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Illegitimate Actions in the Termination of the President Director of PT Bank Pembiayaan Rakyat Syariah Taman Indah Darussalam through an Extraordinary General Meeting of Shareholders: Study of the Decision Number 9/PDT.G/2023/PN.BNA

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Abstract

The General Meeting of Shareholders (GMS) is, in theory, convened by the Board of Directors, as stipulated in Article 79 paragraphs (1), (2), and (3) of Law Number 40 of 2007 regarding Limited Liability Companies. The President Director must be apprised of the General Meeting of Shareholders (GMS), as the President Director convenes the GMS, and the meeting's rationale is explicitly articulated. In Decision Number 9/Pdt.G/2023/PN.BNA, the shareholders of PT. Bank Pembiayaan Rakyat Syariah Taman Indah Darussalam executed an unlawful act by dismissing the bank's director in a manner that contravened legal protocols. The study employs the normative juridical research technique. This research aims to examine and elucidate the legal ramifications for the parties engaged in illicit activities during the RUPSLB regarding the termination of the Director of PT. BPRS, as per decision Number 9/Pdt.G/2023/PN.Bna. The research findings demonstrate that the legal ramifications of the Defendants' activities render their execution legally defective. The incorrect execution of the Board of Directors' firing process, characterised by ambiguous justifications and the absence of a defence from the Board, is the cause of this issue.

Keywords: Unlawful Acts, Dismissal of the President Director, Sharia People's Financing Bank, Extraordinary General Meeting of Shareholders

Introduction

In principle, the holding of the General Meeting of Shareholders (GMS) is conducted by the Board of Directors, as can be seen in Article 79 paragraphs (1), (2), and (3) of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT), which explains that:

1. The Board of Directors holds the annual General Meeting of Shareholders (GMS) as referred to in Article 78 paragraph (2) and other GMS as referred to in Article 78 paragraph (4), preceded by the calling of the GMS;
2. The holding of the GMS as referred to in paragraph (1) can be conducted upon request;
   a. 1 (one) or more shareholders who collectively represent 1/10 (one-tenth) or more of the total number of shares with voting rights, unless the articles of association specify a smaller amount; or
   b. Board of Commissioners.
3. Permintaan sebagaimana dimaksud pada ayat (2) diajukan kepada Direksi dengan Surat Tercatat disertai alasanya.

The GMS, created in the form of a Notarial Deed, is a real deed. The notary directly attends the RUPS when it is held, and afterwards, the notary records what has been observed during the meeting. This is explained by Article 90 paragraph (2) of the Company Law in conjunction with Article 46 paragraph (1), which states that "In the Minutes of the General Meeting of Shareholders (GMS) made by a Notary, the signature of the attendees or meeting participants is not an absolute requirement, as long as the reason for the absence of signatures is stated in the minutes." The notary is present to witness the decision-making process carried out by the shareholders and then records it in the Minutes of the General Meeting of Shareholders. The notary must ensure that the matters stated in the minutes are under the reality witnessed [1].” However, sometimes at the end of the

year, there arises a need to hold an Annual General Meeting (AGM) and an Extraordinary General Meeting (EGM) (hereinafter referred to as EGM). In this customary practice, the meetings are held in two stages: first, the AGM is held, and once it concludes, the meeting is adjourned. Then, a new meeting is opened with the agenda of the EGM [2].

Article 105 of the UUPT stipulates that:

1. Members of the Board of Directors may be dismissed at any time based on a decision by the General Meeting of Shareholders (GMS) with a stated reason.
2. The decision to dismiss a member of the Board of Directors as referred to in paragraph (1) is made after the individual is allowed to defend themselves in the GMS.
3. If the decision to dismiss a member of the Board of Directors as referred to in paragraph (2) is made outside the GMS by the provisions referred to in Article 91, the concerned member of the Board of Directors is informed in advance of the dismissal plan and allowed to defend themselves before the dismissal decision is made.
4. The opportunity to defend oneself as referred to in paragraph (2) is not required if the individual does not object to the dismissal.
5. The dismissal of a Board member is effective from:
    a. the closing of the GMS as referred to in paragraph (1);
    b. the date of the decision as referred to in paragraph (3);
    c. another date set in the GMS decision as referred to in paragraph (1); or another date set in the decision as referred to in paragraph (3).

Based on the explanation above, it is clear that the President Director should be aware of the existence of the GMS, because the GMS is organized by the President Director, and there are clear reasons stated in the meeting. However, in Decision Number 9/Pdt.G/2023/PN.BNA, there was an unlawful act committed by the shareholders of PT. Bank Pembiayaan Rakyat Syariah Taman Indah Darussalam, in which the director of the bank was dismissed by the shareholders, but not under legal procedures.

Based on the ruling, in providing considerations, the Panel of Judges opined that the decision letter from the meeting that temporarily dismissed the Plaintiff as the President Director of PT. BPRS Taman Indah Darussalam, based on letter Number 198/PSP/BTI/XI/2022, is legally flawed because it did not go through the GMS procedure and did not give the Plaintiff, as a member of the Board of Directors, the opportunity to defend himself, thus it is legally invalid and has no legal force.

Based on the considerations of the Assembly mentioned above, it is known that the procedure for the request and calling of the RUPS-LB dated November 15, 2022, is not per legal provisions; thus it should be declared unlawful. Therefore, the RUPS-LB dated November 15, 2022, is legally defective and thus is not valid and has no legal force.

The purpose of this study is to analyze and explain the legal consequences for the parties involved in the unlawful act in the RUPSLB for the dismissal of the Director of PT.BPRS based on Decision Number 9/Pdt.G/2023/PN.Bna.

Research Method

The type of legal research used is normative legal research. This research method involves studying library materials as secondary data, also known as library research. The research focuses on discussing the results of this study, referring to the theoretical foundations obtained from various sources of literature or library materials such as textbooks, legal journals, archives, or legal publication documents [3]. There are 2 (two) approaches used in this research, namely the statute approach and the case approach. There are 3 (three) types of data used in this research, namely primary legal materials, secondary legal materials, and tertiary legal materials. The collected data is analyzed using qualitative analysis methods under the applicable regulations [4].

Results and Discussions

Legal consequences are the impact or result of a legal act that arises from a legal action taken to achieve something desired by the actor, where the action is regulated by legal rules. The act performed to obtain legal consequences must be a legal action, meaning anything that can create rights and obligations [5]. A limited liability company (PT) is a company that is declared by law to be a legal entity. With this status, a PT becomes a legal subject that supports rights and obligations. As a legal entity, a PT has an independent position (persona standi in judicio) that is not dependent on its shareholders. In a PT, only the organ can represent the PT or the company that runs the business. This means that a PT can perform legal acts like a human being and can also have assets or debts (it acts through its management) [6].

In a Limited Liability Company, there are three main organs, namely the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners. The GMS is the organ that represents the shareholders and holds the highest authority in the company, with powers not granted to the Directors or Commissioners. The Board of Directors is fully responsible for the management of the company and acts on behalf of the company both in and out of court by the articles of association. On the other hand, the Board of Commissioners must oversee the company in general and in particular, as well as to provide advice to the Board of Directors in managing the company [7].

The General Meeting of Shareholders (RUPS) can be considered the third entity in the company after the Board of Commissioners and the Board of Directors. This forum serves as a means for shareholders to express their interests, considering that they also have a stake in the company. If the Board of Commissioners or the Board of Directors do not perform their duties well and the company suffers losses, in the end, it will be the shareholders who feel the impact. Therefore, the existence of the GMS is very important. In practice, the decisions and authority held by the GMS play a very vital role [8]. The Board of Directors, as the management of the Corporation, is required to be fully responsible for the management of the Corporation in the interest and purpose of the Corporation, both inside and outside the court. In good faith and full responsibility, the Board of Directors must carry out their duties for the benefit and purpose of the company. The Board of Directors can be personally sued in court if the company suffers losses caused by their mistakes and negligence. Similarly, in the event of bankruptcy caused by the mistakes or negligence of the Board of Directors, and the company's assets are insufficient to cover the losses resulting from the bankruptcy, each member of the Board of Directors is

jointly and severally liable for those losses [9].

The consequence of an unlawful act is the emergence of loss. Losses resulting from unlawful acts must be compensated by the person whose fault caused the loss or by the perpetrator of the unlawful act. Thus, Article 1365 of the Civil Code regulates the obligation of the perpetrator of an unlawful act to compensate for the losses arising therefrom on the one hand, and the right to demand compensation for the injured party on the other [10]. The holding of the General Meeting of Shareholders (GMS) according to Article 76 paragraphs (1) and (2) of the Limited Liability Company Law must be conducted at the location specified in the company's articles of association, or for Public Companies, it can be held at the stock exchange where the company's shares are listed. Decisions in the GMS are made based on deliberation to reach a consensus, which is the result of an agreement accepted by the shareholders present or represented at the GMS [11].

There are 4 (four) conditions in agreeing to the parties, all of which are absolute and must be fulfilled for the agreement to be valid. A contract will become invalid if one of those conditions is not met, resulting in the contract being void (nietig). If an agreement has been made due to error (dwaling), coercion (dwang), or fraud (bedrog), then the agreement can be requested for annulment (*vernieteg verbaar*) before the Court. If the agreement was made without full consent, where one party is considered incompetent or underage to perform a legal act, then the agreement is defective and can be annulled by the Judge at the request of the party who gave their consent under duress or by a person who is incompetent to agree.

In carrying out the fiduciary duties entrusted to the board of directors, it is possible for the termination of the relationship between the trustor and the trustee. Regarding the dismissal of directors from their positions, the mechanism must be observed, as regulated in Article 105 of Law No. 40 of 2007 concerning Limited Liability Companies. Article 105 of the Company Law states that the dismissal of directors from their positions must be preceded by allowing the directors to defend themselves before being dismissed. The requirement to provide this opportunity is a mandatory condition that must be fulfilled. However, it can be disregarded if the concerned party does not object to the dismissal decision [12]. Based on Article 105 of the Company Law, in principle, a director can be dismissed at any time by the shareholders as long as their term of office is still valid for a certain period. However, it should be noted that the mechanism for dismissing a director from their position, which is done before the term of office ends, must be accompanied by notification and the opportunity for the director to defend themselves against their dismissal from the director position [13].

Based on the provisions of Article 105 of the Company Law which regulates the mechanism for the dismissal of board members, the dismissal of the Plaintiff as the President Director of PT BPRS Taman Indah Darussalam based on letter Number 198/PSP/BTI/XI/2022 is legally flawed because it did not go through the GMS procedure and the Plaintiff, as a board member, was not allowed to defend himself, thus it is legally invalid and has no legal force.

The actions taken by the defendants are very detrimental to others, especially in this case, where the President Director of PT BPRS Taman Indah Darussalam will suffer significant losses. One of the impacts is the loss of trust from parties involved in PT BPRS Taman Indah Darussalam, as the public will perceive that the leader of this bank cannot manage and handle the affairs at hand. This situation has led to the commissioner acting in a manner not desired by the President Director, causing the public to believe that the President Director cannot handle the commissioner.

In this case, the Panel of Judges concluded that the dismissal of the Plaintiff as the President Director of PT BPRS Taman Indah Darussalam, which stemmed from the Extraordinary General Meeting of Shareholders (EGMS) dated November 15, 2022, and the Decree of the Controlling Shareholders of PT BPRS Taman Indah Darussalam Number: 002/SKK/PSP/BTI/XI/2022, based on the Plaintiff's resignation letter, the EGMS dated November 15, 2022, should not have included the agenda to dismiss the Plaintiff as the President Director of PT BPRS Taman Indah Darussalam on November 16, 2022, for the reasons stated in the meeting minutes and decided on the dismissal with dishonor to the Plaintiff as the President Director of PT BPRS Taman Indah Darussalam. Therefore, the procedure for the Plaintiff's dismissal was legally flawed and, thus, is legally invalid and has no legal force.

Based on the considerations and explanations provided, the legal consequence of the actions taken by the Defendants is that the execution carried out by the Defendants is legally flawed. This is due to the process of dismissing the Board of Directors being conducted improperly, where the dismissal was made for unclear reasons, and there was no defense provided by the Board of Directors.

In the ruling Number 9/Pdt.G/2023/PN.Bna, it has legal consequences, namely the granting of compensation to the Plaintiff. This is in accordance with Article 1365 concerning unlawful acts that must be compensated by the Plaintiff. According to the panel of judges, the compensation is paid in the amount of IDR.535,363,000 (five hundred thirty-five million three hundred sixty-three thousand rupiah). In events that will result in legal consequences, the legal consequences arising from an unlawful act are regulated in Articles 1365 to 1367 of the Civil Code, stating that Article 1365 of the Civil Code determines that any unlawful act causing loss to someone obliges the person at fault for causing this loss to compensate for it. Furthermore, Article 1365 of the Civil Code is very significant because, through this article, unwritten law is acknowledged by the Law. Regarding the provision of compensation in an unlawful act, which is mandatory, it means that the perpetrators must provide compensation to the aggrieved party [14].

Conclusion

To conclude, the legal consequence of the actions taken by the Defendants is that the execution carried out by the Defendants becomes legally flawed. This is due to the dismissal process of the Board of Directors being conducted improperly, where the termination was carried out for unclear reasons, and there was no defense provided by the Board of Directors.

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