

## Application of Lex Superior Principle in Shareholders General Meeting at Public Companies: South Jakarta District Court Case NO. 91/PDT. P/2024

Andryan Esra Sembiring, Endang Suprpti, Suriadi Bangun

Universitas Tama Jagakarsa, Indonesia

Email: andryanesra@gmail.com, endangspt0@gmail.com, radibangun@gmail.com

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### KEYWORDS

general meeting of shareholders, quorum, Lex Superior Derogate Legi Inferiori, district court decision

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### ABSTRACT

Here is the proofread version of your passage with the specified formatting: This study analyzes the application of the legal principle *Lex Superior Derogat Legi Inferiori* in the context of *General Meetings of Shareholders (GMS)\* in Indonesian Public Companies*. The research is grounded in the case of the South Jakarta District Court Decision No. 91/Pdt.P/2024/PN Jkt.Sel. concerning PT Eksploitasi Energi Indonesia, Tbk. The normative legal method is employed, examining the hierarchy of laws where Law No. 40 of 2007 on Limited Liability Companies holds superior status (Lex Superior), over the Financial Services Authority Regulation (POJK) No. 15 of 2020 (Legi Inferiori\*), which specifically governs GMS in Public Companies. The findings indicate that the Panel of Judges, confronted with the company's repeated failure to achieve a quorum from 2021 to 2023, prioritized the general provisions of the higher-tier law. This was done by granting the company's petition to set a quorum for a third GMS, based on Articles 78 and 86 of Law No. 40 of 2007, effectively setting aside the specific, conflicting procedures in the lower POJK. The study concludes that this judicial decision serves as a significant precedent, reinforcing the principle of legal hierarchy and providing crucial legal certainty for corporate governance. It demonstrates how courts can utilize the *Lex Superior* principle to resolve corporate deadlocks, offering a legal breakthrough that aligns with theories of progressive law and adaptive legal interpretation to meet practical business needs.

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## INTRODUCTION

Indonesia is a country of law, the constitutional foundation of Indonesia as a State of Law is contained in Article 1 letter 3 of the Constitution of the Republic of Indonesia which has undergone several changes (Usman, 2020). In exercising its power, the government is based on the applicable law (Rose & Miller, 2017). This concept is known as *the rule of law theory*, which emphasizes that the state is run based on the rule of law rather than power alone (Radin, 2017). Every action of the state administrator must be based on the applicable law (Rosenbloom, 2022). Thus, the Government's actions carried out in the context of state administration must be based on the "*rules of the game*" that are jointly determined and determined. As the executor of State power, the Government must be able to provide legal certainty to all citizens, both to individuals and to companies incorporated in Indonesia (Juanda, 2023). This is in accordance with the characteristics of the state of law, namely the existence of the Rule of Law (Pech, 2022). At the normative level, the rule of law is manifested in the existence of a hierarchy of legal norms that places the constitution as the supreme law. Meanwhile, empirically, the rule of law is reflected in every action taken by the government and society which is always based on applicable legal regulations (Cheesman, 2015).

Certainty in the law is one of the considerations in the business world. Capital owners in investing will see the extent to which existing laws in Indonesia can protect investments in the capital they invest in Indonesia (Hutahayan, Fadli, Amimakmur, & Dewantara, 2024). Capital owners invest by setting up a new company in Indonesia or investing directly through the Indonesian capital market (Rowter, 2016). To protect capital owners who invest in Indonesia, the Government makes regulations that ensure law enforcement for capital owners (Lira, 2024).

Indonesia has a hierarchy of applicable laws in the following order: (1) Constitution (Constitution), (2) Decree of the People's Consultative Assembly (MPR), (3) Law and Government Regulation in Lieu of Law (PERPU), (4) Government Regulation (PP), (5) Presidential Regulation, (6) Provincial Regional Regulation, (7) Regency or City Regional Regulation. Laws and regulations are recognized for their existence and have binding legal force as long as they are ordered by higher laws and regulations or formed based on authority (Hayek, 2022).

In law, one legal principle applies, namely the principle of *Lex Superior Derogat Legi Inferior* (Lindasari, 2025). The principle of *lex superior derogat legi inferiori* has a higher meaning of laws (norms/rules) negates the applicability of lower laws (norms/rules) (Overgaauw, 2022). In the state of law, the determination of the superiority of one legal norm over other norms can be done easily because of the existence of a written legal order that is arranged in a hierarchical manner (Prost, 2017). Especially in the Indonesian legal system, the foundation related to the hierarchy level of laws and regulations is specifically regulated in articles 7 and 8 of Law No. 12 of 2011 concerning the Formation of Laws and Regulations (Santos & Vijay, 2022).

In the trial process in court, the legal considerations of the Panel of Judges based on the legal evidence found in the trial can be the basis for the Panel of Judges to make a decision (Grimm, 2017). The decision of the Panel of Judges of the South Jakarta District Court No. 91/Pdt.P/2024/PN Jkt. Sel on the application to reduce the number of quorums in the Extraordinary General Meeting of Shareholders (EGMS) at PT Eksploitasi Energi Indonesia, Tbk became the background for the author to conduct a research with the title: "The Application of the Principle of *Lex Superior Derogat Legi Inferiori* in the General Meeting of Shareholders in a Public Company (Case Study: Determination of the South Jakarta District Court No. 91/Pdt.P/2024/PN Jkt. Sel)"

This research is motivated by the need to analyze the rules for the implementation of the General Meeting of Shareholders (GMS) in Limited Liability Companies as stipulated in Law Number 40 of 2007 which is domiciled as *Lex Superior*, as well as the rules for the implementation of GMS in Public Companies regulated in the Financial Services Authority Regulation (POJK) Number 15 of 2020 which is positioned as *Legi Inferiori*. In addition, this study also aims to examine the legal considerations of the Panel of Judges in applying the Principle of *Lex Superior Derogat Legi Inferiori* in the Decision of the South Jakarta District Court Number 91/Pdt.P/2024/PN Jkt.Sel. regarding the application for the determination of quorum for the Extraordinary GMS at PT Eksploitasi Energi Indonesia, Tbk.

The purpose of this study is to know and understand in depth the provisions of the GMS according to Law No. 40 of 2007 as *the Lex Superior* for Limited Liability Companies and the provisions of the GMS according to POJK No. 15 of 2020 as *Legi Inferiori* in the regulation of the GMS in Public Companies. Furthermore, this study aims to analyze the legal considerations of the Panel of Judges who apply the Principle of *Lex Superior Derogat Legi Inferiori* in the determination (Agustiwi, 2018). The benefits of this research are divided into theoretical and practical benefits (Nas, 2016). Theoretically, this research is expected to provide information on the development of judicial practice and become a basis and reference for similar research and the development of legal science in the future (McCrudden, 2017; Taekema, 2018).

Practically, the results of this study can provide input for the Financial Services Authority in drafting regulations that can prevent obstacles to the implementation of the GMS of Issuers, for Capital Market Issuers as a legal option to apply for the determination of the implementation of the GMS through the Court, and for Capital Market Investors to provide legal certainty in investing. For District Court Judges, this research can add insight in deciding similar cases, and for academics it can be used as material for further study and research on the implementation of the Third GMS in Public Companies.

## RESEARCH METHOD

This study aimed to obtain valid and objective legal research results by reviewing the South Jakarta District Court Decision No. 91/Pdt.P/2024/PN Jkt.Sel. A systematic and clear research method was deemed necessary for this purpose. The method established for this study included several key components.

The research employed normative legal methods, focusing on the written legal principles applied within the positive legal system. It analyzed not only relevant regulations but also theories and concepts that underpin the applicable legal framework. This approach involved a comprehensive literature review, which included formal sources of law such as legislation, court rulings, agreements, and legal doctrines.

The study was descriptive and analytical in nature, intended to explain and analyze legal problems and systems pertinent to the case under investigation. In particular, it reviewed the applicable laws and regulations and critically analyzed the South Jakarta District Court decision related to the General Meeting of Shareholders at PT Eksploitasi Energi Indonesia, Tbk.

Data for the research were sourced exclusively from secondary materials. These consisted of primary legal materials such as laws, regulations, and court decisions; secondary legal materials including books, academic works, and previous research findings; and tertiary materials derived from internet resources.

The collection of these legal materials relied on thorough literature review techniques. This included gathering laws, regulations, court decisions, books, journals, articles, and internet-based materials relevant to the subject matter.

For the analysis of legal materials, the study focused on interpreting theories, statutory laws, regulations, and the rationale provided by the panel of judges in the South Jakarta District Court regarding the General Meeting of Shareholders in public companies. This analytical framework enabled a clear understanding of the case and its implications for legal principles in corporate governance.

## RESULTS AND DISCUSSION

### **General Meeting of Shareholders in accordance with Law Number 40 of 2007 concerning Limited Liability Companies as *Lex Superior* for Limited Liability Companies and General Meeting of Shareholders in accordance with Financial Services Authority Regulation (POJK) Number 15 of 2020 concerning the Plan and Implementation of General Meeting of Shareholders in Public Companies as *Legi Inferior* in regulating General Meeting of Shareholders in Public Companies**

The establishment of a Limited Liability Company in Indonesia is based on Law No. 40 of 2007. Consequently, every Articles of Association of the Company, including provisions regarding the holding of the General Meeting of Shareholders (GMS), refer to the Law. More specifically, the General Meeting of Shareholders is regulated in Chapter VI, articles 75 to 91. Thus, Law No. 40 of 2007 functions as the *Lex Superior* or the highest legal basis that must be complied with by every limited liability company in the implementation of the General Meeting

of Shareholders. The change in the status of a Limited Liability Company to a Public Company is made before a Notary and stated in the Deed of Amendment, then the Limited Liability Company becomes a Public Company, so that in the implementation of the General Meeting of Shareholders of the Company is subject to the Financial Services Authority Regulation (POJK) No. 15 of 2020 concerning the Plan and Implementation of the Extraordinary General Meeting of Shareholders in a Public Company, so that POJK No. 15 of 2020 is *an Inferior* LegiLaw Number 40 of 2007.

Based on the provisions of article 79 paragraph 10 of Law No. 40 of 2007 states that the holding of the GMS of a Public Company is subject to the provisions of the laws and regulations in the field of capital market and does not determine otherwise, the holding of the GMS in the Public Company is regulated under the Capital Market Law, namely in POJK No. 15 of 2020, which is a legal product issued by the OJK in accordance with the authority given by Law No. 21 of 2011 concerning the Financial Services Authority in article 8 letters a and c which state that the Financial Services Authority has the authority: (a) to establish the implementing regulations of the Law and (c) to establish the regulations and decisions of the OJK, so that POJK No. 15 of 2020 concerning the plan to hold a GMS in a Public Company is a lower hierarchical regulation compared to Law No. 40 of 2007 concerning Limited Liability Companies.

### **Consideration of the Panel of Judges who apply the principle *of lex superior derogat legi inferiori* in the decision of the South Jakarta District Court Number 91/Pdt.P/2024/PN Jkt.Sel.**

The Panel of Judges in making a decision by making a consideration based on the exceptions and subject matter arising in the proceedings, the Panel of Judges granted the application of PT Eksploitasi Indonesia, Tbk, to stipulate the provision of the number of quorum in the third general meeting of shareholders of at least 35% of all shares that have legal voting rights with the agenda of Approval of amendments to the Articles of Association, to adjust article 3 regarding the purpose, The Company's business objectives and activities should be adjusted to the provisions of the field group in the regulations of the Indonesian Business Field Standard Classification, with the consideration of the Panel of Judges as follows:

1. Since 2021-2023, PT Eksploitasi Energi Indonesia, Tbk has been unable to hold a GMS so that PT Eksploitasi Energi Indonesia, Tbk cannot develop its business and cannot distribute dividends, so from the uncertainty and absence of legal certainty, then based on the Articles of Association article 22 letter F of the Articles of Association of PT Eksploitasi Energi Indonesia, Tbk, it is stated that the number of quorums of the second meeting was not reached, then the number of quorums shall be determined by the Chief Justice of the District Court whose jurisdiction includes the place of residence or domicile of the Company.
2. Article 86 paragraph 5 of Law No. 40 of 2007 concerning Limited Liability Companies states that "If the number of quorums at the Second GMS does not reach the requirements in paragraph 4, then the Company submits an application to the Chairman of the District Court whose jurisdiction the Company is domiciled, to determine the number of quorums of attendance at the Third GMS.
3. Article 78 paragraph 4 of Law No. 40 of 2007 states that other General Meeting of Shareholders (GMS) can be held at any time based on the interests of the Company.
4. Article 22 number 2 of the Articles of Association of PT Eksploitasi Energi Indonesia, Tbk states that in order to be valid and able to make binding decisions, the second meeting must be attended by shareholders representing at least 1/3 of the total shares with valid voting rights.
5. From 2021 PT Eksploitasi Energi Indonesia, Tbk could not hold the EGMS, in 2022 the Applicant had made a summons to be able to hold the EGMS, but the EGMS could not be

held because it did not reach a quorum, as is the case in 2023, so in accordance with article 78 paragraph 4 of Law No. 40 of 2007, other GMS can be held at any time based on the needs of the Company, so it is considered necessary to carry out other EGMS to accommodate the impasse experienced by PT Eksploitasi Energi Indoensia, Tbk.

Based on the above considerations, the Panel of Judges of the South Jakarta District Court made a decision to determine the holding of the Third GMS, where the Panel of Judges did not apply POJK No. 15 of 2020 article 22 as a special rule that regulates the holding of GMS in Public Companies, but the Panel of Judges applied Article 80 paragraphs 1 and 2 of Law No. 40 of 2007 stating that: (1) If the Board of Directors or the Board of Commissioners does not convene the GMS in accordance with the deadline in Article 79 paragraph 5 and paragraph 7, then the shareholders who request the GMS shall have the right to submit an application to the Chairman of the local District Court. This application aims to obtain permission so that the applicant can summon the GMS himself (2) The granting of permission to hold the GMS will be determined by the Chairman of the District Court after the summoning process and hearing of the applicant, the Board of Directors, and/or the Board of Commissioners. The determination can only be issued if the applicant has summarily proven the fulfillment of the requirements and the existence of a reasonable interest from the applicant in the implementation of the GMS.

The decision to determine the Panel of Judges of the South Jakarta District Court accommodates the impasse experienced by PT Eksploitasi Energi Indonesia, Tbk by implementing other EGMS in accordance with article 78, paragraph 4, Law No. 40 of 2007. The holding of the Third GMS will provide legal certainty for the Company's *stakeholders* and certainty in the Company's operational continuity. With the grant of PT Eksploitasi Energi Indonesia, Tbk's application to hold a GMS, this proves that the Panel of Judges saw that PT Eksploitasi Energi Indonesia, Tbk's application had summarily proven that the requirements had been met and the Applicant had a reasonable interest in holding the GMS in accordance with article 80, paragraph 2 of Law No. 40 of 2007.

The decision of the Panel of Judges of the South Jakarta Court also supports theories of law formation, such as the theory of Progressive Law, where progressive law views that legal changes do not always have to start with the revision of the law. The main focus is precisely on the creativity of legal practitioners (judges, prosecutors and advocates) in applying the law appropriately in accordance with the demands of space and time. These legal practitioners can create change by interpreting existing regulations creatively, without the need to wait for them to be officially changed, and in the Legal Interpretation Theory states that after a law is passed, the process of interpreting the law plays a vital role. The theory of legal interpretation itself is the study of how judges or authorized authorities give meaning to the text of the law so that it can be applied concretely to factual cases, and the Theory of Legal Change which states that the Law is required to be adaptive in order to be relevant to the dynamics and needs of society. In this context, law enforcers not only act as literal implementers of regulations, but must also be able to capture and reflect the will of the law that occurs in society, through the interpretation of the law by judges or authorized authorities so that it is relevant when applied to real cases. Thus, the fundamental purpose of law to create order can be achieved, which ultimately provides legal certainty.

Based on legal considerations and theories of law formation as described above, it can explain how the Panel of Judges of the South Jakarta District Court interprets Law No. 40 of 2007 as *Lex Superior* and Financial Services Authority Regulation No. 15 of 2020 as *Legi Inferior* in the holding of the Third Extraordinary General Meeting of Shareholders in Public Companies, and makes decisions by applying the Principles of *Subordinate Shareholders Lex Superior Derogate Legi Inferiori* to provide legal certainty for *the Company's* stakeholders. With the granting of the application for the implementation of the Third EGMS

to determine the number of quorums of attendance and decision-making in the Third EGMS of PT Exploitasi Energi Indonesia by the Panel of Judges of the South Jakarta District Court, this decision is final and has permanent legal force, this is in accordance with Law No. 40 of 2007, article 86, paragraph 7.

## CONCLUSION

Based on the analysis, Law Number 40 of 2007 concerning Limited Liability Companies serves as the *Lex Superior* governing General Meetings of Shareholders (GMS), including quorum requirements and court stipulation mechanisms. When a company becomes a Public Company, its GMS implementation is governed by the Financial Services Authority Regulation (POJK) Number 15 of 2020, which holds a lower hierarchical status (*Legi Inferiori*). In the South Jakarta District Court Decision No. 91/Pdt.P/2024/PN Jkt.Sel., the Panel of Judges applied the *Lex Superior Derogat Legi Inferiori* principle by prioritizing Law No. 40 of 2007 over the POJK, resolving a corporate deadlock caused by repeated quorum failures at PT Exploitasi Energi Indonesia, Tbk. from 2021 to 2023. The court's decision, based on the Company's Articles of Association and specific articles of Law No. 40 of 2007, mandated holding another GMS with a set quorum, reinforcing the legal hierarchy principle, providing legal certainty, and exemplifying progressive legal theory and adaptive interpretation. Future research could explore the practical impacts of this legal hierarchy principle on corporate governance practices across different jurisdictions and the potential need for regulatory harmonization to reduce conflicts between laws and subordinate regulations.

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