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## Validity of the Deed of the General Meeting of Shareholders regarding the Dismissal of Directors Without Notice and Absence

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**Abstract:** This article is entitled the validity of the deed of the general meeting of shareholders regarding the dismissal of directors without notice and absenteeism, legal research methods with normative research types, using the *statute approach* and *conceptual research approaches*. The secondary data sources use primary legal materials in the form of regulations that are relevant to legal issues, and secondary legal materials which are opinions and legal theories that are relevant to the legal issues in this writing. So with this analysis, it can be concluded that the validity of the deed of the general meeting of shareholders regarding the dismissal of directors without notification and absence from the agenda of the GMS meeting that is, it is invalid, because according to the Company Law the decision cannot be taken by the GMS, if the director who will be dismissed is not present because he has not been notified of the meeting regarding his dismissal. However, the GMS deed becomes valid upon the dismissal of a director who is not present at the GMS meeting, if the director has been notified regarding his dismissal at the GMS meeting and he refuses not to attend..

**Keyword:** *Validity, GMS, Board of Directors.*

### INTRODUCTION

The development of legal instruments to create and protect human rights as members of society continues to develop. In this way, there is legal protection to protect honor and dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions against arbitrariness or as a collection of regulations or rules that will be able to protect (Kartika & Laitupa, 2022). For example, in the economic activities of companies, legal protection for a person's rights as an economic actor in running a company must be fulfilled by the State where the company's economic activities develop in line with the development of society. Because recently thoughts have emerged regarding the nature and essence of company law which plays a role in accommodating the needs of the company's interested communities (*stakeholders*). What is of concern in company law is the condition of companies in the form of legal entities "Limited Liability Companies" or *Limited Liability Companies* (Yuwono, 2015). Indonesia as a legal country (*Recht Staat*) has made legal

changes, among others, in the field of limited liability companies. The regulation of limited liability companies in the form of law began with the enactment of Law Number 1 of 1995 concerning Limited Liability Companies which was later amended by Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT).

The definition of a Limited Liability Company consists of 2 (two) words, namely "company" and "limited". "Company" refers to PT capital which consists of a collection of shares, while the word "limited" refers to shareholders whose roles and responsibilities are only limited to the nominal value of the shares they own. Furthermore, a Limited Liability Company or Company is a company in the form of a legal entity. The term Company in Limited Liability Company refers to the method of determining the capital of a legal entity consisting of holdings or shares, while the term Limited refers to the limit of liability of the limited liability company or shareholders, which is only limited to the nominal value of all shares. owned (Al Ihsan, 2017). Legally, a Limited Liability Company is a form of business entity that was previously regulated in Part III of Book I of the Commercial Code ( *Wetboek van Koophandel voor Nederlandsch Indie* ) from Article 36 to Article 56. Currently Limited Liability Companies are regulated in the Limited Liability Company Law ( Nailul Fikriya, 2020). Article 1 paragraph (1) of the Company Law clearly states that a Limited Liability Company (PT) is a legal entity established based on an agreement. This provision has the implication that the establishment of a PT must comply with the provisions stipulated in contract law. This means that in establishing a PT, apart from being subject to the UUPT, it is also subject to contract law.

PT is a legal entity, this means that the company is a legal subject where the company as an entity can be burdened with rights and obligations like humans in general. Therefore, as a legal entity, a PT has its own assets which are separate from the assets of its management, and can be sued and sue before the court in its own name . Even though a PT is an independent legal subject that can carry out legal relations, has wealth, can be sued and sues before the court in its own name, it is an artificial person *who* cannot carry out its own duties (Mada, 2023). Companies as legal entities do not have the power of thought, will and self-awareness. He must act through the natural person who is the administrator of the body. The actions of the administrators are not for themselves, but for and on behalf of and under the responsibility of the legal entity. The GMS is an organ or part of a PT that has authority that is "not given" to the Board of Directors or Board of Commissioners within the limits determined by law and/or the articles of association. The sentence "not given" implies that only the GMS as an organ has full authority to determine the direction in which the PT will move in accordance with the aims and objectives of the PT. As a consequence, the Board of Directors and Board of Commissioners must obey, obey and agree to the GMS policies, and have no right to reject the results of the GMS decisions.

The board of directors can consist of 1 (one) director or several members of the board of directors consisting of one person appointed as president director or main director and one or several vice president directors, although the UUPT uses the term directors and does not recognize the term director, but in principle In fact, the use of the term directors means that it includes all directors because the board of directors consists of one or several directors or can also be called members of the board of directors. It can be seen from the definition of Directors in the Company Law that one of the main authorities of directors is to act as representatives of a limited liability company, reflecting that directors are a position that plays an important role followed by responsibilities that must be assumed by directors. Directors can also be dismissed by the GMS and the Board of Commissioners. It should be noted that there are 2 (two) types of dismissal of members of the Board of Directors, namely permanent dismissal and temporary dismissal. The temporary suspension is only valid for a maximum of 30 (thirty) days within the 30 (thirty) day period that a GMS must be held which

aims to revoke or strengthen the decision on the temporary suspension. Based on the description above, it is known that the authority to dismiss the Directors belongs to the GMS.

The procedures for dismissing Directors either through temporary dismissal or permanent dismissal through a GMS decision are regulated in article 105, article 106 and article 107 of the Company Law. Provisions regarding procedures for dismissal of Directors must be followed so that the dismissal of Directors is not legally flawed. Article 105 paragraph (1) of the Company Law states that members of the board of directors can be dismissed at any time based on a GMS decision by stating the reasons. Furthermore, article 105 paragraph (2) of the Company Law states that the decision to dismiss a member of the board of directors as referred to in paragraph (1) is taken after the person concerned is given the opportunity to defend themselves at the GMS. Furthermore, in article 105 paragraph (3), in the event that the decision to dismiss a member of the board of directors as intended in paragraph (2) is made by decision outside the GMS in accordance with the provisions as intended in article 91, the member of the board of directors concerned is notified in advance about the plan to dismiss and given opportunity to defend oneself before a decision to dismiss is made. Even though the procedure for dismissing members of the board of directors has been regulated in the Company Law, in reality there are still irregularities regarding the dismissal of members of the board of directors without being notified to be dismissed so that they do not have the opportunity to defend themselves or be present on the agenda of the dismissal meeting at the GMS .

So the problem is, what is the validity of the Deed of the General Meeting of Shareholders regarding the dismissal of Directors without notification or absence?

## **METHOD**

The technique for writing this article uses a legal research method with a normative research type, using a *statute approach* and a *conceptual research approach* (Yanova et al., 2023). The secondary data sources use primary legal materials in the form of regulations that are relevant to legal issues, and secondary legal materials which are opinions and legal theories that are relevant to the legal issues in this writing. The data collection technique used is a documentation guide from secondary data sources. This writing uses descriptive analysis techniques with deductive thinking methods.

## **RESULTS AND DISCUSSION**

Limited Liability Companies as a form of economic business have specific organs. The first organ is called the General Meeting of Holders (GMS) which is generally tasked with determining all general policies of the company. The second organ is the Board of Directors whose task is to carry out the policies determined by the GMS. The third organ is the Board of Commissioners which functions as a supervisor for and on behalf of shareholders. A Limited Liability Company is essentially a forum for cooperation between capital owners or shareholders which is manifested in the GMS (Rukmanto, 2022) . The GMS is the highest organ in a limited liability company where this forum decides important matters of a company, so its implementation or administration is very important to carry out. It can be understood that the GMS is a medium for all shareholders and company management to evaluate and ensure that the company runs well and achieve continuous improvement. Therefore, it is natural that the GMS has power and authority that other Limited Liability Company organs do not have. Based on Article 1 paragraph (4) of the Company Law, the GMS has authority that is not given to the Board of Directors and the Board of Commissioners, which shows that the power of the GMS is not absolute. This means that the highest power given by law to the GMS is limited to the scope of duties and authority that is not given by law and the Articles of Association to the Board of Directors

and Board of Commissioners.

Based on Article 1 point 4 of the Limited Liability Company Law, the GMS is a company organ that has authority that is not given to the Directors or Board of Commissioners within the limits specified in this Law and/or the articles of association. In the GMS there are minutes or known as GMS minutes. The minutes of the GMS are complete records which contain everything discussed and decided at the meeting and are also one of the deeds made by the Notary which contains an authentic description from the Notary regarding an action taken or a situation seen or witnessed by the Notary (Rizkianti, 2020 ). In carrying out its activities, a Limited Liability Company must be represented by the Company's organ, namely the Board of Directors, supervised by the Board of Commissioners. So of course, every activity carried out by the Board of Directors and Board of Commissioners will be held accountable by the GMS through an Annual GMS and other GMS. If we look at the provisions contained in the Company Law, basically in the provisions of Article 78 paragraph (1) of the Company Law, there are 2 (two) types of GMS that can be held, namely Annual GMS and Other GMS which are often known as Extraordinary GMS (EGMS) , where in each type of GMS there is of course a different meeting agenda (Rosdiana, 2021). The GMS itself must be held by the Limited Liability Company every year (Annual GMS) as intended in the provisions of Article 78 paragraph (2) of the Company Law, while the Extraordinary GMS can be held at any time based on the needs of the Limited Liability Company concerned. Considering the importance of holding a GMS to protect the interests of shareholders therein, the GMS itself actually needs to be regulated regarding the technical implementation so that the elements of formality and legality of holding the GMS can be fulfilled. If seen based on the provisions of Article 76 UUPT, a GMS can be held at the company's domicile or at the place where the company carries out business activities, whereas in Article 76 paragraph (2) UUPT, for Public Companies, the GMS can also be held at the domicile of the stock exchange and anywhere by 4 (four) conditions. First , the GMS is attended by and/or represented by "all" shareholders. Second, all shareholders "agree". Third, the approved GMS agenda must be specific. Fourth, the place where the GMS is held must be located in the territory of the Republic of Indonesia (Islah Mumpuni, 2023 ).

The authority granted by the Limited Liability Company Law to the GMS is to determine changes to the Articles of Association, determine additional company capital; determining capital reduction, submitting annual reports and ratifying annual calculations; determining the use of profits; appointment/dismissal of the authority of the Board of Directors and Board of Commissioners; provisions regarding the amount of salaries and allowances for Directors; approval for transfer/guarantee of company assets; approval of mergers, consolidations and takeovers; dissolution of the company (Joesoef, 2022). Article 79 paragraph (1) states that the Board of Directors can hold an annual GMS and the Board of Directors is also authorized to hold other GMS which is preceded by a summons to the GMS. Apart from the Board of Directors, the GMS can also be held upon 2 (two) requests. First, one or more shareholders or who together represent 1/10 (one tenth) or more of the number of shares with voting rights, unless the Articles of Association determine a smaller number. Second , the Board of Commissioners.

The authority of the Board of Directors to convene a GMS is stated in Article 79 (1) of the Company Law, which describes that the Board of Directors is an important element in the Company. So, at least the Board of Directors must follow 2 (two) basic principles in carrying out their duties and authority, namely *fiduciary duty* which refers to the company's trust in them and *duty of skill. and care* which refers to the ability and wisdom of directors' decisions which are reflected in the process of selecting, replacing or dismissing directors which according to Article 94 of the Company Law requires a GMS decision (Fitri & Mahmudah, 2023). The directors are responsible for running the company and representing



the company. This relationship relies on the articles of association of the GMS in accordance with Law Number 40 of 2007 concerning Limited Liability Companies, implementing regulations and other statutory regulations. The implementation and responsibilities of directors in running this limited liability company must at least comply with the doctrine or principles of limited liability companies. The Board of Directors has the authority to carry out the management of the PT in accordance with policies deemed appropriate within the limits specified in the Law and/or Articles of Association. Apart from being based on an employment relationship, the relationship between the Board of Directors and the PT also has a fiduciary relationship with the PT. The Board of Directors has a fiduciary position *within* PT. A person is said to have a fiduciary duty *when* he has fiduciary *capacity*. A person is said to have *fiduciary* capacity if the business he transacts, property or wealth he controls is not for his own benefit, but for the benefit of another person. The person who gave him this authority has great trust in him. Trustees are also required to have good faith in carrying out their duties. The Board of Directors' *fiduciary duty* will provide meaningful protection for shareholders and PT. This is because shareholders and PT cannot fully protect themselves from detrimental actions of the Board of Directors where the Board of Directors acts on behalf of the company and shareholders. To avoid misuse of company assets and authority by the Directors, the Directors are charged with a *fiduciary duty*. As an organ that is tasked and responsible for carrying out company management, it has the potential to violate or deviate from the duties and obligations assigned to the directors.

*fiduciary duties* are divided into 2 (two) main components, namely *duty of care* and *duty of loyalty*. *The duty of care* is basically the obligation of the Board of Directors not to act negligently, to apply a high level of accuracy in gathering information used to make business decisions, and to carry out its business management with reasonable care and prudence. *Duty of loyalty* includes the obligation of the Board of Directors not to place their personal interests above the interests of the company. Article 97 paragraph (2) of the PT Law states that "the management of a PT must be carried out by every member of the board of directors in good faith and with full responsibility". In carrying out *fiduciary duties*, a Director must carry out the following duties. First, it is done in good faith. Second, it is done with *a proper purpose*. Third, carried out with responsible freedom; and Fourth, there is no conflict of interest (*conflict of duty and interest*). Deviations that often occur by the Board of Directors include conflicts of interest between the directors and the interests of shareholders in a PT, which often conflict with each other. This has implications, one of which is the absence of directors on the GMS meeting agenda, even though the Directors have important authority and responsibility in holding GMS meetings that have been determined in accordance with the AD/ART, which then has implications for requests for holding a GMS from GMS members.

The reasons that form the basis for the request to hold a GMS include, among other things, the Board of Directors not holding an Annual GMS in accordance with the predetermined time limit or the term of office of the members of the Board of Directors and/or the Board of Commissioners will end. The request is submitted to the Directors or Board of Commissioners by registered letter including the reasons. A copy of the registered letter submitted by the shareholder is submitted to the Board of Commissioners. The Board of Directors is obliged to call for a GMS within a period of no later than 15 (fifteen) days from the date the request for holding a GMS is received (Article 79 paragraph 5). The GMS will discuss issues relating to the reasons for the request for the GMS and other meeting agendas deemed necessary by the Board of Directors.

If the Board of Directors does not summon a GMS within the time period mentioned above, the following steps can be taken. First, the request to hold a GMS held at the request of shareholders must be submitted again to the Board of Commissioners. Second, the Board of Commissioners, as the party requesting the convening of the GMS, shall call for the GMS

themselves. In this case, the Board of Commissioners is obliged to call for a GMS within 15 ( fifteen ) days from the date the request for holding a GMS is received. A GMS convened by the Board of Commissioners can only discuss issues related to the reasons for requesting a GMS by shareholders and the Board of Commissioners.

The procedure for calling a GMS is that the Board of Directors summons shareholders before the GMS is held and in certain circumstances the summons can be made by the Board of Commissioners or shareholders based on a court order, namely, among other things, in the event that the Board of Directors does not convene the GMS and the Directors are absent or there is a conflict of interest between the Directors and Company. A GMS can only be held if a quorum is met as specified in Article 86 of the Company Law. Furthermore, based on Article 90 of the Company Law, it is stated that every time a GMS is held, the minutes of the GMS must be drawn up and signed by the chairman of the meeting and at least 1 (one) shareholder appointed from and by the GMS participants. The signature is not required if the minutes are prepared by a Notary. The signing here is intended to guarantee the certainty and correctness of the minutes of the GMS (Dianti, 2017).

In making decisions at the GMS, the decisions are taken based on deliberation to reach consensus, which means the results of the agreement are approved by the shareholders who are present or represented at the GMS (Dewi, 2016). In the event that a decision based on deliberation to reach consensus is not reached, then the decision is valid if it is approved by  $\frac{1}{2}$  (one half) of the total number of votes cast, unless the law and/or articles of association determine that the decision is valid if it is approved by the same number of votes cast. agree it's bigger. Thus, proposals on the meeting agenda must be approved by more than  $\frac{1}{2}$  (one-half) of the votes cast. If there are 3 (three) proposals and none of them received more than  $\frac{1}{2}$  (one-half) of the votes, voting on the 2 ( two) proposals that received the most votes must be repeated so that one of the proposals gets more than  $\frac{1}{2}$  (one-half) of the votes ) part. This is in accordance with Articles 87 to 91 of the Company Law.

Regarding the number of votes cast, this also varies based on the material of the meeting decision, for example a GMS to amend the articles of association can be held if at the meeting at least  $\frac{2}{3}$  (two thirds) of the total number of 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 number of votes cast, unless the articles of association determine a quorum for attendance and/or provisions regarding larger GMS decision making (Article 88 paragraph (1)). Meanwhile, the GMS to approve a merger, consolidation, takeover or separation, submission of a request for the company to be declared bankrupt, extension of the period of existence, and dissolution of the company can be carried out if at the meeting at least  $\frac{3}{4}$  (three quarters) of the total number of 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 number of votes cast, unless the articles of association determine a quorum for attendance and/or provisions regarding the requirements for making a larger GMS decision (Article 89 paragraph (1) ).

The validity of a General Meeting of Shareholders in a Company depends on its Articles of Association as long as it does not conflict with Law Number 40 of 2007 concerning Limited Liability Companies. However, if the Articles of Association have not been adjusted to the new Law on Limited Liability Companies, then the provisions regarding the legal parameters of a GMS are based on the Law (Utista et al., 2023). So the parameters for the validity of a GMS lie in the Company's Articles of Association as long as they do not conflict with statutory regulations. However, if it is not regulated in the Company's Articles of Association, then the validity parameters refer to the Company Law, namely as follows:

**Based on Article 81 in conjunction with Article 82 of the Company Law :** If the Board of Directors has summoned shareholders, the summons shall be made no later than 14

(fourteen) days before the date of the GMS and carried out by registered letter and/or by advertisement in the newspaper.

**Based on Article 76 in conjunction with Article 86 of the Company Law :** the GMS is held at the PT's domicile or at the place where the PT carries out its main business activities as specified in the Articles of Association, or at another place as long as it is located in the territory of the Republic of Indonesia. The GMS was attended or represented by more than  $\frac{1}{2}$  (one half) of the total shares with voting rights. This can be proven from the list of GMS attendees. However, if the required quorum is not met, then a summons for a second GMS can be called by stating that the first GMS was held but the quorum was not reached. The second GMS is valid and has the right to make decisions if the GMS is attended or represented by at least  $\frac{1}{3}$  (one third) of the total number of shares with voting rights, unless the Articles of Association determine a larger quorum. If the quorum for the second GMS is not met, then the PT can request the chairman of the District Court whose jurisdiction covers the PT's domicile upon the PT's request to determine a quorum for the third GMS by stating that a second GMS was held but the quorum was not reached.

**Based on Article 87 of the Company Law :** GMS decisions are taken based on deliberation to reach a consensus, but if deliberation to reach a consensus is not reached, the decision is valid if it is approved by more than  $\frac{1}{2}$  (one half) of the total number of votes cast unless the Law and/or Articles of Association stipulate that a decision is valid if it is approved by a greater number of affirmative votes.

**Based on Article 88 in conjunction with Article 89 of the Company Law :** A GMS to amend the Articles of Association can be held if the GMS is attended or represented by at least  $\frac{2}{3}$  (two thirds) of the total number of shares with voting rights and the decision is valid if approved by at least  $\frac{2}{3}$  (two thirds) of the total number of votes cast, unless the Articles of Association determine a quorum for attendance and/or provisions regarding larger GMS decision making. In the event that the attendance quorum is not reached, a second GMS can be held. The second GMS is valid and has the right to make decisions if the GMS is attended or represented by at least  $\frac{3}{5}$  (three-fifths) of the total shares with voting rights and decisions are valid if approved by at least  $\frac{2}{3}$  (two-thirds) of the shares. of the number of votes cast, unless the Articles of Association determine a quorum for attendance and/or provisions regarding larger GMS decision making. Likewise, the provisions of Article 86 paragraph (5), paragraph (6), paragraph (7), paragraph (8), and paragraph (9) regarding the holding of the second and third GMS which do not meet the quorum, mutatis mutandis also apply in the GMS to amend the Budget. This basis. A GMS to approve a Merger, Takeover or Separation, filing a bankruptcy petition for a PT, extending the term of existence of a PT, and dissolving a PT can be held if the GMS is attended or represented by at least  $\frac{3}{4}$  (three quarters) of the total number of shares with Voting rights and decisions are valid if they are approved by at least  $\frac{3}{4}$  (three-quarters) of the total number of votes cast, unless the Articles of Association determine a larger attendance quorum and/or provisions regarding GMS decision making. In the event that the attendance quorum is not reached, a second GMS can be held. The second GMS is valid and has the right to make decisions if the GMS is attended or represented by at least  $\frac{2}{3}$  (two thirds) of the total number of shares with voting rights and decisions are valid if at least  $\frac{3}{4}$  (three fourth) of the shares are approved. of the number of votes cast, unless the Articles of Association determine a quorum for attendance and/or provisions regarding larger GMS decision making. Likewise, the provisions of Article 86 paragraph (5), paragraph (6), paragraph (7), paragraph (8), and paragraph (9) regarding the holding of the second and third GMS which do not meet the quorum, mutatis mutandis also apply in the GMS to amend these Articles of Association

**Based on Article 90 in conjunction with Article 91 of the Company Law :** Minutes of the GMS must be drawn up and signed by the chairman of the meeting and at least 1 (one)

shareholder appointed from and by the GMS participants, whose signature is not required if the GMS is made with a Notarial deed.

**Based on Article 78 in conjunction with Article 66, Article 67 and Article 68 of the Company Law :** For the Annual GMS, please note that the Annual GMS must be held no later than 6 (six) months after the financial year ends and all documents from the Company's annual report must be submitted.

Article 37 of the Republic of Indonesia Financial Services Authority Regulation Number 15/POJK.04/2020 concerning Planning and Implementation of the General Meeting of Shareholders of Public Companies that in the event that all members of the Board of Commissioners or members of the Board of Directors are absent or unable to attend as intended in Article 37 paragraph (1) and (2), the GMS is chaired by shareholders who attend the GMS who are appointed from and by the GMS participants. Thus, without the presence of the Board of Directors, the GMS can proceed with the condition that it must meet the quorum that has been regulated in the Legislative Regulations and the Articles of Association of the GMS. The rights of GMS members can also be pursued through court to request the holding of a GMS, if the Board of Directors or Board of Commissioners do not carry out the GMS requested by the GMS members. Apart from that, after a normative search, there was no explicit regulation found in the UUPT stating that there was no requirement to make a GMS deed before a Notary (Puspitaningrum, 2018).

The rules regarding the dismissal of members of the Board of Directors are regulated in Article 105 and Article 106 of the Company Law. Article 105 of the Company Law states that "Members of the Board of Directors may be dismissed at any time based on a GMS decision by stating the reasons." In other words, the GMS has the right to dismiss members of the Board of Directors. The reasons for the dismissal of the member of the Board of Directors concerned **must also be notified** (Khoirunisya et al., 2022). Regarding the reasons used as a basis for dismissing a member of the Board of Directors, it is determined in the explanation of Article 105 of the Company Law, namely that the member of the Board of Directors concerned no longer fulfills the requirements as a member of the Board of Directors as stipulated in the Company Law, including, among other things, committing an action that is detrimental to the Company; or for other reasons deemed appropriate by the GMS (Nailul Fikriya, 2020).

Furthermore, Article 105 and Article 106 of the Company Law regulate the provisions for self-defense given to the members of the Board of Directors concerned. In Article 105 paragraph (2) of the Company Law, it is stated that "The decision to dismiss a member of the Board of Directors as referred to in paragraph (1) is taken after the person concerned has been given the opportunity to defend himself at the GMS." Then Article 105 paragraph (3) UUPT regulates the procedures for dismissing members of the Board of Directors if it is done by decision outside the GMS, namely: In the event that the decision to dismiss a member of the Board of Directors as intended in paragraph (2) is made by decision outside the GMS in accordance with the provisions as intended In Article 91, the member of the Board of Directors concerned **is notified** in advance about the notification plan and is given the opportunity to defend himself before a decision to dismiss him is made (Pradipto et al., 2020).

If you pay attention, in Article 105 of the Company Law there is the phrase "to be informed and given the opportunity to defend oneself before a decision to dismiss oneself is taken" and the phrase in Article 106 of the Company Law, namely "Directors must be notified and given the opportunity to defend themselves before a decision to dismiss themselves is taken". From the description of the article above, it can be seen that the Company Law provides a sequence for the dismissal of members of the Board of Directors. The analogy is that if the Director is not notified of his dismissal, then he does not get the opportunity for the



Director to attend the GMS meeting to defend himself, meaning that the decision to dismiss the member of the Board of Directors cannot be taken. This is in line with M. Yahya Harahap's statement in his book entitled "Limited Company Law", that in principle providing opportunities for self-defense in the GMS forum is imperative or legally compelling. Therefore, it must be given. But there are conditions where the opportunity to defend yourself is not necessary. This condition is stated in Article 105 paragraph (4) of the PT Law, namely "Providing an opportunity to defend oneself as intended in paragraph (2) is not necessary if the person concerned does not object to the dismissal. This article means that the Director has been notified of his dismissal. As proof that the Board of Directors concerned agrees and does not object to his dismissal, he must put it in written form to prevent cases related to his dismissal from occurring in the future. If urgent conditions arise and the Directors must be dismissed immediately but a GMS decision has not yet been taken regarding the dismissal of the member of the Board of Directors concerned, then Article 106 of the Company Law explains the arrangements for the temporary dismissal of members of the Board of Directors, namely "Members of the Directors may be temporarily dismissed by the Board of Commissioners by stating the reasons." "

## CONCLUSION

Validity of the deed of the general meeting of shareholders regarding the dismissal of the Board of Directors without notification and absence from the agenda of the GMS meeting that is, it is invalid, because according to the Company Law the decision cannot be taken by the GMS if the Directors who will be dismissed are not present because they have not been notified of the meeting regarding their dismissal. However, the GMS deed becomes valid upon the dismissal of a Director who is not present at the GMS meeting, if the Director has been notified regarding his dismissal at the GMS meeting and he refuses not to attend.

## REFERENCES

- Al Ichsan, A. (2017). Perlindungan Hukum Peserta Rapat Umum Pemegang Saham dalam Risalah di Bawah Tangan. *Jurnal Lex Renaissance*, 2(2), 392–410. <https://doi.org/10.20885/jlr.vol2.iss2.art7>
- Dewi, M. (2016). Kedudukan Hukum Akta Risalah Rapat Umum Pemegang Saham (Rups) Melalui Media Elektronik. *Arena Hukum*, 9(1), 112–131. <https://doi.org/10.21776/ub.arenahukum.2016.00901.7>
- Dianti, Y. (2017). 濟無No Title No Title No Title. *Angewandte Chemie International Edition*, 6(11), 951–952., April, 5–24. [http://repo.iain-tulungagung.ac.id/5510/5/BAB 2.pdf](http://repo.iain-tulungagung.ac.id/5510/5/BAB%202.pdf)
- Fitri, A. I., & Mahmudah, S. (2023). Peran Notaris dalam Pembuatan Akta Pernyataan Keputusan Rapat Umum Pemegang Saham (RUPS) Perseroan Terbatas di Kota Semarang. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 5(2), 1399–1410. <https://doi.org/10.37680/almanhaj.v5i2.3198>
- Islah Mumpuni, M. (2023). Ketidakpastian Pengaturan Risalah RUPS Telekonferensi Berlandaskan Prinsip Kehati-Hatian Bagi Notaris. *Jurnal Officium Notarium*, 3(1), 11–19. <https://doi.org/10.20885/jon.vol3.iss1.art2>
- Joesoef, I. E. (2022). Pembuktian Rapat Umum Pemegang Saham Secara Elektronik Berdasarkan Kaedah Virlijden Dan Wilsverklaring. *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An*, 5(2), 173–186. <https://doi.org/10.23920/acta.v5i2.672>
- Kartika, E. D., & Laitupa, S. (2022). Government Responsibilities in Fulfilling Victims' Rights During the Rehabilitation and Reconstruction Phase After the Earthquake in Sulai Village, Ulumanda District, Majene Regency. *Musamus Law Review*, 5(1), 61–71. <https://doi.org/10.35724/mularev.v5i1.4593>
- Khoirunisya, A., Studi, P., Hukum, M., Pascasarjana, S., & Bogor, U. D. (2022). *ANALISIS*

- YURIDIS KONFLIK KOMPETENSI PENYELESAIAN SENGKETA JURIDICAL ANALYSIS OF COMPETENCY CONFLICT SETTLEMENT OF DISPUTES FOR TERMINATION OF BOARD OF DIRECTORS THROUGH STATE COURTS.* 42–49.
- Mada, Z. Z. K. (2023). Analisis Yuridis Keputusan Rapat Umum Pemegang Saham Yang Memiliki Persentase Kepemilikan Saham Yang Seimbang Pada Perseroan Terbatas. *Jurnal Magister Ilmu Hukum*, 8(1), 1. <https://doi.org/10.36722/jmih.v8i1.1877>
- Nailul Fikriya, T. (2020). Tanggung Jawab Direksi Pada Perseroan Terbatas Milik Badan Usaha Milik Negara. *Jurnal Lex Renaissance*, 5(3), 592–606. <https://doi.org/10.20885/jlr.vol5.iss3.art6>
- Pradipto, N., Kartika, C. R., & Kusuma, A. J. (2020). *Pemberhentian Terhadap Direksi Perseroan Terbatas Dalam Kepailitan Melalui Circular Resolution.* 86–106.
- Puspitaningrum, J. (2018). Keabsahan Dan Kekuatan Pembuktian Risalah Rapat Umum Pemegang Saham (Rups) Perseroan Terbatas (Pt) Media .... *Legal Pluralism: Journal of Law Science*, 8, 152–174. <https://core.ac.uk/download/pdf/229022384.pdf>
- Rizkianti, S. I. S. dan W. (2020). Rapat Umum Pemegang Saham Perusahaan Terbuka Dalam Masa Pandemi Berdasarkan Peraturan Otoritas Jasa Keuangan Nomor 16/POJK.04/2020. *Call for Paper National Conference For Law Studies: Pembangunan Hukum Menuju Era Digital Society*, 577. <file:///C:/Users/user/Downloads/1509-5136-1-SM.pdf>
- Rosdiana, A. C. (2021). Peran Notaris Dan Keabsahan Akta RUPS Yang Dilaksanakan Secara Elektronik (Dilihat Dari Peraturan Otoritas Jasa Keuangan Nomor 16/POJK.04/2020 Dan Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris. *Indonesian Notary*, 3(15), 213–230.
- Rukmanto, M. A. (2022). Analisis Yuridis Keabsahan Akta RUPS yang Dibuat Oleh Notaris Secara Elektronik (Cyber Notary) Di Indonesia. *Jurnal Hukum, Politik Dan Kekuasaan*, 2(1), 103–119. <https://doi.org/10.24167/jhpk.v2i1.5096>
- Utista, K., Otiana, C., Pasek, I. G., & Wisanjaya, E. (2023). *Keabsahan Akta Autentik Dalam Pembacaan Akta RUPS Apabila Para Pihak Tidak Mengaktifkan Kamera / Tidak Saling Melihat.* 8(01), 1–12.
- Yanova, M. hendri, Komarudin, P., & Hadi, H. (2023). Metode Penelitian Hukum: Analisis Problematika Hukum Dengan Metode Penelitian Normatif Dan Empiris. *Badamai Law Journal*, 8(2), 394–408.
- Yuwono, M. Y. (2015). Perkembangan Kewenangan Rapat Umum Pemegang Saham (RUPS) Perseroan Terbatas Di Indonesia. *Notarius*, 8(2), 212.