to carry on business activities, with authorized capital wholly divided into shares and in

compliance with statutory requirements and implementing regulations. Legal scholar Yahya Harahap describes the LLC as an "artificial legal person" — a juridical entity constituted by statute rather than by natural persons. An LLC acquires legal personality, together with its correlative rights and obligations, upon approval and registration by the Minister of Law of the Republic of Indonesia (Sijabat & Harahap, 2023), an office formerly designated as the Minister of Law and Human Rights.

Under Indonesian corporate law, an LLC's organizational structure is divided into three principal organs that provide a system of checks and balances. The first is the Board of Directors (hereinafter "BOD"), which serves as the executive body. The second is the Board of Commissioners (hereinafter "BOC"), which acts as the supervisory body. The third and supreme governing body is the General Meeting of Shareholders (hereinafter "GMS"), officially known as *Rapat Umum Pemegang Saham* or *RUPS*. The GMS is responsible for crystallizing the collective will of the shareholders in corporate decision-making (Widjaya, 2002). Each organ's rights and duties are regulated by the ICL and by the company's Articles of Association (hereinafter "AoA"). Any amendment to a company's AoA therefore requires the approval of — and/or notification to — the Minister of Law of the Republic of Indonesia. Amendments must be adopted through a GMS and then recorded in a notarial deed drafted in the Indonesian language.

The ICL classifies GMSs into two types: the Annual GMS, whose agenda typically includes the accountability report, financial statements, and corporate report (Fauzan et al., 2020), and Other GMS, commonly called Extraordinary GMS. The difference between them is primarily temporal: the Annual GMS must be held no later than six months after the end of the financial year, whereas an Extraordinary GMS may be convened at any time as needed for the interests of the company.

Conceptually, a GMS is not merely an administrative formality but a manifestation of shareholder sovereignty. It guarantees shareholder participation in strategic corporate matters, such as ratifying financial statements, appointing and dismissing management, and making other fundamental decisions not delegated to other corporate organs. The organ entitled to convene a GMS (whether Annual or Extraordinary) is the Board of Directors, and any convening must be preceded by a formal summons. A GMS may be convened at the request of: (1) one or more shareholders who collectively represent at least one-tenth (1/10) of the total issued shares carrying voting rights, unless the AoA set a lower threshold; or (2) the initiative of the BOC, submitted in a registered letter to the BOD setting out the reasons for the request (ICL, 2007).

However, corporate dynamics sometimes give rise to internal conflict — due to divergent interests or structural governance impediments — that frustrate the convening of a GMS. If the BOD fails to summon a GMS after receiving a valid request from shareholders or the BOC, the request is resubmitted to the BOC, which may then itself summon the meeting (Izzah & Djaja, 2024). To protect shareholders' participatory rights where neither the BOD nor the BOC effects a summons, Article 80 of the ICL opens access to judicial remedies: shareholders meeting the one-tenth (1/10) threshold may petition the District Court in the jurisdiction of the company's domicile for permission to summon and hold a GMS. After summoning and hearing the petitioner (i.e., the shareholder), as well as the company's BOD and/or BOC, the presiding judge shall issue an order granting permission to hold the GMS. To do so, the judge must be satisfied that the petitioner has demonstrated, in a *prima facie* manner (*sumir*; i.e., simply and sufficiently clearly), both the fulfillment of statutory requirements and a reasonable interest in convening the meeting. Conversely, the petition will be denied if such *prima facie* showing is not made. Textually, Article 80 paragraph (6) of the ICL authorizes the District Court to issue a court order permitting the holding of a GMS that is expressly declared to be final and to have binding legal force — language that, on its face, appears to foreclose further legal challenge.

The convening of a GMS pursuant to a court order, as occurred in the case of PT Unilink Prima, was based on District Court Order Number 1759/Pdt.P/2019/PN Sby dated 26 November 2019. That Order was intended as an *ultimum remedium* to overcome deadlock in the functioning of the company's organs in PT Unilink Prima. Problems arose, however, when the Court Order authorizing the GMS was issued without observance of due process of law, as was the case in District Court Order Number 1759/Pdt.P/2019/PN Sby. That Order — although it has served as the basis for a GMS held by one of the shareholders — was later annulled by the Supreme Court of the Republic of Indonesia by Judgment Number 3241 K/PDT/2022 on the grounds of violations of the principle of *audi et alteram partem* and formal defects throughout the petition proceedings. This annulment raises two principal juridical controversies: (1) to what extent can the finality of a court order be challenged if it contains formal defects; and (2) what is the legal legitimacy of a GMS that was conducted pursuant to a court order later declared invalid *ex post facto* and thus retrospectively ineffective?

The PT Unilink Prima case is a landmark decision scrutinizing the consistency between the doctrine of finality of court orders granting permission to convene a GMS, on the one hand, and the principles of legal certainty and due process, on the other. The Supreme Court's annulment of the District Court Order Number 1759/Pdt.P/2019/PN Sby dated 26 November 2019 by Judgment Number 3241 K/PDT/2022 dated 20 September 2022 gives rise to a legal dilemma: while the Indonesian Company Law guarantees the finality of a district court order authorizing a GMS as a form of legal certainty, the Supreme Court — as guardian of justice — possesses the constitutional authority to correct procedural errors through cassation review.

METHOD

This study employs a normative juridical (legal research) method integrating textual, conceptual, and empirical analyses. The statutory approach is undertaken by examining legislative provisions relevant to the issues under study, with particular focus on the systematic interpretation of the Indonesian Company Law, its implementing regulations, and the Supreme Court Circular Letter Number 3 of 2018 (Supreme Court of the Republic of Indonesia, 2018). This analysis also includes related provisions of the civil procedural law, taking into account both legislative intent and judicial interpretation. The conceptual approach scrutinizes key legal doctrines — such as *res judicata*, *audi et alteram partem*, and legal certainty — that have attained juridical recognition in the contemporary development of corporate and civil law (Marzuki, 2022). Meanwhile, the case approach is carried out through an in-depth analysis of the District Court of Surabaya Order Number 1759/Pdt.P/2019/PN Sby dated 26 November 2019 and the Supreme Court of the Republic of Indonesia Judgment Number 3241 K/PDT/2022 dated 20 September 2022, with particular attention to the *ratio decidendi* and the consistency of legal implementation.

The objective of this study is to provide a comprehensive analysis from a litigation-oriented perspective in addressing the critical question of the legal validity of a GMS convened pursuant to a court order that is subsequently annulled by a cassation judgment of the Supreme Court of the Republic of Indonesia. Through the three approaches outlined above, this article seeks to contribute theoretically by reconstructing the legal paradigm of the finality of court orders within the transformative dynamics of modern corporate law, while simultaneously addressing the validity of a GMS whose juridical foundation has been nullified.

RESULTS AND DISCUSSION

The mechanism for convening a GMS through a court order, as provided under Article 80 of the ICL, is fundamentally intended as an *ultimum remedium* in the event of deadlock in the functioning of corporate organs. This procedure constitutes an exception (*derogatio legi*) to the principle of corporate autonomy; as such, it must satisfy strict substantive requirements.

First, the petitioner must demonstrate ownership of at least one-tenth (1/10) of the voting shares or otherwise act under a mandate from the Board of Commissioners, accompanied by a legitimate interest (e.g., misconduct by directors or corporate losses). Second, the presiding judge must summon and hear the directors and/or commissioners before issuing an order, in order to safeguard the principle of fair trial and avoid *ex parte* proceedings. Third, the court order must stipulate technical requirements such as the period of notice, quorum of attendance, appointment of the meeting chairperson, agenda items, and the directive for the management to attend. Failure to observe these conditions — as occurred in the PT Unilink Prima case — results in procedural injustice, undermining legitimacy and opening the way for annulment.

Procedures and Formal Requirements for the Validity of a GMS

Normatively, the GMS performs a central function as the highest decision-making forum within an LLC, vested with veto power and binding authority, through which the collective will of shareholders is expressed (Yusanti et al., 2022). Accordingly, both the formal and substantive validity of this forum are decisive for the legitimacy of strategic resolutions and corporate legal acts. It follows that procedural errors in convening a GMS may nullify the resolutions adopted therein in their entirety (Harahap, 2020).

As the supreme corporate organ whose powers determine the direction and legal acts of a company, the GMS is extensively regulated under the ICL (Irfano, 2021). It should be noted, however, that the GMS, the BOD, and the BOC stand in a coordinate relationship, consistent with the principle of separation of powers set forth in the ICL and the company's AoA (Yuwono, 2015).

Article 1 number 4 of the ICL defines the GMS as: "the organ of the company vested with authority not granted to the BOD or the BOC, within the limits prescribed by this Law and/or the articles of association." From this definition, several conclusions follow (Budiyono, 2011):

a. The GMS is a corporate organ manifested in the form of a meeting, whose authority can only be realized if the convening and decision-making comply with the formal requirements prescribed by the ICL;
b. The authority of the GMS is residual in nature, deriving from shareholders' ownership rights to decide on matters concerning their property;
c. This authority may, within limits, be delegated to other corporate organs — namely, the BOD and the BOC — pursuant to the ICL, the AoA, and/or a GMS resolution.

Because the GMS is designed to safeguard the interests of shareholders, its convening must be regulated so as to ensure both formality and legitimacy (Rosdiana, 2021). The convening of a GMS of an LLC produces Minutes of Meeting (*Risalah Rapat* or *Notulen Rapat*) containing the proceedings, statements, deliberations, and resolutions adopted by the shareholders. Pursuant to Article 21 of the ICL, such resolutions must be incorporated into a notarial deed no later than thirty (30) days from the date of the GMS. Where the GMS is held in the presence of a notary, the deed takes the form of a *Berita Acara Rapat* (Meeting Minutes) (Sudaryat, 2008); whereas if the GMS is conducted without the presence of a notary, the notary shall draw up a *Pernyataan Keputusan Rapat* (Meeting Resolutions) (Fauzan et al., 2020).

To ensure the legal certainty of all corporate acts arising from a GMS, the ICL mandates strict adherence to its established procedures (Saputri, 2022). These include the detailed formalities a notary must observe when preparing the authentic deed of a GMS resolution to guarantee its validity (Fauzan et al., 2020). Accordingly, a notarial deed reflecting GMS resolutions acquires binding legal force only if all procedural steps and formal requirements have been fulfilled under the ICL and the company's AoA (Faradila, 2020). Thus, resolutions of the GMS attain legal force only when convened within a legitimate normative framework and in conformity with the principle of legality under prevailing law. The complete formal

requirements for convening a GMS are summarized in the table below.

Table 1. GMS Convening Procedures under Indonesian Company Law and Regulations

Procedure	Description
Type	Amendments to the Articles of Association (AoA) of an LLC must be resolved through a GMS. Likewise, amendments to the Data of an LLC must also be determined through a GMS.
Venue	A GMS may be convened at: – the registered domicile of the company; or – the place where the company conducts its principal business activities, as stipulated in its AoA; or – any location within the territory of the Republic of Indonesia, provided that all shareholders are present and/or duly represented at the GMS and all shareholders give their consent thereto; or – the domicile of the stock exchange where the company's shares are listed, in the case of a public company.
Convocation	The convocation of a GMS is mandatory to ensure that all shareholders are informed of the date, time, and venue of the GMS, as well as the detailed agenda items to be discussed and resolved at the meeting, subject to the following provisions: – The BOD is authorized to convene the GMS, either on its own initiative or at the request of shareholders representing at least 1/10 (one-tenth) of the total shares with voting rights, or at the request of the BOC; – If the BOD fails to convene the GMS, the BOC is authorized to do so, either on its own initiative or at the request of shareholders representing at least 1/10 (one-tenth) of the total shares with voting rights; – The convocation of the GMS must be made no later than 15 (fifteen) days from the date the request for the GMS is received; – If neither the BOD nor the BOC convenes the GMS, the shareholders requesting the meeting may petition the district court in the company's domicile for authorization to convene the GMS; – The convocation of the GMS must be made no later than 14 (fourteen) days prior to the date of the GMS, exclusive of the dates of convocation and the GMS itself; – The convocation of the GMS must be made by registered mail and/or by public notice in a newspaper;
Quorum	A GMS may only be held if the quorum of attendance is satisfied, and resolutions of the GMS may only be declared valid if the quorum of resolutions is fulfilled (Fauzan et al., 2020). The quorum requirements for attendance and resolutions vary depending on the agenda of the GMS, as regulated under Articles 86 to 89 of the ICL (Puspitaningrum, 2018).

Source: ICL and Indonesian Company Registration Regulation (Ministry of Law and Human Rights of the Republic of Indonesia, 2021)

The parameters governing the validity of a GMS are determined primarily by a company's AoA, insofar as they do not contravene the ICL, and upon the ICL where the AoA is silent. However, where a company's AoA has not been harmonized with the most recent statutory amendments, the ICL operates as *lex superior* and supplies the controlling criteria for assessing whether adopted resolutions are legally binding (Yusanti et al., 2022). Synchronization between a company's AoA and the ICL is therefore essential to prevent disputes over the validity of a GMS, particularly where court order or authorization is required. Moreover, in light of the principles of the rule of law and good corporate governance, procedural transparency and the assurance of shareholder participation constitute fundamental prerequisites for the legitimacy of GMS resolutions. Any failure to comply with these requirements renders all resulting legal acts, including GMS resolutions, devoid of binding force. Every LLC is founded upon the ICL, which stipulates the rights, duties, and legal standing of shareholders, directors, and commissioners. the procedural and formal requirements for convening a GMS, as prescribed by the ICL and summarized in Table 1 above, directly determine the validity of GMS resolutions, safeguarding their enforceability as binding legal acts (Hasbullah, 2016).

As previously indicated, the ICL and its implementing regulations (see Table 1) stipulate that a GMS is ordinarily convened by the BOD or, in specified cases, by the BOC; where both organs fail to act, shareholders meeting the statutory threshold may petition the District Court for authority to convene the meeting. Such petitions are procedurally characterized in Indonesian practice as non-contentious applications and, in form, often appear *ex parte*. In such proceedings, only the petitioner and/or their counsel appear before the court, without the presence of opposing parties or third parties. The hallmarks of an *ex parte* application are: (1) the substance concerns a unilateral interest; (2) there is, in principle, no dispute with an adverse party; and (3) the proceedings are conducted without the participation of other parties and are therefore strictly one-sided.

Nevertheless, this *ex parte* character cannot be applied absolutely in the context of corporate law, particularly in petitions to convene a GMS. Although such petitions are classified as non-contentious proceedings, paragraph (2) of Article 80 of the ICL carves out a mandatory exception, expressly requiring the presiding judge to summon and hear the company's Directors and/or Commissioners before granting authorization for a GMS. This provision signifies that the examination of petitions to convene a GMS is intrinsically adversarial in nature, requiring participation by more than just the petitioner to uphold procedural fairness. Thus, the ICL explicitly carves out a notable exception to the *ex parte* rule, recognizing that GMS proceedings inherently implicate broad corporate rights and interests. That legal design ensures the civil petition cannot proceed based solely on the petitioner's assertions and protects the rights of all stakeholders who might be affected.

Facts and Legal Considerations

Facts are those circumstances susceptible of proof by admissible evidence; legal considerations, generally called *ratio decidendi*, are the legal reasons or lines of reasoning that justify a judicial disposition and are articulated in the *considérants* of a judgment. A judge's reasoning should appear as a logical and coherent sequence of legal analysis, argument, findings of fact, and conclusion. The *ratio decidendi* is discerned by examining the material facts and identifying the legal rationale that decisively produced the court's outcome; a fact becomes material precisely when alternative outcomes are possible, and the court's chosen rationale determines which prevails (Mulyadi, 2009).

District Court of Surabaya Order Number 1759/Pdt.P/2019/PN Sby

In the civil Petition (*Permohonan*) Case Number 1759/Pdt.P/2019/PN Sby, filed on October 14, 2019 for authorization to convene a GMS, the Petitioner named David Siemens Kurniawan, in his statement claimed ownership of 1,400 (one thousand four hundred) of the 10,000 (ten thousand) total shares — equivalent to 14% (fourteen percent) ownership of PT Unilink Prima (*In re Kurniawan*, 2019). He alleged that he had never been provided bookkeeping records and therefore did not know the company's financial statements or profit-and-loss reports, and that he had never received any dividend payments or profit distributions from the company. The Petitioner contended that the Board of Directors of PT Unilink Prima need not be notified or summoned before the court, on the ground that the Board had already become demissionary. Relying solely on the Deed of Establishment (*Akta Pendirian*) of PT Unilink Prima Number 4 dated 3 April 1990 (notarized by Elly Nangoy, S.H. in Surabaya), the Petitioner one-sidedly declared the Board demissionary. Article 9 paragraph (2) of the deed provides that directors are appointed by the GMS for an unspecified term (PT Unilink Prima, 1990); the Petitioner argued that this provision conflicts with Article 94 paragraph (3) of the ICL, which requires a limited term, and therefore that the breach automatically rendered the Board of Directors of PT Unilink Prima demissionary.

In the context of the case at bar, the Sole Judge hearing the case found that the Petitioner

satisfied the statutory threshold under Article 79 paragraph (2) of the ICL (shareholders collectively holding at least one-tenth of voting shares) and deemed the Petition to convene a GMS well-founded. The Judge also relied on Article 94 paragraph (3) of the ICL — which requires a limited term for the Board of Directors — and concluded that the Deed of Establishment's provision (Article 9 paragraph (2)) leaving the directors' term unspecified was inconsistent with that statutory requirement, thereby regarding the directors as demissionary. On that legal reading, and invoking Article 80 paragraph (2) of the ICL, the Sole Judge granted the Petition *ex parte*, reasoning that — in the judge's view — the BOD or the BOC need not be summoned where they were allegedly inactive (*In re Kurniawan*, 2019). Crucially, however, the court did not consider later Deeds of Amendment (*Akta Perubahan*) indicating that Njoo, Steven Tirtowidjojo, was the only validly appointed Director at the time (PT Unilink Prima, 2008). The omission of that evidence and the failure to summon the lawful Director furnished the factual and procedural foundation for his filing for cassation against the District Court of Surabaya Order Number 1759/Pdt.P/2019/PN Sby dated 26 November 2019.

Supreme Court of the Republic of Indonesia Judgment Number 3241 K/PDT/2022

The Applicant in the Cassation (*Kasasi*) Case Number 3241 K/PDT/2022 was Njoo, Steven Tirtowidjojo, who, pursuant to the Deed of GMS Resolutions of PT Unilink Prima Number 21 dated 26 June 2008, executed before Helen Siscerianty Ajinata, Notary in Surabaya, was the lawful Director of PT Unilink Prima (*Tirtowidjojo v. Kurniawan*, 2022). In its legal considerations, the panel of Supreme Court Justices held that the Sole Judge hearing the Petition Case Number 1759/Pdt.P/2019/PN Sby had erred in the application of the law, particularly because the Court Order *a quo* was issued without summoning and hearing the statements of the company's BOD and/or BOC, as mandated by Article 80 paragraph (2) of the ICL. The improper *ex parte* court proceeding conducted by the Sole Judge of the District Court of Surabaya not only violated formal procedure but also contravened the principle of a fair trial under civil procedural law.

The Supreme Court emphasized that Article 80 paragraph (2) is imperative, meaning that before issuing an order to authorize a GMS, the judge is obligated to summon and hear the BOD and/or the BOC (ICL, 2007). In this case, Njoo, Steven Tirtowidjojo, as the Sole Director of the company (PT Unilink Prima, 2002), was never formally notified and summoned to be heard in the court proceedings. The Court's omission — which concerned the lawful director as shown by a later amendment deed — was not attributable to any negligence on the Director's part but to procedural disregard by the Sole Judge hearing the case *a quo*; consequently, the Supreme Court held that the Order had lost its juridical legitimacy from the outset.

Furthermore, the Supreme Court found that the Sole Judge in Case Number 1759/Pdt.P/2019/PN Sby failed to adhere to the basic principle of procedural justice by disregarding the interests of the majority shareholders, who held nearly 90% of PT Unilink Prima's shares (*Tirtowidjojo v. Kurniawan*, 2022). The Supreme Court asserted that a judge's duty extends beyond assessing a petition's formal completeness to ensure the impartial protection of all shareholders' rights. By failing to involve parties who were directly and materially affected, the Court Order authorizing the GMS was procured through a process that violated the principle of *audi et alteram partem*, which guarantees the right to be heard. For these reasons, the Supreme Court annulled the District Court's Order and proceeded to adjudicate the matter itself on cassation.

Formal and Substantive Defects in the District Court's Order

Based on an in-depth analysis of the District Court of Surabaya Order Number 1759/Pdt.P/2019/PN Sby dated 26 November 2019, it is evident that the Sole Judge examining the GMS petition failed to conduct a thorough verification of the relevant legal evidence. The

Sole Judge did not examine the AoA of PT Unilink Prima as contained in the most recent Deed of Amendments of PT Unilink Prima, namely the Deed of GMS Minutes Number 33 dated 27 September 2002, notarized by Suanny Noviyanti Djojo, S.H. in Jakarta, and the Deed of GMS Resolutions Number 21 dated 26 June 2008, notarized by Helen Sisceriany Ajinata, S.H., M.Kn. — a substitute for Rudy Siswanto, S.H. — in Surabaya. Instead, the Sole Judge issuing the Court Order *a quo* referred only to the Deed of Establishment of PT Unilink Prima submitted by the Petitioner.

A careful review of the Court Record demonstrates two categories of error. First, the Sole Judge neglected *iura novit curia*, the Latin maxim — "the court knows the law" — which obliges a judge not only to identify the applicable legal rules but also to verify the legal and factual predicates necessary to apply them. In practice this means the judge must take account of all relevant legal facts and dispositive documentary evidence (specifically, the latest amendment deeds) before reaching a decision; by failing to verify those deeds the judge abdicated that duty. Second, the Court Order transgressed the principle of *audi et alteram partem* by denying affected parties an opportunity to be heard and by marginalizing the interests of shareholders holding approximately nine-tenths of the company's voting power.

The panel of Supreme Court Justices affirmed these points in its legal considerations in the Supreme Court Judgment Number 3241 K/PDT/2022, as follows:

> Given that the Cassation Applicant serves in the capacity of Director of PT Unilink Prima, he is thereby an interested party and, as such, possesses the requisite legal standing to lodge an application for cassation;
>
> That the grounds for cassation from the Cassation Applicant are well-founded because Order Number 1759/Pdt.P/2019/PN Sby, which granted the Petitioner's request to convene a General Meeting of Shareholders (GMS) of PT Unilink Prima, violated the provisions of Article 80 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Company (ICL), namely that the Sole Judge *a quo* did not summon and hear the Board of Directors and/or Board of Commissioners of PT Unilink Prima before issuing the order *a quo*, which states that the Head of the District Court, after summoning and hearing the Petitioner, the Board of Directors and/or the Board of Commissioners, shall grant permission to convene a general meeting of shareholders (GMS) if the Petitioner has demonstrated in a *prima facie* manner that the requirements have been met and the Petitioner has a reasonable interest in convening the GMS. (*Tirtowidjojo v. Kurniawan*, 2022)

In addition, the Supreme Court panel also found that the District Court (*judex facti*) was erroneous because it failed to satisfy the substantive requisites of Article 80 paragraph (3) of the ICL; it was expressly observed that the Court Order *a quo* did not specify the essential elements. According to legal scholar Yahya Harahap, the operative part (*amar*) of any order authorizing the convening of a GMS must, at minimum, include the following (Harahap, 2016):

1. permission for the Petitioner to personally summon the GMS;
2. stipulations concerning the following:
   a. the type of GMS, whether annual or extraordinary;
   b. the agenda of the GMS, in accordance with the petition;
   c. the quorum of attendance, and/or the requirements for passing GMS resolution;
   d. the appointment of the meeting chairperson;
3. an order compelling the attendance of the BOD and/or the BOC at the GMS.

Nevertheless, the holding of the District Court of Surabaya Order Number 1759/Pdt.P/2019/PN Sby dated 26 November 2019 omitted the substantive particulars required by Article 80 of the ICL and issued only the following dispositive clauses:

Original text in Indonesian:

"1. Mengabulkan permohonan Pemohon untuk melakukan penyelenggaraan Rapat

Umum Pemegang Saham (RUPS) PT. Unilink Prima untuk pengangkatan pengurus yang baru;
2. Menghukum Pemohon untuk membayar biaya perkara yang diperhitungkan hingga kini sebesar Rp126.000,- (seratus dua puluh enam ribu rupiah);"

English translation:

"1. Grants the Petitioner's petition to convene a General Meeting of Shareholders (GMS) of PT. Unilink Prima for the appointment of a new management;
2. Compels the Petitioner to pay the court costs incurred to date in the amount of Rp126,000.- (one hundred and twenty six thousand rupiah);"

The GMS convened pursuant to above-mentioned Order lacked clarity as to its type, agenda, quorum requirements, chairmanship, and attendance obligations — in turn producing ambiguity in its implementation.

Consequently, the Panel of Supreme Court Justices unequivocally declared that "the Order of the *judex facti* / District Court of Surabaya must be annulled and the Supreme Court would try this case itself" (*Tirtowidjojo v. Kurniawan*, 2022), and proceeded to adjudicate the case *a quo* with its Cassation Judgment as follows:

Original text in Indonesian:

"– Mengabulkan permohonan kasasi dari Pemohon Kasasi **NJOO, STEVEN TIRTOWIDJOJO** tersebut;
– Membatalkan Penetapan Pengadilan Negeri Surabaya Nomor 1759/Pdt.P/2019/PN Sby, tanggal 26 November 2019;"

English translation:

"– Grants the cassation application of the Cassation Applicant **NJOO, STEVEN TIRTOWIDJOJO**;
– Annuls the District Court of Surabaya Order Number 1759/Pdt.P/2019/PN Sby, dated 26 November 2019;"

It is thus clear that the legal basis for convening the GMS of PT Unilink Prima was annulled and deprived of legal force, rendering it unenforceable and invalid.

These defects were not merely technical. The absence of mandatory elements in the Order — coupled with the failure to summon persons with a cognizable legal interest — produced a procedurally vitiated grant of authority to convene a GMS. As the Supreme Court underscored, the dispositive clause of the District Court's Order was substantively inadequate. Such lacunae don't just trip over legal niceties — they forge legal uncertainty, unsettle corporate governance, and expose the company to protracted disputes, conflicting claims of authority, and even the potential invalidation of resolutions purportedly adopted at the meeting.

Contradictory Principle and Conditional Finality in the Supreme Court's Judgment

In Judgment Number 3241 K/PDT/2022 dated 20 September 2022, the panel of Supreme Court Justices explicitly stated that the trial of the GMS authorization petition by the Sole Judge of the District Court of Surabaya was conducted improperly and in contravention of the principles of "proper, fair, impartial, and just civil adjudication." By excluding indispensable parties, the proceedings effectively degenerated into an *ex parte* process, thereby breaching the contradictory principle (*contradictoir beginsel*) — which subsumes the *audi et alteram partem* guarantee — that lies at the core of civil procedure. This was not a mere oversight of form: the omission deprived affected persons of the opportunity to contest facts and legal claims that directly determined corporate governance outcomes.

Although the ICL textually states that an order authorizing a GMS is "final and has permanent legal force," hence precluding further legal remedies, this provision cannot be applied absolutely or be immune from judicial review, as revealed in the cassation proceedings Number 3241 K/PDT/2022. The Supreme Court read that statutory language through the lens

of functional legality: procedural finality is conditional, not immune. The Supreme Court Circular Letter Number 3 of 2018 reinforces this reading by confirming that orders issued through *ex parte* proceedings remains susceptible to annulment through suit, opposition, or cassation when procedural defects are shown. The facts that came to light in this case revealed that the contradictory principle or adversarial principle, a cornerstone of Article 80 paragraph (2) of the ICL, had been disregarded. As a result, the statutory clause of being "final" and having "permanent legal force" was inapplicable. A GMS petition is not a perfunctory administrative formality but a participatory judicial process, meaning it cannot be reduced to unilateral determination.

Where a court order rests on the untested assertions of one party while adversarial participation is denied, its pretension to finality collapses. The cassation challenge, lodged on April 18, 2022, against the Order of the District Court of Surabaya was a fundamental correction of the lower court's erroneous interpretation of corporate legal procedure. Through its Judgment, the Supreme Court underscored that the concept of finality in Article 80 paragraph (6) of the ICL must be construed as conditional finality, attaching only when all elements of legal procedure have been fully and fairly satisfied (*Tirtowidjojo v. Kurniawan*, 2022). Within this framework, procedural justice is not ancillary but is an indispensable precondition to juridical legitimacy; absent it, the order cannot retain the irreversible imprimatur that the phrase "final and [having] permanent legal force" would otherwise suggest.

The annulment of the GMS authorization order crystallizes three cardinal principles. To begin, the finality of such orders is not absolute where procedural defects exist. The second dictates that annulment operates not only prospectively but also retroactively (*ex tunc*), so that the defective Order is treated as if it never validly existed. *Ex tunc* annulment undoes the legal effects of the impugned act back to its inception. Completing the triad, this legal nullity is of the kind known as void *ab initio*, signifying that the resulting instrument or resolution is considered to have never come into existence, having been invalid from the very outset.

The practical consequence of the Court annulling an order *ex tunc* is that the resolutions adopted under that order lose legal efficacy *ab initio*. This concept of being void *ab initio* applies when a legal act "contravenes the law, morality, or public order" (Pandin et al., 2024). Correspondingly, and any notarial Minutes and/or Resolutions of the GMS, even if embodied in an authentic deed, are stripped of their executorial force and cannot substantiate further corporate acts, including registration with the Ministry of Law. Hence, the annulling judgment is not merely a correction of a flawed lower court practice but a complete revocation of all legal consequences that stemmed from the defective order.

Those doctrinal consequences generate tangible and distinct implications for stakeholders, namely:

1. Minority shareholders who invoked the petition (here, shareholders holding the one-tenth threshold) are deprived of lawful legitimacy to bind the company where the petition itself is founded on a procedurally defective order; their unilateral fruit of the GMS cannot prevail against the company's substantive governance rules.
2. Majority shareholders (the remaining nine-tenths) retain the capacity to repudiate or refuse to recognize resolutions that are void *ab initio*; they are not automatically bound by the outcomes of an unlawfully convened GMS.
3. Directors and Commissioners, where an agenda item concerns appointment or dismissal of corporate organs, any purported removals or appointments carried out under the defective order are legally ineffective — the prior incumbents remain the valid officeholders until properly replaced by a validly convened GMS.
4. Third parties who have entered transactions based on the defective resolutions enjoy a qualified protection: courts may afford protection to bona fide third parties to preserve transactional security, but such protection is conditional and typically requires a

demonstration of good faith and lack of knowledge of the procedural defect of the supposed GMS; protection does not retroactively validate the defective corporate act itself. Considered cumulatively, these stakeholder effects underscore the Court's paramount concern with the preservation of legal certainty, while at the same time foreclosing the possibility that defective procedures be cloaked in the guise of unassailable finality.

A statutory and hermeneutic caveat follows. Judicial practice has habitually interpreted phrase "final and has permanent legal force" in Article 80 paragraph (6) of the ICL rather narrowly; the Supreme Court's approach demands a more functional and contextual comprehension. Administrative finality must not be mistaken as a blanket immunity against judicial scrutiny, especially when formal or substantive violations occur. As the foregoing Supreme Court's Judgment demonstrates, violations against paragraphs (2) and (3) of Article 80 of the ICL create a structural failure — a legal vacuum that undermines the rule of law and distorts legal certainty if left unremedied. In short, finality of such orders must be understood as conditional, tethered inseparably to due process of law: absent procedural fairness, finality evaporates, and judicial annulment becomes not only appropriate but inevitable remedy.

As previously outlined, the validity of a GMS is contingent upon scrupulous compliance with all statutory requirements. Omission of even a single element — such as properly summoning the Directors and/or Commissioners, or determining the quorum requirement — can taint the entire meeting and suffices to nullify all resulting resolutions. The Supreme Court's annulment of the District Court's Order via Judgment Number 3241 K/PDT/2022 illustrates this legal contagion, showing that procedural flaws at the petition stage do not remain technical defects but vitiate the entire corporate act predicated on the faulty authorization.

The analysis ultimately confirms that the concept of finality under Article 80 paragraph (6) of the ICL requires reformulation to address the complexities of modern corporate law. The principle of finality, after all, cannot be intended to shield legally defective court orders from correction. Instead, every petition to convene a GMS must be adjudicated within a framework of due process that secures all parties' rights. The Supreme Court Judgment Number 3241 K/PDT/2022 dated 20 September 2022 thus marks a doctrinal milestone in the evolution of Indonesian corporate law: it preserves the substantive integrity of corporate governance by harmonizing legal certainty with the imperatives of procedural fairness, while clarifying the operative consequences of void *ab initio* and *ex tunc* annulment for stakeholders.

Post-Cassation Development Judicial Review Judgment Number 212 PK/PDT/2024

The legal dispute did not conclude with the cassation ruling. On September 8, 2023, the losing party in the cassation, David Siemens Kurniawan, filed for a Judicial Review (*Peninjauan Kembali*) against Supreme Court Judgment Number 3241 K/PDT/2022, seeking to challenge its findings. In adjudicating this extraordinary remedy, registered as Case Number 212 PK/PDT/2024 and assessed under the strict statutory standard for review, the Panel of Supreme Court Justices found the challenge untenable and unjustifiable. The Panel held that there were no grounds to overturn the Cassation Judgment: the Applicant failed to establish any judicial oversight (*kekhilafan hakim*) on the part of the *judex juris*, and the purportedly new evidence (*novum*) was not decisive, falling short of the dispositive threshold set out in Article 67 of Law Number 14 of 1985 concerning the Supreme Court (as amended) (*Kurniawan v. Tirtowidjojo*, 2024).

Reinforcing the reasoning of the cassation-level Judgment, the Judicial Review Panel re-examined the initial GMS authorization petition and reaffirmed the core procedural defect that animated the cassation. The Panel found that at the District Court hearing only the Petitioner who represented about one-tenth (1/10) of the shareholding and also acted as a Commissioner was heard, while the majority shareholders who held the remaining company's shares were not afforded any opportunity to be heard (*Kurniawan v. Tirtowidjojo*, 2024). The Panel held that

this constituted a clear breach of *audi et alteram partem* and rendered the original petition inadmissible *ab initio*.

Accordingly, in a session convened on Thursday, 18 April 2024, the Supreme Court delivered its verdict on the Judicial Review. It formally rejected the application submitted by the putative petitioner in the original District Court matter, David Siemens Kurniawan, and ordered him to bear all court costs. In its dispositive ruling, the Court expressly declared:

Original text in Indonesian:

"1. Menolak permohonan peninjauan kembali dari Pemohon Peninjauan Kembali **DAVID SIEMENS KURNIAWAN** tersebut;
2. Menghukum Pemohon Peninjauan Kembali untuk membayar biaya perkara dalam semua tingkat peradilan, yang pada pemeriksaan peninjauan kembali sejumlah Rp2.500.000,00 (dua juta lima ratus ribu rupiah);"

English translation:

"1. Rejects the judicial review application of the Judicial Review Applicant **DAVID SIEMENS KURNIAWAN**;
2. Compels the Judicial Review Applicant to pay the court costs at all levels of proceedings, which in the judicial review proceedings amounting to Rp2.500.000,00 (two million five hundred thousand rupiah);"

This development concretely fortifies the cassation outcome. The highest court's refusal to reopen the matter confirms that its earlier assessment of procedural vitiation was definitive and that the cassation annulment stands as the operative corrective measure. In practical terms, this Judgment narrows remaining avenues for collateral attack and consolidates the finding that District Court Order Number 1759/Pdt.P/2019/PN Sby was issued in violation of prevailing laws and legal principles, thereby strengthening the doctrinal claim advanced in this article that statutory "finality" is conditional upon observance of core adversarial guarantees.

CONCLUSION

The annulment of the District Court of Surabaya Order Number 1759/Pdt.P/2019/PN Sby dated 26 November 2019 by the Supreme Court of the Republic of Indonesia, as reflected in Judgment Number 3241 K/PDT/2022 dated 20 September 2022 and reinforced by Judgment Number 212 PK/PDT/2024 dated 18 April 2024, marks a doctrinally significant correction of the interplay between judicial finality and due process in corporate proceedings by pronouncing two interrelated doctrinal propositions of importance. First, it affirms that the contradictory principle is a substantive protection that cannot be subordinated to procedural convenience, requiring that a GMS petition be examined in a participatory, not unilateral, manner. The Court's second proposition establishes that the finality of a court order is conditional, not absolute. This Judgment clarifies that while the Indonesian Company Law deems such orders final, this status is not an absolute bar to judicial review, as finality attaches only to determinations rendered in full compliance with all procedural guarantees prescribed by law. An order produced by a flawed process — notably, one conducted *ex parte* that disregards the duty to summon and hear the majority shareholders and affected corporate organs — consequently loses its substantive legitimacy and may be lawfully annulled.

The validity of a GMS hinges on strict compliance with statutory formalities, which in this case were proven to have been violated. The annulled Order that formed the basis for PT Unilink Prima's GMS was proven to have contravened Article 80 of the ICL by omitting mandatory requirements such as the notice period and quorum of attendance. Consequently, the GMS convened on the basis of this legally defective foundation is invalid, meaning all resolutions passed therein lack binding legal force. Because those guarantees were absent, finality is forfeited.

The forfeiture of finality permitted the order's cassation annulment *ex tunc*, rendering all

legal consequences of the GMS resolutions adopted thereunder void *ab initio*. This retrospective annulment eradicates the legal existence of the GMS and removes the executorial potency of any notarial instruments derived from it, effectively preventing further legal acts grounded upon them. In this regard, the Supreme Court's Judgment with final and binding legal force (*inkracht van gewijsde*) not only rectifies the procedural defect but extinguishes *ab initio* any jurisdictional competence improperly assumed, while at once annulling all derivative legal effects founded upon the defective order.

Ultimately, this jurisprudence strikes a necessary balance between legal certainty and procedural justice. It reinforces that the principles of the rule of law and due process must serve as the primary reference in every judicial process, including petition proceedings that, while procedurally non-contentious, can have a widespread impact on the structure and legitimacy of corporate actions. In doing so, Judgment Number 3241 K/PDT/2022 constitutes an important precedent that recalibrates the limits of finality in service of protecting corporate stakeholders and ensuring that corporate actions are sustained by fundamental procedural norms.

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