

Sanctions Against the Board of Directors who do not Implement the Decisions of the General Meeting of Shareholders (GMS)

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Abstract

The General Meeting of Shareholders that held by PT. Cengkeh Zanzibar concerning limited liability companies is not appropriately implemented by the parties concerned. In this matter, the Directors do not implement the GMS decision, which resulted in losses to the company. This study is written to discover the responsibility of the Directors from some losses to the company. The methodology of this study is normative juridical, which also with some interviews. This study concludes that the Main Director is willing to resign and looking for the new one.

Keywords

directors; GMS; amendments to articles of association



I. Introduction

Limited Liability Company (PT) was established based on an agreement (Subekti, 1987). Therefore, to be able to establish a limited liability company, there must be at least 2 (two) people who make promises to each other. All matters stipulated in Law no. 40 of 2007 concerning the contents of the Articles of Association is a minimum provision. That is, all provisions other than what is contained above, and do not conflict with the law, are allowed (Nadapdap, 2012). In point 6 of Article 15 paragraph (1) of Law no. 40 of 2007 above, it is explained that the name of the position and the number of members of the Board of Directors themselves must be listed in the articles of association. If later the basic budget will be amended, then there are also several things that need to be considered.

In this study, the researcher raised the issue of a company that wanted to change the contents of the articles of association, which was also agreed in a General Meeting of Shareholders (GMS) forum. The amendments to the articles of association include changes to the structure of PT Cengkeh Zanzibar, which wants to change its president director and the number of directors. The change was made on the grounds that the president director of the company was deemed unprofessional and concurrently served as the largest shareholder of PT Cengkeh Zanzibar, which was feared to have a conflict of interest. The conflict of interest referred to is an unlawful act committed by the majority shareholder who doubles as a director who takes advantage of the transfer of company assets for personal interests or misuse of company assets (Syafriada, Latumeten, & Suryandono, 2019). This change has been agreed and stated in the results of the GMS No. 29 of 2008, and it reads:

1. The upcoming members of the board of directors are professionals, the shareholders simply sit on the board of commissioners.
2. Appoint Mr. Ir. Budi Dharmawan as the main director, and Mr. Handrijana Hardha as the director 1
3. In addition to carrying out duties as directors, emphasized to Ir. Budi Dharmawan within a period of no later than 3 (three) years to prepare, recruit and select CANDIDATES MEMBERS OF THE PROFESSIONAL BOARD OF DIRECTORS, to be submitted to the ratification of the GMS yad.

The General Meeting of Shareholders (GMS) was held on May 19, 2008, and since then there has been no follow-up or goodwill by the parties concerned, namely the president director of PT Cengkeh Zanzibar.

Considering the things above, the researchers are interested in trying to discuss how the responsibilities and sanctions for directors who do not implement the GMS decisions in terms of changing the company's articles of association, with the research title as follows: "Sanctions Against Directors Who Do not Implement General Meeting Decisions" Shareholders (GMS)" with the problems that can be raised in this study are: How is the regulation regarding changes to the articles of association by the GMS decision based on (Law Number 40 of 2007)? What is the responsibility of the board of directors if they do not implement the GMS decision which results in a loss to the company based on (Law Number 40 of 2007 concerning Limited Liability Companies)?

II. Research Methods

Methods the approach method used in this legal research is a normative juridical approach, but also with the addition of field research conducted by finding sources to be interviewed. The juridical approach is an approach that refers to the applicable laws and regulations (Soemitro, 1983). While the normative juridical approach is research that seeks to synchronize the legal provisions that apply to norms or other legal regulations with their relation to the application of these legal regulations to actual practice in the field.

The research specifications used in this study are in the form of a statute approach (Dewi, 2016). The statutory approach is carried out by reviewing all laws and regulations related to the legal issues being faced, namely the form of directors' responsibility that causes losses to PT.

This type of data collection in this study uses library research. Literature research was carried out starting from research on the provisions regarding the application of legal principles, the Limited Liability Company Law, Company Regulations, Civil Code, and Commercial Code and so on. And also conducted interviews with relevant informants in PT Clove Zanzibar.

III. Discussion

3.1 Company Profile and Case Description Position

a. Company Profile

PT. Clove Zanzibar was established on December 15, 1972, at that time it was a plantation company engaged in clove cultivation for commercial purposes with a total land area of 2,359 Ha (Central Java area 1.1167 Ha and West Java area 1.192 Ha).

In the early 1970s, cloves became one of the spices that became a leading commodity because it had a pretty good business opportunity at that time. PT. Zanzibar Cloves then helped to clear land for clove plantations, one of which was approximately 2,500 hectares in Sidokumpul Village, Patean District, Kendal Regency, Central Java. This clove garden was later called the Ngebruk garden. In addition, there are also several other gardens such as Curug Gardens which are also located in Sidokumpul Village, Kalisidi Gardens in Ungaran, Semarang Regency, and Maranginan Gardens and Mataram Gardens, both of which are located in Sukabumi Regency.

In 2000, Budi Darmawan, as General Manager of PT. Cloves Zanzibar, again pioneered the plantation business in the garden that is still owned. This time the company is trying to do business in the garden that is till owned. This time the company is tring to do business in the

field of agro-tourism and the development of fruit commodities. Plantera, which is one of the subsidiaries, was appointed to manage the management of the Ngebruk plantation as one of the business lines of PT. This Zanzibar Clove. Several expert staff at PT. Zanzibar Cloves was appointed to manage the company's activities at Plantera. Not to forget the company also invites the community around the plantation to also cooperate so that the fruit plantation business is growing.

Then, in 2008, Plantera Fruit Paradise conducted a Grand Launching to introduce itself to the public, especially the people of Central Java, as the first tropical fruit garden with superior and complete fruit varieties in Central Java. The clove and fruit production business unit is managed directly by PT. Zanzibar cloves, and marketing of fresh fruit and agro-tourism gardens are managed by IBANA and Plantera, respectively.

b. Description of Case Position

On 21 April 2008, the General Meeting of Shareholders of PT. Clove Zanzibar with the decision to appoint a Director for a term of office from 2007 to 2012.

The composition of the Board of Directors at the resolution of the 2008 GMS is as follows:

- Ir. Budi Dharmawan as President Director
- Handrijana Hardha as Director 1

In the result of the same GMS decision, Gunawan Setyadi (shareholder) was still appointed as Director 2 until the ratification of the professional Board of Directors.

On May 19, 2008, the Deed of GMS No. 29 of 2008 was made with a notary named Subiyanto Putro located in Semarang.

On August 14, 2009, amendments to the Articles of Association of PT. Zanzibar Clove with Number: AHU-09053.AH.01.02.Tahun 2009 with the approval of the Minister of Law and Human Rights of the Republic of Indonesia.

As of October 24, 2012, the relevant board of directors has not yet appointed a professional board of directors. So that Ir. Budi Dharmawan, Handrijana Hardha and Gunawan Setyadi were re-appointed as Director of PT. Cloves of Zanzibar for a term of office from 2012 to 2017.

In AKTA No. 38 it is explained that the results of the GMS held on 17 May 2017 evaluated the decline in company profits in the time span between 2012-2017. In the event that a member of the Board of Directors is proven to have intentionally caused a loss to the Company, the member of the Board of Directors is considered to have had bad intentions in carrying out his duties so that he can be held accountable (Darmawan, 2019).

The decrease in profit is detailed as follows:

Table 1. Company Profit Total

<i>Company profit</i>	<i>2013-2014</i>	<i>2015</i>
<i>Total</i>	Rp. 6.055.387.501,6	Rp. 3.850.760.01

At the GMS held on 10 May 2017, it was agreed to dismiss Handrijana Hardha and Gunawan Setyadi on the grounds that they had not carried out the tasks decided at the 2008 GMS, namely to appoint a Professional Director.

In the same GMS, the following have been appointed:

- Rifi Nurlistyaningrum as Director 1
- Gutus Setyono as Director 2

Ir. Budi Dharmawan remains assigned as the President Director for a while while recruiting an additional 1-2 more professional directors, so that the number of directors will then be 3-4 people.

3.2 Arrangement for Amendment to Articles of Association by GMS Resolution Based on Company Law

Based on Article 19 Paragraph 1 of Law Number 40 of 2007, amendments to the company's articles of association are determined by GMS decision. Then explained in the provisions of Article 88 Paragraph (1), the GMS to amend the articles of association can be held and take decisions:

- a. Attended at least 2/3 of the total shares with voting rights, or represented in the GMS,
- b. GMS resolutions on amendments to the articles of association are "valid" if "approved" at least 2/3 of the total votes cast.

The articles of association may determine the quorum of attendance and/or provisions regarding the decision making of the GMS which is greater than what is described above.

If the articles of association specify a quorum for attendance and the provisions for making decisions are larger, it means that the GMS and new decisions are valid, if what is outlined in the articles of association is fulfilled. In addition, there are also so-called binding decisions outside the GMS, namely decisions taken with voting rights to approve in writing by signing the proposal in question (Budiono, 2012).

GMS is an important organ in a company's running. The result of the decision taken from the GMS is the highest decision in a decision of PT. GMS has a very dominant role in a PT. The GMS binds the company and becomes the responsibility of the company (Noor & Prananingtyas, 2020) The way to summon the GMS can be done by sending a registered letter or by placing an advertisement in the newspaper. As for the content of the invitation to the GMS, the summons must include the date, time, place, and agenda of the meeting accompanied by a notification that the material to be discussed at the GMS is available at the Company's office from the date of the invitation to the GMS until the date the GMS is held.

In this case, the GMS held by PT. Zanzibar cloves are deemed to comply with the conditions prescribed by the above Act. It is proven in the deed of the resolution of the GMS No.29 in 2008 it was explained that the conditions written in Article 21 Paragraphs (1), (2), and (3) as well as Article 88 Paragraph (1) have been fulfilled.

Please note that based on Article 8 Paragraph (2) of the Company Law, the deed of establishment contains the articles of association and other information relating to the establishment of the Company. The law turns out to be able to provide solutions to so many impasse problems that cling to the human mind (Hartono, 2020). The other information contains at least:

- a) The full name, place and date of birth, occupation, place of residence, and nationality of the individual founder, or the name, domicile and complete address as well as the number and date of the Ministerial Decree concerning the legalization of a legal entity from the founder of the Company;
- b) Full name, place and date of birth, occupation, place of residence, nationality of the first appointed member of the Board of Directors and Board of Commissioners;

- c) The name of the shareholder who has subscribed to the shares, details of the number of shares, and the nominal value of the shares that have been issued and paid up.

From the above provisions, in practice PT. Zanzibar cloves have met what is required by Article 8 Paragraph (2) above. It is proven that the Deed of Amendment to the Company's Articles of Association with the Number: AHU-09053.AH.01.02.Tahun 2009 has been made in which all the requirements set out above have been described.

Article 21 of Law Number 40 of 2007, also explains the procedure for amending the company's articles of association. Procedures that explain what will be changed, and which changes must be with the approval of the minister. Minister is the minister whose duties and responsibilities are in the field of law and human rights ("REQUIREMENTS FOR THE LEGAL ESTABLISHMENT OF A LIMITED COMPANY (PT) IN INDONESIA," 2013).

So if it is concluded, PT. Cloves of Zanzibar will have to change the contents of the articles of association, which includes changing the contents of the board of directors and board of commissioners with the approval of the minister in accordance with article 21 of the Company Law above.

3.3 Responsibilities of the Board of Directors

Previously, it had to be understood whether the GMS held was also valid according to the law or the applicable law. Starting with the place where the meeting is held in accordance with Article 76 Paragraph (1) which reads:

"The GMS is held at the domicile of the Company or at the place where the Company conducts its main business activities as determined in the articles of association."

Likewise in practice, the meeting has also been held at the domicile of the Company. This is explained in the Deed of GMS No. 29. Next is regarding the votes present at the meeting, as regulated in Article 87 Paragraph (2) which reads:

"In the event that a decision based on deliberation to reach a consensus as referred to in Paragraph (1) is not reached, the decision is valid if it is approved by more than 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 a larger number of affirmative votes."

In the event that deliberation efforts to reach a consensus are not reached, the decision is valid if it is approved by more than of the total votes issued by the GMS to amend the Articles of Association if at the meeting at least 2/3 of the total shares with voting rights are present or represented, and the decision is valid if approved by at least 2/3 of the total votes cast, unless the Articles of Association specify a larger quorum of attendance (Anwar, 2018).

In practice, the meeting was attended by 2,755 (two thousand seven hundred and fifty five) shares or 85% of the total issued shares of 3,236 (three thousand two hundred and thirty six). So it can be concluded that the results of the GMS are legally valid. Thus, it is obligatory for all parties concerned to comply with the results of the GMS. If a member of the Board of Directors fails to carry out these obligations or violates what is prohibited by the management, and the negligence or violation causes losses to the Company, the member of the Board of Directors is personally responsible for the loss. the loss of the Company.

Bearing in mind the definition of the board of directors is a company organ that is authorized and fully responsible for the management of the company for the benefit of the company, in accordance with the aims and objectives of the company and represents the company both inside and outside the court in accordance with the provisions of the budget. The author connects with 2 principles that exist in civil law, especially related to the responsibilities of directors, namely Fiduciary Duty and Business Judgment Rule. The term fiduciary duty comes from two words, namely fiduciary and duty. Fiduciary comes from the Latin fiduciarus with the root fidus which means "trust," while duty means "duty" (Widiastiani, Hukum, Atma, & Yogyakarta, 2019). Fiduciary Duty is the principle that

directors must be trusted and always be honest (M. Yahya Harahap, 2018). While the Business Judgment Rule is a regulation that will protect a director/manager from liability, if it is true that the act has been done in good faith (Henry Campbell Blac, 2019). So it can be said that BJR is here to help the directors and management of the company to face challenges from the company without being afraid of being responsible for the termination of everything (Yaacob & Yeon, 2020).

According to Hamilton, in the context of fiduciary duty (FiduciaryDuty) board of directors, the concept of the fundamental relationship between the company and the directors came from tradition. This relationship is then placed within the framework of the principles of fiduciary duty. Fiduciary obligation is a natural law principle that has been adopted into the Anglo-American legal tradition through the tradition of common law (Jonathan R. Macey, 2017).

In this case, the losses experienced by PT. Zanzibar cloves were in the form of a decrease in profit of IDR 2,204,627,490.6 (36%) (internal interview, 2019). The profit in 2013-2014 was recorded as the company's profit of Rp. 6,055,387,501.6, then in 2015 the company's profit decreased to Rp. 3,850,760,011.

This form of loss was felt as a result of not implementing the GMS decision to appoint professional directors in their fields. This is expected to increase the company's profits, because the relevant directors have studied plantation science.

The issue of real responsibility relates to the obligation of an individual to carry out the activities assigned to him as well as possible according to his abilities (Raffles, 2020). After the decline in profit experienced, the GMS also agreed to dismiss Handrijana Hardha as director 1 in the GMS decision No.38 in June 2017. In addition to the dismissal of director one, the results of the decision also resulted in several points, including:

1. Dismissing Handrijana Hardha and Gunawan Setyadji as directors of PT Cengkeh Zanzibar because until 2017 they had not carried out the tasks decided at the 2008 GMS, namely appointing a Professional Director, which resulted in a decrease in company profits;
2. Appointed two Director of Professional for jabatan tahun period 2017 till 2022, namely:
 - Rifi Nurlistyningrum, SE as Director 1
 - Gutus Setyono, ST as Director 2;
3. Ir. Budi Dharmawan remains assigned as the President Director for a while while recruiting an additional 1-2 more professional directors, thus the next number of directors will be 3-4 people. One of the professional directors will be appointed as president director to replace Ir. Budi Dharmawan. Furthermore, Ir. Budi Dharmawan will FILL THE POSITION OF COMMISSIONER.

In the first point, it is explained that the board of directors 1 bears responsibility for the losses suffered by the company. However, it was also explained that the main director was still retained for several reasons. One of them is in point number 3, namely so that the president director can recruit 1-2 more professional directors, one of whom will later replace the position as president director of PT. Zanzibar cloves.

This result will be stated in the General Meeting of Shareholders forum, which will then be stated in the minutes of the decision of the General Meeting of Shareholders regarding the replacement of the President Director (Lubis & Oktarina, 2018)

IV. Conclusion

In the amendments to the Articles of Association that will be made by PT. Clove Zanzibar is about changes in the number of Directors, the composition of the Board of Directors, and the composition of the Board of Commissioners. In terms of the amendments, the amendments to the articles of association do not have to get the minister's approval, in accordance with what is regulated in Article 21 Paragraphs (2) and (3).

The responsibilities of the directors concerned regarding their actions that do not implement the resolutions of the GMS have also been regulated in Article 97 paragraphs (3), (4), and (5). In this case the directors of PT. Clove Zanzibar has been negligent in carrying out its duties to appoint professional directors who will later replace the position of the President Director.

As a result of not carrying out the duties of the board of directors, PT. Clove Zanzibar suffered a loss which eventually led to a decline in the company's profit. This loss resulted in director 1 being dismissed by the GMS in 2017.

References

- Anwar, M. (2018). Analisa Penerapan Rapat Umum Pemegang Saham PT. Metro Mini Ditinjau dengan Undang-Undang No. 40 Tahun 2007 Tentang Perseroan Terbatas. *Sekretari*, 5(1). <https://doi.org/10.32493/skr.v5i1.1101>
- Budiono, H. (2012). Arah Pengaturan Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas Dalam Menghadapi Era Global. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 1(2), 187. <https://doi.org/10.33331/rechtsvinding.v1i2.96>
- Darmawan, M. C. (2019). Perlindungan Hukum bagi Pemegang Saham Minoritas yang Dirugikan Akibat Direksi Melakukan Kesalahan atau Kelalaian. *Jurist-Diction*, 2(3). <https://doi.org/10.20473/jd.v2i3.14367>
- Dewi, M. (2016). Kedudukan Hukum Akta Risalah Rapat Umum Pemegang Saham (RUPS) melalui Media Elektronik. *Arena Hukum*, 9(1). <https://doi.org/10.21776/ub.arenahukum.2016.00901.7>
- Hartanto, D. (2020). Sociology Review of Social Phenomenon, Social Rules and Social Technology. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal) Vol 3 (2)*: 1175-1184.
- Henry Campbell Blac. (2019). *Black's Law Dictionary*. (Bryan A. Garner, Ed.) (11th Editi). United State: Thomson Reuters.
- Jonathan R. Macey. (2017). *The Law of Business Organizations*. West Academic Publishing.
- Lubis, I., & Oktarina, N. (2018). Perlindungan Hukum terhadap Direksi yang Diberhentikan tanpa Melalui Rapat Umum Pemegang Saham (Studi Pada PT. Sumber Andalan Mandiri (SAM)). *UNES Law Review*, 1(2), 172–183. <https://doi.org/10.31933/law.v1i2.25>
- M. Yahya Harahap. (2018). *Hukum Perseroan Terbatas*. Jakarta: Sinar Grafika.
- Nadapdap, B. (2012). *Hukum Perseroan Terbatas*. Jakarta: Permata Aksara.
- Noor, R. R., & Prananingtyas, P. (2020). Prinsip Surat Kuasa Mutlak dalam Rapat Umum Pemegang Saham Luar Biasa. *JCH (Jurnal Cendekia Hukum)*, 5(2). <https://doi.org/10.33760/jch.v5i2.227>
- Raffles, R. (2020). Tanggung Jawab dan Perlindungan Hukum Direksi dalam Pengurusan Perseroan Terbatas. *Undang: Jurnal Hukum*, 3(1), 107–137. <https://doi.org/10.22437/ujh.3.1.107-137>
- Soemitro, R. H. (1983). *Metodologi penelitian hukum*. Jakarta.

- Syafrida, S., Latumeten, P. E., & Suryandono, W. (2019). Benturan Kepentingan Oleh Pemegang Saham Mayoritas Yang Diangkat Sebagai Direktur Utama Perseroan Terbatas Tertutup (Analisa Akta Anggaran Dasar PT ARS). *Jurnal Notary*, 1(1).
- Syarat-Syarat Sahnya Pendirian Perseroan Terbatas (Pt) di Indonesia. (2013). *Lex Privatum*, 1(2).
- Widiastiani, N. S., Hukum, F., Atma, U., & Yogyakarta, J. (2019). Pengadilan Hubungan Industrial the Industrial Relations Court Jurisdiction in the Case of a Company against Its Directors, (2), 179–196.
- Yaacob, N., & Yeon, A. L. (2020). The law on business judgment rule in Malaysia: A review. *Journal of Critical Reviews*, 7(5), 151–156. <https://doi.org/10.31838/jcr.07.05.25>