

Comparison of the Implementation of Share Holder General Meeting in the Law on Limited Liability Company in Indonesia and Syarikat Law in Malaysia

Edi Yunara
Medan, Indonesia

Abstract

General Meeting of Shareholders (GMS) is one of the organs of the elements that are recognized by civil law and common law. In the execution of the current era of globalization has been through many obstacles when foreign companies want to invest in Indonesia because of the differences in legal systems that exist among foreign companies with corporate legal system in Indonesia. So to overcome these differences require a legal solution to the smooth concrete economy of both countries to do business, although do not rule out the existence of crime committed fraud in seeking solutions.

Keywords: Comparison, GMS , and Crime

A. Introduction

Today, there are various forms of companies with their own different characteristics and legal regulations. One of the widely known forms of company is Perseroan Terbatas (Limited Liability Company) because it has a limited responsibility and it is easy for its owner (shareholders) to transfer the company (to any one) by selling all or part of the shares they own.

The regulation of company law in Indonesia which adheres to Continental European Legal System is different from that in Malaysia which practices Common Law Legal System. In Indonesia, Perseroan Terbatas (PT) as a corporate body is regulated in Law No. 1/1995 on Limited Liability Company which has then been revised through Law No.40/2007 on the Amendment of Law No.1/1995 on Limited Liability Company. In Malaysia, a company is known as Syarikat which follows the common law system and is regulated in the stipulation of Malaysian Companies Act 1965 (CA. 1965). Companies Act is also reinforced by the other acts such as Industrial Security Act 1983, Trade Registration Act 1956, Annexation and Incorporation Code 1998, Company Closure Rules 1967, Malaysian Financial Institution and Banking Act 1987, Commission Security Act 1993, Company Commission Act 2001, Demutualisation Act 2001 and many more.

Perseroan Terbatas is defined in Article 1 paragraph (1) of Law No.40/2007 as a legal entity in the form of capital alliance established based on the agreement to conduct business with the authorized capital which is entirely divided into shares and meets the requirement defined in this law and its regulation of implementation (Saliman et al. 2005:115).

Therefore, it can be concluded that the elements of Perseroan Terbatas according to Law No.40/2007 are as follows:

1. Perseroan Terbatas is a legal entity
2. Capital alliances
3. Established based on agreement
4. Conducting business activities
5. Its capital stock consists of shares.

In Malaysia, Syarikat is defined as an incorporated association. When officially registered as the incorporated, it will be regarded by the law as a “person” whose existence is separate from those who have established it. Therefore, in term of law, this Syarikat has a separate and distinct character (Bidin, 2007:18) that both definitions mentioned above are not very much different each other. The elements of syarikat in Malaysia include:

1. Become a corporate body with the power of company incorporated;
2. Acted in its own name;
3. Can sustainably inherit and possess property;

4. Liability of members is limited.

Both definitions mentioned above are not very much different each other. Of the elements mentioned above, the existence of share is so important and cannot be separated from a Perseroan Terbatas. Share is a sign of capital investment participation in a company (Perseroan terbatas) as the proof of capital ownership (Raharjo, 2009:86).

The establishment of Perseroan Terbatas in Indonesia and Syarikat in Malaysia can be done in 2 (two) ways; first, through standard registration under the existing law. The second is especially for public enterprises. For example, in Indonesia, the establishment of Perseroan Terbatas (Limited Liability Company) under BUMN (State-Owned Enterprises) such as Pertamina, PLN, GIA and so forth is regulated in its own law outside of the limited liability company law after getting parliamentary approval, while, in Malaysia, syarikat awam such as PETRONAS, PERNAS and MAS (an airline company) and several other companies cannot be established until getting approval from the parliament.

Based on Article 48 paragraph (1) of Limited Liability Company Law, shares issued on behalf of the owner that it becomes a proof of ownership of share (s) of a Perseroan Terbatas.

Ownership of share entitles shareholders as regulated in Article 52 paragraph (1) of Limited Liability Company Law:

1. To attend and to vote at the General Meeting of Shareholders;
2. To receive the dividend payment and the remaining assets from liquidation;
3. To execute other rights based on the Company Law.

In Malaysia, the shareholders are called “ahli” with the same rights as regulated in Sections 15 and 48 (1), (2) and (3) of the Companies Act 1965, among others:

- a. To ensure that the provisions of the memorandum and articles of association are complied;
- b. To prevent action ultra vires and unlawful actions;
- c. To get information about the company's records;
- d. To attend and to vote at general meetings;
- e. To be treated fairly.

The above rights will take effect after being recorded in the register of shareholders on behalf of the owner. Each share gives the owner the non-shareable right. The right arising from one share owned by more than one person is , The right arising from the share is the right owned by a person appointed as a joint representative of the shareholders. This matter is regulated in Article 52 paragraph (2) up to paragraph (5) of Limited Liability Company Law.

B. Arrangements and Understanding of GMS

Perseroan Terbatas cannot be separated from the element of share because the capital of the Perseroan Terbatas originates from the shares owned/issued by the Perseroan Terbatas itself. The amount of share owned by the Perseroan Terbatas itself or owned by the other parties belong to the Perseroan Terbatas determines the percentage of vote at the General Meeting of Shareholders. This General Meeting of Shareholders is regulated in Chapter VI, Articles 75-91 of Law No.40/2007 on Limited Liability Company.

Rapat Umum Pemegang Saham (RUPS) in Indonesia or Mesyuarat Lembaga dan Pemegang Saham in Malaysia (Goh, 1995:62) is called General Meeting of Shareholders (GMS) in English or Algemene vergadering van aandeelhouders in Dutch. RUPS is one of the organs of corporate body in a Perseroan Terbatas in addition to the two other organs, namely board of directors and commissioners. GMS is one of the company organs holding residual authority, the authority which is not allocated to the other company organs – board of directors and commissioners – that can make decision after meeting certain condition and in accordance with certain procedures (Fuady, 2002:57).

Malaysian Companies Act that adheres to common law has 2 (two) company organs namely General Meeting of Stakeholder or “Mesyuarat” (Bidin, 2001:232) and Board of Directors. Commissioners belong to the component of Board of Directors which is also known as “Lembaga Pengarah”.

Based on Article 1 paragraph (4) of Limited Liability Company Law, RUPS (GMS) is a company organ with an authority which is not given to the Board of Directors or Commissioners within the limits specified in this law and/or statutes.

Thus, based on the understanding the GMS, it can be said that both Board of Directors and Board of Commissioners are not the highest organ in a limited liability company, but the AGM. In a Limited Liability Company, shareholders are not the highest sovereignty holders, but very often, the shareholders can influence the policies to be made by the Limited Liability Company. In this respect, the position of GMS as one of the company organs is the same as that of the other organs such as the company's Board of Directors and Commissioners (Nadapdap,: 111).

The shareholders do not have power over Limited Liability Company until they are in the GMS. This means that the joint will of shareholders is also the will of GMS. The results of GMS are the highest will of Limited Liability Company that cannot be opposed by any parties unless the decision of GMS violates the law or the establishment deed or the statutes of the Limited Liability Company.

According to Misahardi Wilamarta, even though in the structure of Limited Liability Company the GMS has the supreme power, it does not mean that the GMS is of the highest level among the company organs. The GMS has supreme authority only when the authority is not delegated to the other company organs. Thus, each company organ has its own independent duty and authority.

C. The Authority of GMS

In Article 75 of Limited Liability Company Law, it is regulated that GMS has the authority that is not owned by Board of Directors and Board of Commissioners, yet, the authority is restricted by law. In this case, shareholders have the right to obtain information relating to the Limited Liability Company as far as the agenda of the meeting and are not contrary with the interests of the Limited Liability Company. The GMS, in other agendas, does not have the right to take a decision unless all shareholders are present and/or represented at the GMS and approving the addition of agenda item.

The GMS has several authorities, among other things:

1. Article 19 paragraph (1) on that the change of statutes is determined by the GMS
2. Article 38 paragraph on that repurchase of shares or its transfer should only be done under the approval of GMS, unless otherwise provided in the legislation in the field of capital market.
3. Article 41 paragraph (1) on the increase of Limited Liability Company's capital is done under the approval of GMS.
4. Article 44 on the reduction of corporate capital.
5. Article 64 paragraph (1) on approving financial report or annual accounts.
6. Article 69 paragraph (1) on that the approval of the annual report including the ratification of the financial report and the supervisory report of the Board of Commissioners, is conducted by the GMS.
7. Article 71 paragraph (1) on that the use of net profit including the amount of the money set aside for reserve money is decided by the GMS.
8. Article 105 on the establishment of incorporation, merger and takeover.
9. Article 123 on determination of dissolution of the Limited Liability Company

Meanwhile, after a company is incorporated, the GMS which is called Mesyuarat Am in Malaysia should do the following steps:

- a. To appoint the chairman of the board;
- b. To receive and conform the statutory matters as follows:
 - Certificate of Incorporation;
 - Memorandum and Articles of Association;
 - Stamp duty
 - Register of members, directors and the like;
 - The minutes;
 - Customers' share and share certificates.
- c. To appoint the Board Managing Director and set the reward for it;
- d. To discuss and fix the remuneration of the directors;
- e. To fix the remuneration of Company Secretaries;
- f. To discuss the structure of the company and consider, if it is considered appropriate, to distribute the next shares;
- g. To open a bank account and to consider the people who will sign the account on behalf of the company;

- h. To determine the domicile of the registered office;
- i. To determine the date of the accounting period;
- j. To appoint auditors;
- k. To discuss the organizational structure and company management policies;
- l. To discuss and decide on other matters.

When observed carefully, the elements of authority that should be discussed in the GMS are more widely regulated in the Company Laws of Malaysia compared with that found in the Limited Liability Company Law of Indonesia. In addition, the GMS has limitations and scope of authority that can be implemented in a Limited Liability Company. The limits and the scope of authority that can be implemented by the GMS in a Limited Liability Company, among other things are:

1. GMS should not take a decision that is contrary to the existing applicable law and the stipulations stated in the statutes (even though the statutes can be changed in the GMS if it meets the requirements set for it);
2. GMS should not take a decision that is contrary to, by law, the interests of stakeholders such as minority shareholders, employees, creditors, local communities and so on.
3. GMS should not take a decision under the authority of Board of Directors and Board of Commissioners, as long as both boards are not abusing their authority.

The restrictions are more universal in nature as set forth in the existing applicable company law applied around the world as well as in Malaysia.

D. Organization of GMS

Based on Article 79 paragraph (1) of the Limited Liability Company Law, It is basically determined that the Board of Directors organize the annual and other GMSs which was preceded by the calling for GMS. Thus, the implementation of GMS is a part of the Board of Directors' duties. In this case, even though it is called the General Meeting of Shareholders (GMS), it does not mean that shareholders have the authority to perform that meeting. Meanwhile, in Malaysia, a Mesyuarat (GMS) cannot be implemented until two key elements of the definition of Mesyuarat (GMS) as defined in Section 147 (1) (a) of the Companies Act 1965 and Article 47 are met, namely:

- a. Must be attended by more than one person;
- b. These people must simultaneously be physically present.

The venue for the GMS itself is specified in Article 76 of Limited Liability Company Law regulating that GMS is held where the Limited Liability Company conducts its main business activities as specified in its Statutes. If it is an Open Limited Liability Company, the GMS can be held in the domicile of the stock exchange where the shares of the Limited Liability Company were listed. The place where the GMS is held, also for that of the Open Limited Liability Company, is in the territory of the Republic of Indonesia. If the GMS is attended and/or represented by all shareholders and all of the shareholders agree to hold the GMS with particular agenda it can be held anywhere with unanimous decision.

The GMS can also be done by using of technology, such as teleconference, videoconference or other electronic facilities that enable all participants to directly see and hear to each other and participate in the meeting. This is stipulated in Article 77 of the Company Law. Based on the rule, it is clearly shown that GMS can be organized either conventionally or by making use of media technologies such as teleconference, video conference, or other electronic media. But the media used in the GMS based on Article 77 of the Company Law is an alternative depending on the party who is competent to choose what media is to be used in the GMS (Miru, 2011: 11).

The selection of the above mentioned media must meet at least three (3) cumulative conditions, namely:

- a. Participants should directly see each other directly;
- b. Participants must directly listen to each other directly;
- c. Participants must participate in the meeting.

This means that if one of the conditions is not met, then the media is not eligible to be used as a medium in the implementation of the GMS (Miru, 2011:11-12).

E. Forms of General Meeting of Shareholders (GMS)

GMS can be distinguished into 2 (two) types as regulated in Article 78 of Limited Liability Company Law;

a. Annual GMS

Annual GMS is intended to assess and make decisions about the report of Board of Directors on the activities of the Limited Liability Company, the results achieved in the past year and the plans for the next activity.

Annual General Meeting of Shareholders is compulsory to be held within a period not later than six months after the fiscal year ends. All documents in the annual report of the Limited Liability Company must be submitted in the GMS. The annual report of Limited Liability Company must, at least, contains (Fuady, 2005: 94) :

1. The financial statements consisting of, at least, a balance sheet of last financial year in comparison with that of the previous one, the income statement of the relevant financial year, the cash flow statement, and statement of changes in equity, and notes to the financial statements;
2. Reports on the activities of the Limited Liability Company;
3. Reports of the implementation of social and environmental responsibility;
4. Details of issues that arise during the fiscal year that influenced the Limited Liability Company's business activities;
5. Reports of supervisory duties which have been implemented by the Board of Commissioners during the past financial year;
6. Name of the members of Board of Directors or the members of the Board of Commissioners;
7. Salaries and allowances for the members of the Board of Directors and the salary or honorarium and allowances for the members of the Board of Commissioners of Limited Liability Company for the last year.

Whereas for the implementation of the GMS itself can be done at the request:

- 1) One (1) or more shareholders who jointly represent one-tenth (1/10) or more of the total number of shares with voting rights, unless the statutes specify a smaller number; or
- 2) Board of Commissioners.

Request for this General Meeting of Shareholders is submitted to the Board of Directors through a registered letter with the reasons of why the GMS is proposed.

In terms of the implementation, the Board of Directors are required to conduct a call for the GMS at least no later than 15 days from the date of the request for the GMS is received. The Board of Directors does not make a call for the AGM in terms of:

- 1) The request for the General Meeting of Shareholders is submitted again by the Board of Commissioners;
- 2) The Board of Commissioners themselves who make a call for the GMS.

b. Other GMSs (Extraordinary General Meeting of Shareholders)

The Extraordinary General Meeting of Shareholders is intended to discuss and make a decision about the problems suddenly arising and requiring immediate action/treatment because if it is immediately treated it will inhibit the operations of Limited Liability Company. This type of GMS can be held any time based on the need for the benefit of the Limited Liability Company.

While in Malaysia, there are 2 (two) kinds of Mesyuarat or GMS:

- a. Mesyuarat Agung Pemegang Saham/Syer (General Meeting of Shareholders/Share)
- b. Mesyuarat Agung Lembaga Pengarah (General Meeting of the Board of Directors).

Mesyuarat Agung Pemegang Saham/Syer (General Meeting of Shareholders/Share) can be held in 4 (four) possibilities:

1. Statutory Meeting/Statutory(for public limited companies only), must be implemented within a period not less than one month and not later than three months after the date of business commencement and must be called at least 7 (seven) days in advance. The meeting referred to by the term Statutory Meeting is set out in Section 142 (1) of the Companies Act 1965;
2. Annual General Meeting, first implemented no later than 18 months after being incorporated and after that in each calendar year or not more than 15 months between this and the following general meeting as set forth in Section 143 (1) of the Companies Act 1965;

3. Extraordinary general meeting which is set out in Section 144 (1) may be exercised at any time they feel necessary, and the request must be signed by:
 - the members holding at least one-tenth of the shares issued and paid that give the right to vote; or
 - the members who have at least one-tenth of the voting rights in the General Meeting, if the company has no capital share.

How this Extraordinary General Meeting implementation system is set out in Section 144 (2) and (3) or Section 150 of the Companies Act, 1965 is that, in this case, the Court can intervene at the request of acting director or shareholder or otherwise at the discretion of the Court itself, when there fraudulent acts done by either majority or minority shareholders.

4. Meeting of the Special Class or classes of shareholders is usually held or called for the purpose of considering the proposal to vary the class rights (Goh, 1995:178). The meeting of this class is not concretely regulated in the Companies Act 1965, but indirectly, it is briefly touched in Section 65 (1) of the Companies Act 1965 (Bidin, 2007:237).

The Board Meetings set forth in the statutes of company is:

1. According to the Board Meetings set forth in the Company Statutes 79, Board of Directors (Lembaga Pengarah) is a small body that is responsible for handling the routine decisions that must be taken if the company wants to keep his business from day to day. Board Meetings is conducted by the director who perform his duties collectively, and do not constitute an important concept for the protection of shareholders (Bidin, 2007:237-238). But in the case, the director may elect a chairman to preside the meeting.
2. Committee Meetings is usually performed by large companies. The committees established are subject to the rule that may be set by the director against them as regulated in the Company Statutes 86. However, the procedure for this Committee Meeting is the same as that for the Board Meeting as regulated in the Company Statutes 79 and 80 (Bidin, 2007).

In this respect, the regulation of GMS in Malaysia is broader and more flexible compared to the procedure of GMS that can be implemented in accordance with the Limited Liability Company Law of Indonesia because both Board Meeting and Committee Meeting are not recognized in Indonesia.

F. The Right to Vote in the GMS

The provision of Article 18 of the Limited Liability Company Law states that any issued shares have one vote, unless the statutes of the company specify otherwise. However, the voting rights referred above do not apply to:

1. The shares of a PT (Limited Liability Company) is solely controlled by the PT itself;
2. The main shares of a PT which is directly or indirectly controlled by its subsidiaries; or
3. The shares of a PT which is controlled by another PT whose shares directly or indirectly is owned by the PT.

Article 85 of the Company Law further states that the shareholder, either individually or represented based on a power of attorney, is entitled to attend the GMS and cast his vote in accordance with the the shares owned. However, this does not apply to the shareholders of the shares without voting rights. In terms of voting, the votes cast by shareholders apply to all of the shares they owned and shareholders are not entitled to provide authority to more than one authorized person for a portion of the shares they owned with a different voice.

In terms of voting, the members of Board of Directors, Board of Commissioners, and employees of the concerned Limited Liability Company are forbidden to act as a power holder of shareholders. If the shareholder is present in person at the GMS, the power of attorney that has been granted does not apply to this meeting any more. The Chairman of the Meeting has the right to determine who is entitled to attend the GMS by paying attention to the provisions of Limited Liability Company Law and the Statutes of the Limited Liability Company.

In terms of voting rights at the GMS, in principle, the rule existing in Indonesia is almost the same as the existing rules in Malaysia as set up in Seksyen 5 (1) and Seksyen 17 (1) of the Companies Act 1965.

G. Quorum in the GMS

The GMS decision is valid if the requirements of the implementation have been met and the meeting is attended by the shareholders whose number complies with the quorum specified in the Law No.40/2007 and the Statutes of Limited Liability Company regarding the quorum provisions.

According to Article 86 of Law No.40/2007, the GMS will be held if more than half (1/2) of the total number of shareholders with voting rights are present or represented, unless the laws and/or statutes specify otherwise. If the condition above cannot be met, the GMS may be held for the second time. In this second call, it is also included or informed that the first GMS has been held, but it did not meet the quorum.

The second GMS is legitimate and entitled to make decisions if at least 1/3 (one third) of the total number of shareholders with voting rights present or represented, unless the statutes specify otherwise. But, if the quorum is not met either in the second GMS, the Limited Liability Company can appeal to the Chairman of the State Court whose jurisdiction covers the domicile of the Limited Liability Company in order to set the quorum for the third GMS. The call for the third GMS should also mention that the second GMS has been held but it did not meet the quorum and the third GMS will be held with the quorum stated by the Chairman of the State Court. The decision of this quorum is final and binding or has permanent legal force (meaning that the above decision cannot be filed into appeal, cassation or judicial review).

The call for the second and third GMS are done no later than 7 (seven) days before the second and third GMS are held, while the second and third GMS are held no sooner than 10 (ten) days and no later than 21 (twenty one) days after the GMS preceding them.

Unlike in Indonesia, in Malaysia, Mesyuarat (GMS) cannot be held until there are 2 (two) main elements found in Mesyuarat as specified in Section 147 (1) (a) of Companies Act 1965, and the notice of the meeting must be made in writing and submitted at least 14 days from the date when the meeting will be held (Section 145 (2)), whereas the approval for special resolution should be notified at least 21 days from the date of the meeting set, but for certain meetings, such as annual general meeting, may be called by shorter notice (Section 145 (3)), as long as it is approved by all members, and for any other meeting, it should be approved by the majority of not less than 95 percent of the shares (Bidin, 2007: 240). It once happened in the case of Sharp Iwn Dawes, when a General Meeting for a mining company was held, but only one member was present, so the meeting was canceled by the Court under the consideration of prima facie (Moore, 1979: 3), and this was molded in Malaysia when the High Court of the Federation of Malaya made decision in the case of *Re Salvage Engineers*.

H. Decision Making in GMS

Based on Article 87 of Law No.40/2007, the decisions of GMS are taken based on deliberation and consensus. But, if this deliberation and consensus is not met, the decision is valid if approved by more than half of the total number of votes given, unless the laws and/or statutes specify otherwise. The stipulations in Article 86 and 87 are the provisions of quorum in general, but in some specific case, special provision like that of Article 88 applies.

In Article 88, GMS to amend the statutes can be held if at least 2/3 (two-third) of the total number of shareholders with voting rights are present or represented in the GMS and the decision taken is legitimate if approved by 2/3 (two-third) of the total number of votes given, unless the statutes specify the quorum of attendance and/or the provision on the making of bigger decision of GMS. In terms of unmet quorum of attendance, the second GMS can be held. This second GMS is legitimate and entitled to make decision in at least 3/5 (three-fifth) of the total number of shareholders with voting rights are present or represented in the GMS and the decision taken is legitimate if approved by 2/3 (two-third) of the total number of votes given, unless the statutes specify the quorum of attendance and/or the provision on the making of bigger decision of GMS.

Whereas under Article 89, GMS intended to approve the merger, takeover or separation, to apply for a petition that the Limited Liability Company be declared bankrupt, to extend the term of establishment and dissolution of Limited Liability Company, can be held if at least 3/4 (three-fourth) of the total number of shareholders with voting rights are present or represented in the GMS and the decision taken is legitimate if approved by 3/4 (three-fourth) of the total number of votes given, unless the statutes specify otherwise and/or the provision of the requirement for GMS decision making is bigger.

Meanwhile in Malaysia, there are 3 types of resolutions that can be done in the making decision of meeting, they are:

- a. Ordinary resolution, the resolution passed by simple majority present at the meeting;
- b. Special resolution, the resolution passed by the votes of not less than 3/4 (three-fourth) of the majority votes at the meeting, provided that the members shall be notified not less than 21 days prior to the meeting for the special resolution;
- c. Extraordinary resolution, the resolution passed by 3/4 (three-quarter) of the majority present at the meeting (the same as special resolution), but the length of the notice period is not defined in the Companies Act 1965, but in practice using the analogy of section 145 (2), it is at least 14 days from the date of the meeting. Extraordinary resolution is only required in certain matters involving the dissolution of the company.

Thus, the procedure of decision-making in the GMS in Malaysia under the Companies Act 1965 is almost similar to that in Law No.40/2007 in Indonesia. But what is different in the Companies Act 1965 is that, in some cases, there is another set of regulation that must be approved by the members holding 95% of shares for those entitled to attend and vote at the meeting. In Malaysia, based on the percentage of those present in the meeting, but it is not strictly regulated in Law No.40/2007.

I. Minority Shareholders in GMS

Minority shareholders in a Limited Liability Company has always been given less fair treatment by the majority shareholders, both in carrying out its obligations to run the company and make annual reports or in terms of business development and borrowing money from the banks or involving a third party as a new shareholder. But the suffering of the minority shareholders began to receive attention after the issuance of Law No.1/1995 in conjunction with Law No.40/2007. Legal protection for the minority shareholders is regulated in the provisions of Article 85 – 111 of Law No.1/1995 and Law No.40/2007. Since then, the minority shareholders whose shares is not less than 10% have received good and complete legal protection from the government, by allowing them to submit an application to the chairman of the local district court for permission to implement the GMS.

After getting permission from the Chairman of the District Court and the GMS has been carried out, but received no response from the majority shareholders, the minority shareholders, based on the GMS that has been implemented, can do further legal action both criminal or civil charges.

As happened in 2004, PT. Pangkatan Indonesia is a subsidiary of PT. TolanTiga. As a parent company, PT. TolanTiga is a foreign capital company whose investor holding 80% of the shares is from the UK. This majority shareholder has badly treated Rahmat Shah, the minority shareholder with 20% of share, by making fictitious reports stating that the company is experiencing a great financial loss which had forced the company to undertake massive rehabilitation on either the employee housing and the re-planting of oil palm trees which are still productive with the plant age of 4-7 years, and asked the minority shareholder for additional costs for the plan, whereas, under the management of the majority shareholder, the minority shareholder did not receive any annual dividend from the company for the last one year and the company did not pay the minority shareholder's monthly salary in his capacity as the commissioner of PT. Pangkatan Indonesia. Yet, the company still asked the minority shareholder to deposit additional capital, and if the minority shareholder is not able to, the development and rehabilitation still remain to be implemented by the caretaker in favor of the majority shareholder and will take into account the costs that have been incurred for the rehabilitation and re-planting with a reduction in the percentage of capital that existed previously.

In this case, the minority shareholders filed an objection to the District Court of Medan, and the appeal was granted based on the Decision of Medan District Court in 2004 (Decision of Medan District Court in 2004), but this Decision of Medan District Court was canceled by the High Court of Medan in 2005 (Decision of Medan High Court in 2005) and the Indonesian Supreme Court in 2006 (Decision of the Indonesian Supreme Court in 2006). In this case, the minority shareholder really did not get legal protection properly and correctly based on the applicable Limited Liability Company Law.

After receiving information that ought to be trusted that the husband and wife was threatened by the United Kingdom through the President of the Republic of Indonesia (Megawati Sukarnoputri) saying that the British government would cease all of the business activities of British companies in Indonesia at that time if PT. Pangkatan Indonesia was defeated in the lawsuit.

Of these cases, it appears that law enforcement in Indonesia has not been implemented freely and independently as they can still be intervened politically and diplomatically by a third party.

Another case in the District Court of Medan in 2007 is related to PT. Fajar Agung Company whose shareholders are all family members. The main shareholder is composed of, his wives and his children from his 5 wives. The case was that the management of the company has been monopolized by his children of the first wife (H. Sulaiman Adnan and H. Mhd.Nasir Adnan) for years since 1997 because their father was old (60 years), and even one of his children named H. Mhd. Nasir Adnan requested permission from the Medan District Court to declare that their father named H. Adnan Matkuddin, as the major shareholder, was under guardianship (curatele) because he was already mentally ill even though their father, at the time, was in a good health living with his 41 years old fifth wife named Hj. LaylatulKafti'ah. After their father passed away, the heirs could not be reconciled either by their family or the local Islamic scholars that the other shareholders (the children of the second and fifth wives) represented by Adlan Adnan applied for permission to Medan District Court to hold the GMS. After their application for permission was granted, they reported their biological elder brothers, H. Sulaiman Adnan dan H. Mhd. Nasir Adnan (the children from the first wife) based on criminal charges and civil suits to Rokan Hilir Religious Court in 2007 (Decision of Rokan Hilir Religious Court, 2007) and Dumai District Court in 2008 (Decision of Dumai District Court, 2008). Based on the Decision of Dumai District Court having a permanent legal force (inkracht vanbewijsjde), Dumai District Court with the assistance of Rokan Hilir District Court has carried out the executions by clearing and taking over the management of oil palm plantations covering an area of 6000 hectares but only remaining 2500 ha because it has been continuously sold by Sulaiman Adnan and M. Nasir Adnan during their tenure from 1998 to 2009. After H. Sulaiman Adnan cs handed the property over to H. Adlan Adnan cs, the heirs (H. Adlan Adnan cs), the heirs (H. Adlan Adnan cs) who controlled the inherited property divided it to all of the heirs (13 shareholders) including H. Sulaiman Adnan csin accordance with their respective portions based on the fara'idlaw. After the distribution of the inherited property, some heirs utilized the inherited land themselves and some sold the inherited land to the third parties.

In Malaysia, legal protection for the minority shareholders is concretely regulated in Section 65 (1) (4) of the Companies Act 1965 principally stating that "minority shareholders may make an objection to the diversity of the class rights by applying to the Court with 2 (two) reasons (Bidin, 2007:64):

- a. The majority shareholder has not taken bona fide action in the interests of the company;
- b. The decision has given priority to the majority shareholders and at the same time denies the right of minority shareholders.

Minority shareholders, according to the provisions of Section 197 (a) of the Companies Act 1965, are the shareholders holding not less than 1/10 percent of the shares issued.

The regulation on the minority shareholders is based on the experience of common law countries in the case of Foss vs Harbottle. Based on the Companies Act 1965, the courts in Malaysia have applied the legal protection for the minority shareholders on the case of Raja Khairuzzaman bin Raja Aziuddin vs Zaman Indah Sdn. Bhd in 1979 (2 MLJ 181). The procedures of legal protection for the minority shareholders are regulated in Section 28 (1), Section 31 (3), to get the remedy is regulated in Section 16 (6)(7), Section 181 (1) (2) (a) (b) (c) (d), Section 197 and 200, and to do the requisition is regulated in Section 144 (2).

The reasons for proving the protection of minority shareholders in the Companies Act 1965 are:

- a. Protection of the class rights;
- b. Unfair prejudice;
- c. Inspection by the minister;
- d. Report made by the inspector.

Meanwhile, in the common law countries, the protection of minority shareholders is emphasized based on:

1. When directors caused the company take ultra vires action or in excess of its powers;
2. When an action is made or approved by a common majority, while the special majority is treated under the Act, the statutes or memorandum of the company;
3. When the individual right of a shareholder has been infringed;
4. When the fraud occurred on the minority;
5. Importance of justice.

J. Conclusion

GMS is a company organ with the authority that cannot be given to the Board of Directors or Board of Commissioners within the limits specified in this Law and/or the statutes. It can be concluded that the GMS is the highest organ in a Limited Liability Company because the development/progress of a Limited Liability Company is discussed in this GMS.

The implementation of GMS in Indonesia is basically almost similar to that in Malaysia, but, to some extent, they have an adequately significant difference, among other things:

- a. In Indonesia, there three comp[any organs such as General Meeting of Shareholders, Board of Directors and Board of Commissioners while in Malaysia, there are only two, namely, General meeting of Stakeholders and Board of Directors;
- b. Though there are two forms of GMS in Malaysia, their explanation is broader and more detailed;
- c. The component of GMS authority is broader and more detailed;
- d. The call for GMS which is not in accordance with the grace time regulated in the law, the GMS can still be implemented after being approved by 95% of the majority shareholders;
- e. Legal protection for the minority shareholders gets a special treatment for the achievement of eternal justice, even though in practice the role of Court is rarely played in Malaysia compared to that in Indonesia;
- f. Legal protection for the shareholders in Malaysia and in Indonesia is different, because legal protection for the minority shareholders in Indonesia can apply for permission to hold GMS to the State/District Court, but in Malaysia, not only are the minority shareholders protected but also the majority shareholders if manipulated by the minority shareholders. According to the Companies Act 1965, GMS should be implemented based on at least two major elements not depending on the amount of shares.

Even though legal protection for the minority shareholders in Indonesia is concretely regulated in the Limited Liability Company Law, in its implementation, the law enforcement does not guarantee its legal certainty because it can still be politically or diplomatically interved by the third party. In Malaysia, legal protection for the minority shareholders is regulated in Section 65 (1) (4) of Companies Act 1965, but the role of Court in certain condition, can intervene in the settlement of minority shareholder dispute, but it is not dominantly performed because the consultation and consensus are always preferred by the shareholders, and the law enforcement is conducted freely and independently by the Court.

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