

Analysis of the Case PT Metro Mini Sues the Limited Liability Company Law to the Constitutional Court

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Abstract

The General Meeting of Shareholders (GMS) is the highest institution and part of the Company as a place for shareholders to make important decisions whose authority is not given to the Board of Directors or the Board of Commissioners within the limits determined by law and/or the Articles of Association. The law is based on Article 1 paragraph 4 of the Limited Liability Company Law. Pursuant to Article 86 paragraph 1 of the Limited Liability Company Law, a GMS can be held if more than 1/2 of the total shares with voting rights are present or represented, unless the law and/or articles of association determine a larger quorum. In the second GMS as referred to in paragraph 2 is valid and a decision can be made if in the GMS at least 1/3 of the total shares are represented or represented, unless the articles of association determine a larger quorum based on the provisions of Article 86 paragraph 4 of the Limited Liability Company Law. If the quorum for the second GMS as referred to in Article 86 paragraph 4 is not reached, the Company may request the chairman of the district court whose jurisdiction covers the Company's position to determine a quorum for the third GMS based on the provisions of Article 86 paragraph 5. The GMS will have a grace period regarding the implementation of the second GMS and third, namely no later than 10 (ten) days and no later than 21 (twenty one) days after the GMS that preceded it was held, according to the provisions of Article 86 paragraph 9 of the Limited Liability Company Law it becomes a matter to be decided by the Constitutional Court. The problem caused by the Judicial Review of Article 86 paragraph 9 of Law Number 40 of 2007 concerning Limited Liability Companies is due to the length of time in which the decision of the District Court was received in the implementation of the GMS made the results of the implementation of the Third GMS of PT. Metro Mini was blocked in the Ministry of Law and Human Rights system so that it became a loss in the legality of the Metro Mini company due to the holding of the Third GMS of PT. Metro Mini is carried out more than the time specified in Article 86 paragraph 9 of the Limited Liability Company Law. Therefore, the Government should immediately revise Law Number 40 of 2007 concerning Limited Liability Companies, in particular Article 86 paragraph 9 which previously stated "The second and third GMS shall be held within a period of no sooner than 10 (ten) days and no later than 21 (twenty one)) days after the GMS that precedes it is held" becomes "the second and third GMS is held within a period of no sooner than 10 (ten) days and no later than 21 (twenty one) days after the GMS that precedes it is held or in the event that the GMS is held based on a court order This is no later than 21 (twenty one) days after the district court's decision is obtained. Because of the Constitutional Court Decision No. 84/PUU-XI/2013, so that the meaning of the Constitutional Court's decision becomes a positive norm reference, because the Indonesian legal system adheres to the continental European legal system.

Keywords: GMS, Judicial Review, Company



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INTRODUCTION

The General Meeting of Shareholders (GMS) is an organ of the Company that has authority which is not granted to the Board of Directors or the Board of Commissioners within the limits specified in the Limited Liability Company Law and/or the Articles of Association which are based on Article 1 paragraph 4 of the Limited Liability Company Law Number 40 2007. Which GMS can be held if more than 1/2 of the total shares with voting rights are present or

represented, unless the law and/or articles of association determine a larger quorum. And if the quorum as referred to in paragraph 1 is not reached, a summons for a second GMS may be made. And in the second GMS as referred to in paragraph 2 is valid and a decision can be made if in the GMS at least 1/3 of the total number of shares or is represented, unless the articles of association determine a larger quorum. Provisions of Article 86 paragraph 4 of the Limited Liability Company Law.

In the event that the quorum for the second GMS as set forth in Article 86 paragraph 4 is not reached, the Company may request the chairman of the district court whose jurisdiction covers the Company's position to determine a quorum for the third GMS based on the provisions of Article 86 paragraph 5. The GMS has a grace period regarding its implementation. The second and third GMS, namely no sooner than 10 (ten) days and no later than 21 (twenty one) days after the GMS that preceded it was held, according to Article 86 paragraph 9 of the Limited Liability Company Law, is a matter to be decided by the Constitutional Court. In this case, Article 86 paragraph 9 of Law Number 40 of 2007 concerning Limited Liability Companies which was submitted to the Constitutional Court in the decision of the Constitutional Court Number 84/PUU-XI/2013, in which the Constitutional Court granted the Application of the Main Director of PT Metro Mini, which questioned Article 86 paragraph 9 of the Limited Liability Company Law. In its decision, the Constitutional Court granted a constitutional which loosened the results of the GMS by the Ministry of Justice and Human Rights.

In the decision of the Constitutional Court Number 84/PUU-XI/2013, which was tested Article 86 paragraph 9 of Law No.40 of 2007 concerning Limited Liability Companies, it is considered contrary to Article 28I of the 1945 Constitution which expressly states "That every person The right to be recognized as a person before the law is a human right that cannot be reduced under any circumstances. Contrary to the norms contained in Article 86 paragraph 7 of Law Number 40 of 2007 concerning Limited Liability Companies which reads, the Decree of the Chairman of the District Court regarding the quorum of the GMS as referred to in paragraph 5 is final and has permanent legal force. The Petitioner considers that Article 86 paragraph 9 also contradicts norms of Article 28 D paragraph 1 of the 1945 Constitution which states "That everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal recognition before the law, which in the presence of existence of legal certainty in a country is firmness regarding the enactment of a rule of law applies strictly binding in its implementation GMS, namely a company organ that has authority not granted to the directors or the board of commissioners within the limits specified in this law and the budget in Article 75 paragraph 1.

Shareholders' shareholders have the right to obtain information relating to the company and the directors and/or the board of commissioners. The GMS consists of the Annual GMS and other GMS, which must be held annually no later than 6 months after the last financial year. While the EGMS can be held at any time based on the need for the benefit of the company. In the event that the holding of a GMS is also determined by the number of shareholder quorums stipulated in Law No. 40 of 2007, in which a new GMS can be held if 1/2 more of the total shares with voting rights attend, unless the Articles of Association stipulates a higher quorum. big. If the quorum is not reached, the directors can summon a second GMS. The summons for the second GMS must state that the first GMS has been held and no quorum has been reached. The second GMS is valid and has the right to make decisions if the GMS is attended by at least 1/3 of the total shares with voting rights. If the quorum for the second GMS is also not reached, the Company may request the chairman of the district court to determine a quorum for the third GMS. Furthermore, the third GMS was held on the basis of a quorum determined by the chairman of the district court. The summons for the GMS must state that the second GMS has been held and does not reach a quorum.

The summons for the second GMS and the third GMS are each made within a period of no later than 7 days before the Second GMS or the Third GMS is held. The Second GMS and the Third GMS are held within a period of no sooner than 10 days and no later than 21 days after the GMS that preceded them was held. GMS decisions are taken based on deliberation and consensus. In the event that a deliberation attempt to reach a consensus is not reached, a decision is valid if it is approved by more than 1/2 of the total votes issued by the GMS to amend the Articles of Association. 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 attendance quorum. In the event that the attendance quorum is not reached, a second GMS may be held. The second GMS is valid and has the right to make decisions if in the meeting at least 3/5 of the total shares with voting rights or represented, and the decision is valid if approved by at least 2/3 of the total votes cast.

With these bases, the applicant for MK Decision 84/PUU-XI/2013 feels that their constitutional rights have been harmed by the existence of regulations stating that the next GMS is held after the first GMS was held. In the case experienced by the applicant, namely, the results of the Extraordinary General Meeting of Shareholders held by PT. Metro Mini cannot be accepted by the Ministry of Law and Human Rights, which has passed the 10-21 day grace period for the Third GMS which they held after the previous GMS. Where the applicant assumes that after the Third GMS can be held after obtaining the decision of the chairman of the district court, where the decision of the chairman of the district court they get after 26 days of the previous GMS, it is clear that the time period stipulated by the Limited Liability Company Law has passed to carry out the Third GMS. With that, the Ministry of Law and Human Rights rejected the results of the PT. Metro Mini represented by Novrialdi as the Main Director. These matters made the Petitioner feel that his rights had been impaired by the existence of the regulation, thus causing the Petitioner to file a lawsuit against the Constitutional Court.

The formulation of the problem is made with the aim of solving the main problems that arise clearly and systematically. The formulation of the problem is used to define the problems to be studied, so that it will make it easier for the research to be carried out and will be in line with the goals set. Based on the description above, the problems that will be examined in this study are as follows: Why did the Ministry of Law and Human Rights reject the results of PT. Metro Mini's GMS? How is the implementation of the GMS of PT. Metro Mini according to Law no. 40 Year 2007? What are the judges' considerations in deciding the petition in the Constitutional Court Decision No. 84/PUU-XI/2013 concerning Organizing GMS?

RESEARCH METHODS

This research method was conducted by normative legal method. Normative law research uses normative case studies in the form of legal behavior products, for example reviewing laws. The main subject of the study is law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. So that normative legal research focuses on positive law inventory, legal principles and doctrine, legal discovery in in concreto cases, legal systematics, level of synchronization, comparative law and legal history.

RESEARCH RESULTS AND DISCUSSION

Limited Liability Companies as regulated by Law Number 40 of 2007 concerning Limited Liability Companies, hereinafter referred to as the Limited Liability Company Law, are legal entities. Legal entity is a legal subject. A limited liability company as a legal entity is a legal subject that has rights and obligations. One of the important things that must be done by the company to carry out rights and obligations is to make decisions. The Company has organs to

achieve its goals, including the General Meeting of Shareholders (GMS), the Board of Directors and the Board of Commissioners. GMS as an organ for making decisions, is the most important in running the company. The results of the decision are then implemented by the directors with the supervision of the board of commissioners.

PT. Metro Mini refers to the article on the regulation of the GMS, after the First and Second GMS which were respectively held on 27 October 2012 and 15 November 2012 which did not reach a quorum/agreement. Based on court decision No.03/Pdt.P/RUPS/2012/PN Jkt Tim dated 11 December 2012, it was determined that the quorum for the third GMS was 1/4 of the total number of shares with voting rights present or represented and the resolutions of the GMS were approved by two-thirds of the total the members present. This is in accordance with Article 86 paragraphs 5 and 7 of the Company Law which authorizes the court to determine the quorum for the third GMS and the determination of the quorum for the GMS by the chairman of the district court is final and has permanent legal force. So based on this determination PT. Metro Mini held the Third GMS. Held on February 23 2013, attended by 329 shareholders, of which the number has a quorum and decided the directors and board of commissioners of PT. Metro Mini for the 2013-2018 period which is stated in the company statement deed No. 9 dated 22 May 2013.

However, problems arose where the access to ratification of the GMS was blocked by the Ministry of Law and Human Rights. The Ministry of Law and Human Rights is of the opinion that the validation of the GMS of PT. Metro Mini conflicts with the provisions of Article 86 paragraph 9 which states "The Second and Third GMS shall be held within a period of no sooner than 10 (ten) days and no later than 21 (twenty one) days after the preceding GMS was held." The legal consequences that occurred to PT. Metro Mini from the impact caused by the GMS arrangement as stated in Article 86 paragraph 9 of this PT Law, that the GMS of PT. Metro Mini is invalid, even Illegal due to the time limit for holding the next GMS from the previous GMS, namely 10 (ten) days at the latest and 21 (twenty one) days at the latest, based on Article 86 paragraph (9) of this UUPT. As according to the chronology previously explained, the Second GMS held by PT. Metro Mini as of 15 November 2012 and the Third GMS held as of 23 February 2013.

This figure is very far from what is stipulated in Article 86 Paragraph 9 of Law Number 40 of 2007 concerning Limited Liability Companies. PT. Metro Mini itself, obtained a decision from the East Jakarta district court No.03/Pdt.P/RUPS/2012/PN on December 11, 2012, referring to the holding of the Second GMS and the receipt of a decision by the District Court itself that had passed 5 days from the deadline for holding a GMS. stipulated in Article 86 paragraph 9 of Law Number 40 of 2007 Concerning Limited Liability Companies, namely no later than 21 days, but a court decision is obtained on the 26th (twenty six) day. Obviously PT. Metro Mini in this case feels disadvantaged by the limitations on the holding of the GMS, because in the implementation of the Third GMS it must be carried out with the establishment of a Quorum from the Head of the District Court referring to Article 86 paragraph 5 of Law Number 40 of 2007 concerning Limited Liability Companies. Therefore Nofrialdi as the Main Director Elected in the decision of the GMS of PT. Metro Mini feels that its constitutional rights are limited by the existence of a brief limitation on the implementation of the GMS, which results in the PT. Metro Mini and also resulted in the invalidity of PT. Metro Mini in carrying out its Company activities.

Therefore he filed the application in Article 86 paragraph 9 of Law Number 40 of 2007 concerning Limited Liability Companies for registration number MK No. 84/PUU-XI/2013. By ius constitutum, PT. Metro Mini has carried out the GMS procedure in accordance with the essence of the rule itself. PT. Metro Mini has held the first GMS but without a quorum as stipulated in Article 86 paragraph 1 "GMS can be held if more than 1/2 (one half) of the total

shares with voting rights are present or represented, unless the law and/or the articles of association determine the number of the larger quorum". So with these rules, PT. Metro Mini held an invitation for the second GMS in accordance with the provisions of Article 86 paragraph 2 of Law Number 40 of 2007 concerning Limited Liability Companies "In the event that the quorum referred to in paragraph 1 is not reached, a second summons for GMS can be made". However, in its implementation which was held on 15 November 2012, the second GMS did not reach a quorum. As regulated in Article 86 paragraph 4 "The second GMS as referred to in paragraph 2 is valid and has the right to make decisions if in the GMS at least 1/3 (one third) of the total shares with voting rights are present and represented, unless the articles of association determine a larger quorum."

Therefore, the second GMS of PT. Metro Mini could not be implemented, because it did not reach a quorum of 1/3 of the shareholders. Then the summons for the third GMS must be carried out with a note, it must obtain a decision from the district court whose jurisdiction covers the domicile of the company upon request to establish a quorum for the third GMS. Due to the decision of the district court regarding the determination of the implementation of the third GMS and determining the number of quorums in accordance with the provisions of Article 86 paragraphs 5,6 and 7 of Law Number 40 of 2007 concerning Limited Liability Companies. Implementation of the third GMS of PT. Metro Mini was implemented based on the Supreme Court Decision Number 2779 K/Pdt/2011 which confirmed the District Court Decision Number 01/Pdt P/RUPS/2011/PN East Jkt dated 18 May 2011 which contained the decision granting permission to the Petitioner to hold the EGMS of PT. Metro Mini. Therefore, the implementation of the third GMS of PT. Metro Mini is in accordance with what is recommended by the Law in implementing the GMS of PT. Metro Mini. Therefore, there is no reason whatsoever for a State Institution authorized to ratify the results of the GMS of PT. Metro Mini not to authorize. Because all processes and implementation procedures are in accordance with the Limited Liability Company Law.

CONCLUSION

Considerations of the Constitutional Court Judges in the Constitutional Court Decision No/84/PUU-XI/2013 and the Contents of the Decision, the authors conclude as follows: That the General Meeting of Shareholders or commonly called the GMS held by PT. Metro Mini is not against Law no. 40 of 2007 concerning Limited Liability Companies, as stipulated in Article 86 paragraph 9 "The second and third GMS are held within a period of 10 (ten) days and no later than 21 (twenty one) days after the preceding GMS was held". That Article 86 paragraph 9 of Law No. 40 of 2007 concerning Limited Liability Companies which states "the second and third GMS shall be held within a period of no sooner than 10 (ten) days and no later than 21 (twenty one) days after the preceding GMS was held". Contrary to Article 27 paragraph 1. Article 28 D paragraph 1, Article 28I paragraph 1, Article 28I paragraph 2 of the 1945 Constitution. Before it was interpreted "the second and third GMS are held within a period of no sooner than 10 (ten) days and no later than 21 (twenty one) days after the previous GMS was held or in the case of a GMS being held based on a court order, the period is no later than 21 (two twenty one) days after obtaining the decision of the district court".

Suggestion: The government should immediately revise Law Number 40 of 2007 concerning Limited Liability Companies, in particular Article 86 paragraph 9 which previously stated "The second and third GMS shall be held within a period of no sooner than 10 (ten) days and no later than 21 (twenty one) days after the GMS that preceded it was held". Being "the second and third GMS are held within a period of no sooner than 10 (ten) days and no later than 21 (twenty one) days after the preceding GMS is held or in the case of a GMS being held based

on a court order, the period is no later than 21 (twenty one) day after obtaining the decision of the district court". Because of the Constitutional Court Decision No.84/PUU-XI/2013, so that the meaning decided by the Constitutional Court becomes a positive norm reference, because the Indonesian legal state system adheres to the continental European legal system, not the Anglo Saxon system which adheres to the common law partially or completely. . Then there was a delay in the decision to implement the GMS of PT. Metro Mini where there should be privileges in terms of terminating the GMS which is carried out in the submission of the GMS at the District Court or a kind of privilege for the GMS Executor in submitting the District Court's Decision, whether it is acceleration of the Decision or a separate room within the District Court institution to avoid delays in the Implementation of the GMS as stipulated in the Article 86 paragraph 9 and 86 paragraph 7 of Law no. 40 of 2007 concerning Limited Liability Companies, which states that the implementation of the GMS must be determined by the Chairman of the District Court.

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