

LETTER OF ACCEPTANCE

Dated: June 14, 2026

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We are pleased to share with you that our scientific & review committee has recommended your article titled: **“Responsibility of the Director of a Limited Liability Company who has resigned from the implementation of the EGMS based on Law No. 40 of 2007 concerning Limited Liability Companies”** Paper ID: 2803 has been accepted for publication in *International Journal of Social Sciences and Humanities (IJSSH)* in Vol. 4 No. 2 Year 2026.

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International Journal of Social Sciences and Humanities (IJSSH)

E-ISSN: 2985-6469 (Online)

Office: Jl. Tawak-Tawak Karang Sukun, Mataram, Indonesia

Whatsapp: +62 852 0518 7816



Responsibility of the Director of a Limited Liability Company who has resigned from the implementation of the EGMS based on Law No. 40 of 2007 concerning Limited Liability Companies

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Article History

Manuscript submitted:
10 March 2026
Manuscript revised:
19 April 2026
Accepted for publication:
17 May 2026

Keywords

Board of Directors, Legal Responsibility, EGMS, Limited Liability Company, Legal Certainty, Shareholders, Company Organs

Abstract

Limited Liability Companies as a legal entity that adheres to a three-tier board system consisting of the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners require clear legal certainty regarding the division of authority and responsibility of each organ. One of the legal issues that often arise in practice is regarding the status and responsibilities of the Board of Directors who have submitted their resignation in relation to the holding of the Extraordinary General Meeting of Shareholders (EGMS). This study aims to analyze the legal responsibility of the Board of Directors who have resigned from the implementation of the EGMS and to examine the legal certainty for shareholders on the EGMS held by the Board of Directors during the transition period, based on Law Number 40 of 2007 concerning Limited Liability Companies. This study uses a normative legal research method with a statute approach and a case approach. The results of the study show that the resignation of the Board of Directors does not necessarily relieve the person concerned from his legal obligations and responsibilities. During the transition period until the GSM accepts or decides on the resignation, the Board of Directors remains obliged to carry out its duties, including facilitating the implementation of the EGMS; Negligence in this case can give rise to civil liability that cannot be avoided by taking refuge behind the doctrine of the Business Judgment Rule. Legal certainty for majority shareholders is realized through the guarantee of the validity of EGMS resolutions held by the Board of Directors during the transition period as long as all formal and procedural requirements are met, while legal certainty for minority shareholders is realized through protection instruments in the form of the right to sue for annulment of the GSM resolution, appraisal rights, and alternative EGMS implementation mechanisms through the Board of Commissioners or court determinations.

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III

Introduction

The development of the business world in the era of globalization and digitalization has undergone a very rapid transformation, characterized by increasing global market integration, the development of information technology, and changes in business models that are increasingly data-based and digital networks. This transformation encourages companies to carry out continuous innovation in order to be able to maintain competitiveness in the midst of increasingly complex and dynamic competition (Porter & Heppelmann, 2014; Vial, 2019; Verhoef et al., 2021; Kraus et al., 2022). Digitalization not only changes the production and distribution patterns of goods and services, but also affects corporate governance structures, decision-making patterns, and corporate strategies in the face of the uncertainty of the global business environment (Nambisan et al., 2019; George et al., 2021). In this context, the phenomenon of the formation of corporate groups or concerns has developed significantly both at the national and international levels because it is considered to be able to increase efficiency, expand business networks, and strengthen the company's position in facing global competition (Morck et al., 2005; Khanna & Yafeh, 2007; Almeida & Wolfenzon, 2006; Claessens et al., 2000). Therefore, the need for an effective corporate governance system is increasingly important to ensure the sustainability and accountability of corporate activities.

In Indonesia, the company's legal development is a response to the dynamics of the national and global economy that continues to develop. Based on the explanation of Law Number 11 of 1995 concerning Limited Liability Companies, the regulation was born as an effort to replace the provisions in the Commercial Law (KUHD) which are considered no longer adequate in answering the needs of the modern business world. The presence of the law is part of the economic law reform that aims to create legal certainty for investors, strengthen the investment climate, and improve the efficiency of business activities in the face of economic globalization (La Porta et al., 1998; Djankov et al., 2008; Coffee, 2007; Armour et al., 2017). One of the substantive changes introduced is the obligation to fully deposit the issued shares to ensure the company's sustainability and financial health. Furthermore, within twelve years, Law No. 11 of 1995 was replaced by Law No. 40 of 2007 concerning Limited Liability Companies which came into effect on August 16, 2007. The presence of the 2007 IPT Law is a form of refinement of previous regulations to be more adaptive to the development of business law, technology, investment, and modern corporate governance practices that are developing at the global level (Aguilera et al., 2015; Bebchuk & Weisbach, 2010; Tricker, 2019).

In the structure of a Limited Liability Company, the regulation regarding the company's organs has a very important position because it is directly related to the company's management, supervision, and decision-making mechanism. The company's organs as stipulated in Law Number 40 of 2007 consist of the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners. This division of authority reflects the principles of good corporate governance which emphasizes the importance of accountability, transparency, responsibility, independence, and fairness in corporate management (OECD, 2023; Shleifer & Vishny, 1997; Solomon, 2020; Mallin, 2019). Based on Article 11 Number 1(4) of the 2007 IPT

Law, the IGMS is an organ of the company that has authority that is not given to the Board of Directors or the Board of Commissioners within the limits determined by the law and the articles of association. The provision shows that although the three organs of the company have an equal position in the company's organizational structure, each has different functions and authorities. In the IGMS forum, shareholders have the right to obtain relevant information regarding the company's conditions and activities from the Board of Directors and the Board of Commissioners as long as it does not conflict with the interests of the company. The right to information is one of the important instruments in protecting shareholders and strengthening corporate supervision mechanisms (Jensen & Meckling, 1976; Fama & Jensen, 1983; Adams et al., 2010).

The IGMS consists of the Annual IGMS and Other IGMS which in practice are known as the Extraordinary IGMS as stipulated in Article 178 paragraph (1) of the 2007 IPT Law. The Annual General Meeting of Shareholders must be held no later than six months after the end of the financial year and is the main forum for the accountability of the Board of Directors to shareholders. In the meeting, an annual report containing financial statements, reports on the company's activities, reports on the implementation of social and environmental responsibilities, supervisory reports of the Board of Commissioners, and information on the remuneration of the Board of Directors and Board of Commissioners must be submitted. The obligation to provide such information reflects the application of the principles of transparency and accountability which are the main foundations of modern corporate governance (Bushman & Smith, 2003; Healy & Palepu, 2001; Beekes et al., 2016). Meanwhile, the Extraordinary IGMS may be held at any time based on the needs of the company at the request of one or more shareholders representing at least one-tenth of the total number of shares with voting rights or at the request of the Board of Commissioners. Although it is called the General Meeting of Shareholders, the implementation and holding of the IGMS is in principle the authority of the Board of Directors as affirmed in Article 179 paragraph (1) of the 2007 IPT Law. This provision shows that the Board of Directors plays a central role in ensuring the implementation of an effective corporate governance mechanism in accordance with the applicable legal provisions.

The strategic role of the Board of Directors in the implementation and management of the company cannot be separated from the concept of fiduciary duty which is one of the fundamental principles in modern corporate law. Based on Article 11 number (5) of the 2007 IPT Law, the Board of Directors is fully responsible for the management of the company for the interests and purposes of the company. The concept of fiduciary duty comes from the Latin term *fiducia* which means trust, so it means that the Board of Directors receives a mandate to act in the interests of the company and its shareholders. In corporate law theory, fiduciary duty requires the Board of Directors to carry out their duties with a duty of good faith, duty of care, loyalty, and avoid conflicts of interest that can harm the company (Macey, 2008; Eisenberg, 1993; Velasco, 2009; Bainbridge, 2008; Keay, 2014; Kershaw, 2012). The fiduciary duty is also in line with agency theory which explains that the Board of Directors as an agent must act to maximize the interests of shareholders as principal and minimize potential conflicts of interest that can cause losses to the company (Jensen & Meckling, 1976; Daily et al., 2003; Filatotchev & Nakajima, 2014). Therefore, an understanding of the relationship between the authority of the Board of Directors in the holding of the IGMS and the

implementation of fiduciary duties is important to ensure the realization of good corporate governance and the protection of the interests of the company and shareholders.

Methods

This research uses normative legal research methods, which are research that focuses on the study of legal norms contained in laws and regulations, legal doctrines, and various other secondary legal sources. Normative legal research aims to find, study, and analyze the principles, rules, and legal concepts that govern a certain legal problem (Marzuki, 2021). In this study, the study focuses on the provisions of Law Number 40 of 2007 concerning Limited Liability Companies along with various regulations and jurisprudence related to legal protection of shareholders in Limited Liability Companies. The prescriptive nature of normative legal research allows researchers not only to describe the applicable legal provisions, but also to provide an assessment of the application of legal norms in practice (IRAC, 2020). To obtain a comprehensive analysis, this study uses a statute *approach* and a *case approach*. The legislative approach is carried out through the review of various relevant legal provisions as the main basis for analyzing research problems, while the case approach is used to examine the application of legal norms in concrete legal decisions or events. Through these two approaches, this research is directed to understand, interpret, and explain the substance and purpose of legal norms that govern legal protection for shareholders, so that a deeper understanding can be obtained regarding the implementation and effectiveness of applicable legal arrangements (Soekanto & Mamudji, 2019).

Results and Discussions

1. Organs of the Company and the Responsibilities of the Board of Directors who Resigned for the Implementation of the EGMS

A Limited Liability Company (PT) is a legal entity formed based on an agreement, carries out business activities with capital divided into shares, and fulfills the requirements as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies (PT Law 2007). As a legal entity, a Limited Liability Company has a position as a separate legal entity from its shareholders, so it has its own rights, obligations, assets, and legal responsibilities. This characteristic is one of the main foundations of modern corporate law because it allows for a clear separation between the interests of the company and the personal interests of the shareholders (Jensen & Meckling, 1976). From a corporate legal perspective, the existence of a legal entity also serves to provide legal certainty for investors while encouraging economic growth through a safer and more structured investment mechanism (La Porta et al., 2000). According to Ahmad Yani and Gunawan Widjaja, a Limited Liability Company is a legal entity established to run a company with a certain capital divided into shares, where shareholders participate through share ownership and legal actions carried out on behalf of the company. Therefore, the existence of a university is not only seen as an economic instrument, but also as a legal institution that has a complex organizational structure and governance mechanism.

Based on Article 1 number 3 of the 2007 PT Law, the organizational structure of the Limited Liability Company consists of the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners. The structure shows that the Indonesian corporate legal system adheres to a *three-tier board system* model that separates the decision-making, management, and supervision functions of the company. This model is in line with the principle of *checks and balances* which is one of the main elements in the implementation of *good corporate governance* (Shleifer & Vishny, 1997; Aguilera et al., 2015). The GMS is an organ that accommodates the interests of shareholders and has the

highest authority in determining the direction of the company's policies. The Board of Directors is an organ that carries out the function of managing and representing the company in its daily activities, while the Board of Commissioners is tasked with supervising and providing advice to the Board of Directors. The division of authority aims to prevent excessive concentration of power in one organ and ensure that all of the company's activities run in accordance with the company's objectives and applicable legal provisions (Mallin, 2019; Tricker, 2019).

In this system, the GMS has a very strategic position because it is an organ that has authority that is not given to the Board of Directors or the Board of Commissioners as affirmed in Article 1 number 4 and Article 75 paragraph (1) of the 2007 PT Law. The GMS is a forum for shareholders to take various important decisions related to the sustainability of the company, such as amendments to the articles of association, appointment and dismissal of the Board of Directors and Board of Commissioners, ratification of annual reports, and approval of certain corporate actions that have a significant impact on the company. Article 78 paragraph (1) of the 2007 PT Law distinguishes the GMS into two forms, namely the Annual GMS and the Extraordinary GMS (EGMS). The Annual General Meeting of Shareholders must be held no later than six months after the end of the financial year, while the EGMS can be held at any time if there is an urgent need related to the interests of the company. In modern business practice, EGMS is often used as a means of resolving strategic problems that cannot wait for the implementation of the Annual GMS, including when there is a vacancy in the position of the Board of Directors, internal conflicts of the company, organizational restructuring, and other corporate actions that require immediate decisions (OECD, 2023; Bebchuk & Weisbach, 2010).

The Board of Directors as the company's management organ plays a central role in the implementation of the GMS and EGMS. Based on Article 1 number 5 of the 2007 PT Law, the Board of Directors is an organ of the company that is authorized and fully responsible for the management of the company for the interests and purposes of the company and represents the company both inside and outside the court. This authority places the Board of Directors as the party that best understands the company's condition, business needs, and strategic steps that need to be taken to maintain business sustainability. In carrying out its duties, the Board of Directors is bound by the principle *of fiduciary duty*, namely the obligation to act in good *faith*, *duty of loyalty*, and *duty of care* for the best interests of the company (Eisenberg, 1993; Bainbridge, 2008; Keay, 2014). This principle emphasizes that the Board of Directors must not use their positions for personal interests or certain parties that can harm the company. Therefore, Article 97 paragraph (3) of the 2007 PT Law emphasizes that each member of the Board of Directors is personally responsible for the company's losses if proven guilty or negligent in carrying out their duties.

Legal problems arise when the Board of Directors submits their resignation but at the same time it is still necessary to hold an EGMS for the benefit of the company. Normatively, Article 79 paragraph (1) of the 2007 PT Law gives authority to the Board of Directors to summon and hold the GMS. Thus, as long as the resignation is not effective based on the decision of the GMS or the provisions of the company's articles of association, the Board of Directors concerned still has legal standing as an organ of the company and still bears the responsibilities attached to its position. During the transition period, the Board of Directors is still obliged to ensure the implementation of the EGMS if there is an urgent need or a legitimate request from shareholders. If the Board of Directors deliberately neglects these obligations, for example by not convening a meeting or hindering its implementation, then the action can be categorized as a *breach of fiduciary duty* which has the potential to give rise to legal liability (Macey, 2008; Coffee, 2007). However, based on Article 97 paragraph (5) of the 2007 PT Law, the Board of Directors can be exempted from liability if it is able to prove that the losses incurred are not due to its fault or

negligence, have acted in good faith and prudence, do not have a conflict of interest, and have taken steps to prevent losses from occurring. This provision shows that Indonesian company law accommodates the doctrine of *business judgment rule*, which is legal protection for the Board of Directors who make decisions rationally and in the interests of the company (Velasco, 2009; Kershaw, 2012).

Thus, the responsibility of the Board of Directors who have submitted their resignation does not necessarily end from the time the resignation letter is submitted. As long as the resignation has not been approved or has not been effective according to the law, all obligations and responsibilities attached to the position of the Board of Directors remain valid. Therefore, the holding of EGMS by the Board of Directors who have submitted their resignation remains legally valid as long as it is carried out in accordance with the provisions of the 2007 PT Law and meets all applicable formal requirements. In the context of a public company, this provision must also pay attention to the Financial Services Authority Regulation Number 15/POJK.04/2020 regarding the plan and implementation of the GMS of a public company. Violations of established procedures can result in formal defects that lead to the cancellation of the GMS decision. Therefore, compliance with legal procedures is the main requirement to ensure the validity of the EGMS in the transition period of the leadership of the Board of Directors.

2. Legal Certainty of Shareholders on the Implementation of EGMS Held by the Board of Directors who have Resigned

Legal certainty is one of the fundamental goals of law that functions to provide guarantees regarding the rights, obligations, and legal consequences of an action. According to Sudikno Mertokusumo, legal certainty is a protection for the community against arbitrary actions so that a person can obtain what is his right under certain conditions. Meanwhile, Gustav Radbruch placed legal certainty as one of the basic values of law in addition to justice and utility. In the context of corporate law, legal certainty is very important because it concerns the protection of shareholder rights, the validity of the actions of the company's organs, and the stability of business activities carried out by the company. Legal certainty is also one of the factors that affect the level of investor confidence in a country's legal system (Djankov et al., 2008; La Porta et al., 2000). Therefore, every provision that regulates the relationship between shareholders, the Board of Directors, and the Board of Commissioners must be clearly formulated so as not to give rise to multiple interpretations in its application.

In the legal system of Indonesian companies, all shareholders have the same position before the law regardless of the amount of shareholding. The 2007 PT Law provides various forms of legal protection to shareholders, including the right to attend and vote in the GMS, the right to obtain dividends and the remaining liquidation proceeds, the right to request the holding of the GMS, the right to obtain information about the company, the right to file a lawsuit against the company, and the right to request a share buyback (*buyback*) if it does not approve of certain corporate actions. These rights are a form of implementation of the principle of *investor protection* which is one of the important indicators in modern corporate governance (Claessens & Yurtoglu, 2013; OECD, 2023). The existence of these rights shows that Indonesian company law seeks to create a balance between the interests of majority and minority shareholders. The most crucial issue of legal certainty in this study is regarding the validity of the EGMS held by the Board of Directors who have submitted their resignation. From a positive legal perspective, the validity of the actions of the Board of Directors is determined by its legal status as an organ of the company. As long as the resignation is not effective, the Board of Directors still has legal legitimacy to exercise all its authority, including holding the EGMS. Therefore, the decisions made in the EGMS remain valid and binding as long as they comply with the provisions regarding the invitation of meetings,

quorum of attendance, and decision-making procedures as stipulated in the 2007 PT Law. For the majority shareholders, this condition provides legal certainty because it ensures the continuity of the company's decision-making process without being disturbed by administrative issues related to the resignation of the Board of Directors. However, for minority shareholders, legal certainty must also be interpreted as a guarantee that the EGMS mechanism is not used as a means to carry out actions that are detrimental to their interests.

In the perspective of modern corporate governance, the protection of minority shareholders is one of the most important aspects. The potential for *minority shareholder oppression* can still arise if majority shareholders use their vote dominance to make decisions that are detrimental to minority groups. Therefore, the formal validity of an EGMS should not be separated from the principle of substantive justice. As Gustav Radbruch put it, a law that is only oriented towards formal certainty without regard for justice can give birth to legalized injustice (*gesetzliches Unrecht*). In this context, the protection of minority shareholders must be realized through the guarantee of the right to obtain information, the right to file objections, the right to sue for adverse decisions, and the right to request the repurchase of shares if they do not agree to certain corporate actions. Thus, legal certainty is not only understood as compliance with procedures, but also as a guarantee of protection for all shareholders in a fair and proportionate manner.

Based on this description, it can be understood that the legal certainty for the implementation of the EGMS held by the Board of Directors who have submitted their resignation basically depends on two main aspects, namely procedural validity and substantive protection of shareholder rights. As long as the Board of Directors still has a valid legal standing and all procedures for the implementation of the EGMS are fulfilled in accordance with the provisions of the 2007 PT Law, the resulting decision has binding legal force. However, the validity must still be balanced with the protection of the interests of shareholders, especially minority shareholders, so that the legal objectives of certainty, justice, and benefits can be realized in a balanced manner. This approach is in line with the principles of *good corporate governance* which emphasizes transparency, accountability, responsibility, independence, and fairness in the implementation of modern companies (Tricker, 2019; Solomon, 2020; Mallin, 2019).

Conclusion

Based on the results of the research and discussion that has been described, it can be concluded that the organ system of Limited Liability Companies in Indonesian law adheres to a *three-tier board system* consisting of the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners. The three organs have different functions, authorities, and responsibilities, but they complement each other in realizing *good corporate governance*. In relation to the holding of the Extraordinary General Meeting of Shareholders (EGMS), the Board of Directors plays a central role because it has the authority to summon and hold meetings. Therefore, the resignation of the Board of Directors does not necessarily remove the legal obligations and responsibilities inherent in his position. As long as the resignation is not effective or has not received a decision from the GMS, the Board of Directors concerned is still obliged to carry out the company's management duties, including facilitating the implementation of the EGMS if necessary for the benefit of the company. Negligence in carrying out these obligations can give rise to legal liability, especially if it results in losses for the company and shareholders.

In addition, legal certainty for shareholders in the implementation of EGMS conducted by the Board of Directors who have submitted their resignation is basically determined by the fulfillment of all formal and procedural requirements as stipulated in Law Number 40 of 2007 concerning Limited

Liability Companies. For the majority shareholders, legal certainty is realized through guaranteeing the validity of EGMS decisions that remain binding as long as they are implemented in accordance with the provisions of laws and regulations. Meanwhile, for minority shareholders, legal certainty is realized through various available legal protection instruments, such as the right to file a lawsuit against adverse GMS decisions, the *right to appraisal* to request the repurchase of their shares, and the right to request the holding of the EGMS through the Board of Commissioners or through a court determination if the Board of Directors does not carry out its obligations. Thus, Indonesian company law has provided a mechanism that aims to maintain a balance between legal certainty, protection of shareholder rights, and the sustainability of the company's management.

Acknowledgments

The author expresses gratitude to God Almighty for all the graces, gifts, and opportunities given so that this research can be completed properly. The author also expresses his deepest appreciation and gratitude to all lecturers, supervisors, and academics who have provided direction, input, and support during the process of preparing this research. The guidance and contributions provided are an important part of the improvement of the substance and methodology of the research carried out. The author also expresses his gratitude to his family, colleagues, and all parties who have provided moral support, motivation, and assistance during the research and writing process of this article. The author realizes that this research still has limitations, so constructive criticism and suggestions are highly expected for future research improvements. Hopefully the results of this research can provide benefits for the development of legal science, especially in the field of corporate law and limited liability company governance in Indonesia.

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