directors and the board of commissioners. Each has a position and authority in accordance with the functions and responsibilities they have.[65]

If described, the ultimate authority of the GMS is in accordance with the 2007 Company Law, among others as follows.

1. Declares accepting or taking over all rights and obligations arising from legal actions committed by the founder or his proxy (article 13 paragraph 1).
2. Approve legal actions on behalf of the company by all members of the board of directors, all members of the board of commissioners together with the founders on condition that all shareholders attend the GMS, and all shareholders approve them in the GMS (article 14 paragraph 4).
3. Amendments to the articles of association are determined by the GMS (article 19 paragraph 1).
4. Give approval of the buyback or further transfer of shares issued by the company (article 38 paragraph 1).
5. Delegate authority to the Board of Commissioners to approve the implementation of the GMS decision on the buyback or further transfer of shares issued by the company (article 39 paragraph 1).
6. Approve the addition of company capital (article 41 paragraph 1).
7. Approve the reduction in company capital (article 44 paragraph 1).
8. Approve the annual work plan if the articles of association determine so (article 64 paragraph 1 jo paragraph 3).

[65] *Ibid*, p 307.

9. Give approval to the annual report and ratification of the financial statements as well as the Board of Commissioners supervisory duty report (Article 69 paragraph 1).
10. Decide on the use of net income, including the determination of the amount of allowance for mandatory reserves and other reserves (article 71 paragraph 1).
11. Establish the division of duties and management of the company between members of the board of directors (article 91 paragraph 5).
12. Appoint members of the board of directors (article 94 paragraph 1).
13. Establish the amount of salaries and allowances for members of the board of directors (article 96 paragraph 1).
14. Appoint another party to represent the company if all members of the board of directors or commissioners have a conflict of interest with the company (article 99 paragraph 2 letter c).
15. Give approval to the Directors to:
    a. Transfer the company's wealth, or
    b. Making a guarantee of the company's wealth debt.

    Approval is required if more than 50% (fifty percent) of the total net assets of the company in 1 (one) transaction or better related to each other or not (article 102 paragraph 1).
16. Give approval to the Directors to submit bankruptcy or the company's own application to the commercial court (Article 104 paragraph 1).
17. Dismiss directors (article 105 paragraph 2).

18. Strengthen the decision on the temporary dismissal made by the board of commissioners to members of the board of directors (article 106 paragraph 7).
19. To appoint members of the board of commissioners (article 111 paragraph 1).
20. Determine the amount of salary or honorarium and allowances for members of the board of commissioners (article 113).
21. Appoint independent commissioners (article 120 paragraph 2).
22. Give approval on the merger plan (article 223 paragraph 3).
23. Give approval regarding mergers, consolidations, expropriations or separations (article 127 paragraph 1).
24. Give a decision on the liquidation of the company (article 142 paragraph 1 letter a).
25. Receives liability from the liquidator for the liquidation settlement (article 143 paragraph 1).

From the explanation above it can be seen, besides the general authority formulated in article 1 number 4 and article 75 paragraph 1, there is another specific authority in the form of granting approval for the actions of the Board of Directors or the Board of Commissioners or issuing the determination of certain legal actions as imposed by one one by the description. Regarding the quorum requirements and GMS decision making through electronic media according to article 77 paragraph 2, it is subject to the requirements specified in this law or those stipulated in the articles of association. If guided by the provisions of the

2007 Limited Liability Company Law, the quorum quantity and attendance decision making requirements for each agenda or agenda item of the GMS are classified as follows:

1. The quorum requirement for attendance and decision making of the GMS regarding ordinary agenda, provided for in article 86:
    a. The quorum for attendance is 1/2 part of the total shares with voting rights, present or represented.
    b. Furthermore, according to Article 87 Paragraph (2), the decision is valid, if it is agreed that more than 1/2 of the total votes cast.
2. Quorum requirements and GMS decision making for the type of agenda or agenda of "amendment" to the articles of association set out in article 88, with the following conditions:
    a. Quorum attendance requirements, at least 2/3 of the total shares with voting rights, present or represented.
    b. The decision is valid if approved at least 2/3 of the total number of votes cast.
3. The quorum requirement for attendance and decision making of the GMS regarding the merger, merger, takeover or separation, submission of an application for bankruptcy, the extension of the period of its establishment and dissolution of the company, refer to article 89 with the following provisions:
    a. Attendance quorum requirements, at least 3/4 of the total shares with voting rights, present or represented,

b. The decision is valid if agreed at least 3/4 part of the total votes cast.

From the explanation above, the quorum requirements and requirements for decision making by the GMS through electronic media are the same as for the conventional GMS. Equally subject to and refer to the conditions specified in article 86 article 88 and article 89.[66]

In this case, the second GMS can be held with a quorum of attendance and decision-making determined by article 89 paragraph 3 Law number 40 of 2007 of Indonesian Company Law if the quorum for the presence of the first GMS is not reached. Even the third GMS can be conducted based on article 89 paragraph 4 Law number 40 of 2007 of Indonesian Company Law with the quorum stipulated by the Chair of the District Court in accordance with the provisions of article 86 paragraph 5 Law number 40 of 2007 of Indonesian Company Law.[67]

General meeting of shareholders itself is regulated on article 78 verses (1) Law number 40 of 2007 of Indonesian Company Law mentioning:

"GMS are consist of annual GMS and other GMS".[68]

The Extraordinary GMS is the general meeting of shareholder that held anytime and conduct based on necessity and the interest of the company. The GMS decisions are basically taken based on deliberations for consensus (Article 87 paragraph 1) Law number 40 of 2007 of Indonesian Company Law). The GMS

[66] *Ibid*, p *313.*
[67] *Ibid*, pg 511-512.
[68] *Ibid.*

decisions are basically taken based on deliberations for consensus (Article 87 paragraph 1 Law number 40 of 2007 of Indonesian Company Law).

However, in the event where a decision based on deliberation and consensus is not reached, the decision is valid if it is approved more than 1/2 (one half) of the total votes issued unless the Law and or articles of association stipulate that the decision is valid if approved by the number a larger agreeing vote (Article 87 paragraph 2 of the Law number 40 of 2007 of Indonesian Company Law). Moreover, based on the *Super Majority principle,* it takes at least more than 50% of the shares with voting rights to be present at the GMS. Summons for the GMS is regulated in article 81, article 82 and article 83 of the 2007 Limited Liability Company Law.

1. The one who must call the GMS, the Board of Directors

Directors who call the GMS to shareholders. Because according to the explanation in article 81 paragraph 2, the invitation to the GMS is the directors' obligation. However, in certain cases, the invitation to the GMS can also be carried out by the Board of Commissioners or shareholders in accordance with the provisions of article 81 paragraph 2. Summons of GMS by the Board of Commissioners**.** The new board of commissioners has the authority to summon GMS in the case specified in article 79 paragraph (6) and explanation of article 81 paragraph 2:

A. The Board of Directors does not make a GMS summons within 15 days from the date of the request for a GMS submitted by the board of directors. as explained above, article 79 paragraph 2 letter (b)

grants the board of commissioners the right to request a GMS to the directors. In case the directors do not call the GMS based on the request of the board of commissioners within 15 days from the date the directors receive the request letter, then based on article 79 paragraph 6 letter (b), gives the board of commissioners the right to make their own summons.

B. In the case of directors being unable

If all members of the board of directors are unable to attend, the GMS can be summoned by the board of commissioners. There is a conflict of interest between the directors and the company In such cases the law authorizes the Board of Commissioners to call a GMS.

C. Invitation to the GMS by shareholders

As explained above, article 81 paragraph 1 gives the right to shareholders to submit an application to the head of the district court to grant permission to conduct the meeting of shareholders of the GMS. The right is open if the board of directors or the board of commissioners does not call a GMS within 15 days from the date of the board of directors or the board of commissioners receives a letter requesting the organizer of the EGMS from shareholders.

2. The grace period for a GMS summons

Regarding the grace period for a GMS summons, it is regulated in article 82 paragraph 1 with the following explanation:

A. Summoned are all shareholders whose shares have voting rights,

B. Summons of the GMS to shareholders, carried out before the GMS is held,

C. Summons to the GMS must be made no later than 14 days prior to the date when the GMS is held, excluding the date of the notice and date of the GMS.

3. Form and Content of the Call

The legal form of a GMS summons according to article 82 paragraph 2 must be made:

A. In the form of registered mail, and/or In the form of advertisements in newspapers.

B. Moreover, it must be done in writing. It can be in the form of registered letters or advertisements in newspapers.

According to article 1 number 14 of the 2007 Limited Liability Company Law. Newspapers are Indonesian language newspapers that are circulating or on a national scale. Regarding the contents of the GMS summons to shareholders, outlined in article 82 paragraph 3. Must be listed:

A. The date the GMS was held,

B. The place where the GMS was held,

C. When the AGM (Annual General Meeting) is held,

D. GMS Agenda,

E. Notification that the GMS material to be discussed is available at the company's office from the date of the GMS summons until the date the GMS is held.

In connection with the matter of GMS material that will be discussed in the GMS, article 82 paragraph 3 affirms:

A. The Company is obliged to provide a free copy of GMS material to shareholders.
B. but the obligation arises only if requested by the relevant shareholders.

As a note, the GMS summons must contain sufficient information that can really be used as a basis for consideration for shareholders to determine whether he will attend the GMS or not, even though he knows the risks, that he is subject to the GMS resolutions even if he is absent.

In the form and manner of transfer of stock under Article 55 of the limited liability law of 2007, it is permissible for the transfer of stock to be how the transfers are governed by the underlying budget, provided that they are in accordance with the law. of 2007 that can be set in the basic budget, described below:

1. Done with the deed of transfer of rights

transfer of rights to shares according to article 56 paragraph 1 must be carried out with a “deed of transfer of rights”. According to the explanation of this article, what is meant by “deed”:

A. maybe in the form of a notarial deed or a deed made before a notary, or
B. deed under the hand.

2. The deed or copy is submitted in writing to the company

the second method according to article 56 paragraph 2, deed of transfer of rights or copy, is submitted in writing (Schriftelijke, in writing) to the company. Submission to the company can be done by those who transfer rights or who receive rights. the important thing is that the deed of transferring rights must be submitted to the company, the law does not specify who has to submit it.

3. The Board of Directors must record and notify the transfer of rights to shares

the following methods or actions regarding the “obligation” of the company's directors to take the following actions:

a. Directors “must” record the transfer of rights to shares:
    1) The recording is done in DPS or special register.
    2) that is recorded, date and day are important in that right.
b. Directors must “notify” changes in the composition of shareholders to the minister

the obligations of the second director in connection with the transfer of rights to shares:

1) Notifying the changes in the composition of shareholders to the minister. According to the explanation in article 56 paragraph 3, what is meant by “notifying changes in the composition of shareholders to the minister” includes changes in the composition of shareholders mentioned because of inheritance, expropriation or separation.

2) The Minister records the transfer of rights to the shares in the company register no later than 30 days from the date of recording the transfer of rights. [69]

Furthermore, article 85 of company law mention that "Shareholders, either alone or represented by a power of attorney, are entitled to attend the GMS and use their voting rights in accordance with the number of shares they have."[70] Means, power of attorney can be used for representing shareholders in the general meeting of shareholders itself. Moreover, in article 85 1 law no 40 of 2007 of company law mentioned that shareholder either individually or represented based on power of attorney has arights to attending and using vote rights as total shares that owned by himself. Means, the attorney who granted rights can be using the vote rights in the general meetings of the shareholder. Based on the investment agreement that delegates to the PT Berkah Karya Bersama the power of attorney belongs to PT Berkah Karya Bersama. Furthermore, the power of attorney that gives to the PT Berkah Karya Bersama is irrevocable power of attorney, which means it cannot be revoked by Siti Hardiyanti Rukmana because of it needs agreement and approval from the other party who makes an agreement with her. In fact, Siti Hardiyanti Rukmana did not inform the revocation to the PT Berkah Karya Bersama and without concern of PT Berkah Karya Bersama. Power of attorney in agreement delegated by mandate (*Lastgeving*). The mandate itself provided on Article 1792 civil code stated that "A mandate is an agreement, by

[69] *Ibid, p 268-269.*
[70] *Ibid.*

which an individual assigns authority to another, who accepts it, to perform an act on behalf, such mandator".[71]

Furthermore, based on article 1813, there are many conditions that can terminate mandate. A mandate is terminate as follows:

1. revocation of the mandate granted to the mandatary;
2. termination of the mandate by the mandatary;
3. the death, the guardianship, the bankruptcy or apparent insolvency, either of the mandator or the mandatary; due to the marriage of the woman who has granted or accepted the mandate.[72]

Article 1814 also regulates the right of mandator in revoking the authority given to the mandatary "The mandator may revoke the authority if he deems fit, and if there are grounds therefor, he may require the mandatary to return the mandate." [73] In addition, irrevocable power of attorney can be found on the decision of the Supreme Court: December 16th, 1976 No.731 K / Sip / 1975 and the decision of the Supreme Court: November 17th, 1987 No.3604 K / Pdt / 1985.

Regarding the minutes or minutes of the GMS, regulated in article 90 of limited liability company law. Each GMS must be made minutes. Therefore, the making is "imperative" (mandatory rule). The GMS, which has not been made, is invalid and is considered non-existent. As a result, things decided and determined at the GMS could not be implemented. Those who are obliged to sign the minutes of the GMS "must" be signed. If the minutes of the GMS are not made with a

[71] Indonesian Civil Court article 1792.
[72] Indonesian Civil Court article 1813.
[73] Indonesian Civil Court article 1814.

“notarial deed” that is burdened with the obligation to sign are:

1. Chair of the meeting, and
2. at least 1 (one) shareholder appointed from and by the GMS participants.

according to the explanation in article 10 paragraph 1, the purpose of signing by the chair of the meeting and at least 1 (one) shareholder appointed from and by the GMS participants, aims to ensure the certainty and truthfulness of the contents of the minutes of the GMS. Starting from the provisions of article 90 paragraph 2 the minutes of a GMS made with a notarial deed are not required to be signed by the chairperson of the meeting and 1 (one) shareholder. Without being signed, the GMS minutes drawn up with a notarial deed, the contents contained therein are deemed to be truthful. This is in accordance with the legal function of a notarial deed as an authentic deed. In accordance with the provisions of article 1870 of the Civil Code, an authentic deed has a perfect proof of power about what is contained therein and binds to the parties that make and those who have rights from them.[74]

In the decision of Supreme Court No 862K/Pdt/2013 the judges decided to annulled the results of the meeting of the resolutions of the EGMS on March 18, 2005, concerning the implementation of the investment agreement because it was considered to violate the procedure for the acquisition of share ownership under the Company Law. In my opinion, the judicial decision is unfair because PT Berkah Karya Bersama has been informed of the shareholders in EGMS.

[74] M. Yahya Harahap, *Op.cit, p 340.*

Moreover, both parties signed an investment agreement that must be considered as a reason for the parties to come in EGMS as the implementation of the agreement itself. The Supreme Court Judge is of the opinion that the Extraordinary General Meeting of Shareholders held on March 18, 2005 cannot be implemented according to the law written on limited liability company Law No. 40 of 2007 in Article 85 paragraph (1) that stating:

> *"Shareholders, either alone or represented by a power of attorney, are entitled to attend the GMS and use their voting rights in accordance with the number of shares they have".*

On the other hand, the defendants considered that based on the power of attorney given by the plaintiff (Siti Hardianti Rukmana) on June 3th 2003, the plaintiff used the power of attorney as the basis for the EGMS on March 18rd 2005. As written in articles of investment agreement on August 23rd, 2002 and Supplemental Agreement February 7th, 2003 which stated;

> *"in the framework of the implementation of the Investment Agreement dated 23 August 2002 as further supplemented by the Supplemental Agreement dated 7 February 2003 executed by the parties thereto, including the Principal and the Attorney, to call and /or attend any EGM of CTPI which will discuss, inter alia, the following matter."*

The power of attorney given by the plaintiff is a power of attorney that cannot be revoked in accordance with the clause that was agreed upon by the parties based on Article 1338 of the Civil Code which states that;

> *"All agreements are made lawfully in accordance with the law apply as a law for those who make it".*

The provisions in article 1813 of the Indonesian Civil Code can deviate

from the provisions in articles 1813 and 1816 of the Civil Code.[75] The EGMS of March 18rd 2005, was an implementation of an Investment Agreement. The power of attorney is an accession agreement and is an entity that cannot be separated from the investment agreement as a principal agreement. Moreover, Article 1343 of the Civil Code states that if the words of an agreement can be given various kinds of interpretations, then the intentions of the two parties making the agreement must be investigated.

In relation to the agreement of the power of attorney, it is necessary to investigate the intent and purpose of the parties in making and agreeing to the power of attorney agreement. The power of attorney agreement is generally made for the benefit of the Mandator[76]. Therefore, the power of attorney agreement allows the power of attorney the right to withdraw his power in accordance with the provisions of Article 1814 of the Indonesia Civil Code. This is certainly different from the absolute power of attorney or the power of attorney that cannot be withdrawn. An irrevocable power of attorney is not made for the interests of the mandatary but is made solely for the benefit of the recipient of the power of attorney. Absolute power of attorney is made based on the principal agreement to carry out the obligations or achievements of the attorney. The condition of irrevocable conditions is due to the mandatary recipient carrying out its obligations with the main agreement. If the recipient of the power of attorney has

[75] Diana Kusumasari, *"Surat Kuasa Mutlak"* https://www.hukumonline.com/klinik/detail/lt4d82ef71dee0a/surat-kuasa-mutlak/. Accessed October 1st 2019.

[76] Julia Kagan, "*Power of Attorney"*. https://www.investopedia.com/terms/p/powerofattorney.asp. May 05 2019. Accessed Desember 03 2019.

not carried out his obligations or achievements, then the irrevocable conditions become invalid.[77]

An irrevocable condition is required for the mandatory for guarantee obligations the mandator in accordance with the principal agreement. Thus, in order to understand the intent and purpose of the parties in making and agreeing to absolute power of attorney, it is necessary to pay attention to the principal agreement that underlies the issuance of the power of attorney.

Problems of enforcement arise when a party fails without excuse or justification to keep a contractual commitment. The most familiar kinds of contract enforcement involve the payment of money damages and specific relief. However, the law makes other important remedies available especially the power to cancel a contract in response to a material breach. The parties also may address the consequence of the breach in their agreement. They may do so in the form of an agreed damage clause, which will be enforced if it avoids the pitfalls of the rule against penalties. Contract enforcement also occurs when a party invokes an enforcement term other than one providing for agreed damages. Principles of good faith govern these means of contract enforcement. [78]

In addition to being based on the provisions of the law, the interpretation of the agreement can be based on the principle of good faith. In modern contract law, the principle of good faith is a fundamental agreement principle. In contract law, good faith has three functions.[79] Good faith in its first function teaches that

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[77] Subekti, *"Hukum Perjanjian",* Jakarta: PT Intermasa, 1998, p 57-58.
[78] Steven J Burton, *Op.cit* , p 5.
[79] Ridwan Khairandy, *Kebebasan Berkontrak & Pacta Sunt Servanda Versus Iktikad Baik: Sikap yang harus diambil pengadilan*,Yogyakarta, FH UII PRESS, 2015, p 64-67.

all contracts must be interpreted in good faith. The second function is the add function (aanvullende werking van de geode trouw). The third function is the function of limiting and negating (very often derogerende werking van de geode trouw).[80] The Hoge Raad[81] in its decision dated 9 February 1923 gave the meaning of good faith with the words *redelijkheid en bilijkheid*. *Redelijkheid* is reasonable or in accordance with common sense. *Bilijkheid* is appropriate.

In the context of the implementation of the agreement, the role of good faith (*te goeder trouw)* really has a very important meaning. In fact, by prof. R. Subekti S.H. in his book "*the Good faith Agreement"* was said to be the most important joint in contract law. This can be understood because good faith is the main foundation to be able to carry out an agreement as well as possible and as it should. How important is the role of good faith in the implementation of the agreement, we will feel especially now, where aspects of life and community life are increasing and more complex. Legal relations in the form of agreements or contracts, both between community members and between community members and private legal entities with government agencies, are often not so simple to implement. In fact, sometimes the implementation of the agreement is a long series and takes a long time. No wonder while the implementation of the agreement was running suddenly there was a change in such a way, which was very influential on the implementation of the agreement, which had never previously been imagined to happen, so there was nothing stipulated in the agreement. Perhaps the change in circumstances resulted in the implementation of

[80] Ridwan Khairandi, *Itikad Baik dalam Kebebasan Berkontrak*, Jakarta: Pasacasarjana Fakultas Hukum Universitas Indonesia, 2003, p 216.

[81] *Hoge Raad* is dutch supreme court.

the agreement not being possible as originally agreed, or if it might also be carried out but with such a large risk. In the event of a change in such circumstances, it appears that the importance of good faith from the parties in the agreement to carry out the agreement. Actually, the good intention referred to in Dutch with te goeder trouw (which is often translated with honesty) can be divided into 2 types, namely;

1. Good faith at the time of entering into an agreement is Good faith at the time of entering into an agreement is nothing but an estimate in the hearts of the related parties that the conditions required to enter into an agreement legally have been fulfilled. Someone who wants to buy an item, for example: thinks in their hearts that the seller of the item is really the owner. if later it turns out that the seller of the goods is not the true owner of the goods traded, the buyer is in good faith. Because he has goodwill, he is protected by law.
2. Good faith at the time of carrying out the rights and obligations arising from the agreement is Good faith when carrying out the rights and obligations arising from an agreement also lies in the hearts of human beings, who always remember, that in carrying out the agreement must heed the norms of decency and justice, by refraining from deeds might cause harm to other parties. Whether an agreement is carried out in good faith or not will be reflected in the actual actions of the person who carried out the agreement. By looking at the actual actions of the implementation of the agreement.

Then the implementation of the agreement can be measured objectively.[82]

Based on this, the implementation of the agreement may not conflict with appropriateness and propriety.[83] Good faith standards for implementing contracts are objective standards. In contract law, the notion of acting in good faith refers to adherence to the standard commercial fair of fair dealing, which according to the Dutch legislator is said to act in accordance with *redelijkheid en bilijkheid* (reasonableness and equity). In the law islamic agreement, one of the Qur'an regarding covenants is about fulfillment agreements and obligations arising in the agreement. Legal basis to do deeds in good faith, regulated in:

QS Al Ahzab verse 70

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا

"O you who Believe in fear of Allah, and say the right words".

The standard here is an objective standard that refers to an objective norm. The behavior of the parties in the contract must be tested on the basis of unwritten objective norms that develop in the community. Good faith provisions refer to unwritten norms that have become legal norms as a separate source of law. The norm is said to be objective because behavior is not based on the assumption of the parties themselves, but this behavior must be in accordance

[82] H. Riduan Syahrani, "*Seluk-Beluk Asas-asas Hukum Perdata",*PT Alumni Bandung, 2013, p 247-249.

[83] Ridwan Khairandi, "Penggunaan Asas Itikad Baik Dalam Penafsiran Kontrak*", Jurnal Hukum Bisnis*, Vol. 29, No.2, 2010.

with the general presumption of good faith. Equating good-faith behavior with adherence to objective standards limits the elasticity of the concept of good faith, excludes external facts that show bad faith behavior, and potentially results in unfair results. Behavioral measurement standards in establishing contracts, implementing contracts, or enforcing contract law must be elastic. These standards must be flexible with good faith ideas, which are in essence a broad concept. The idea of good faith is a foreign mode of analysis comprising a spectrum of related, factual considerations. The objective standard elements are:

1. The informal behavior of contracting parties and their individual expectations;
2. The nature and requirement for particular transaction at issue;
3. the fairness of the customary commercial or social standard for measuring conduct;
4. The modern commercial policy of flexibility in commercial intercourse;
5. The effect of the court's decision on commerce or society;
6. The conceptual history of good faith from such sources as the law merchant, common law, equity and civil law system.[84]

The process of forming a contract involves risks. Prospective parties invest time, money, and even part performance in the course of negotiations. If they fail to reach a final agreement, that investment may be disappointed. Charges

[84] *Op.Cit* Ridwan Khairandy, Kebebasan Berkontrak & Pacta Sunt Servanda Versus Iktikad Baik: Sikap yang harus diambil pengadilan, p 56-57.

of "bad faith[85]" then mayfly. To be sure, the parties have no immunity from the legal consequences of misconduct based on tort, unjust enrichment, and promissory estoppel. Conduct giving rise to such liabilities may be described as "bad faith" though it is not "contractual bad faith" because it arises independently of any agreement between parties. But many parties are unwilling to rely solely on these remedies to protect them during negotiations. The parties can conclude preliminary agreements to guide their conduct during negotiations looking toward a final agreement. This preliminary agreement may take such forms as commitment letters or letters of intent. Some preliminary agreements are not legally binding at all, either because the parties did not intend legal consequences or because the agreement is too definite to be enforced. Others are enforceable. For example, a preliminary agreement might envision a world in which the parties negotiate exclusively with each other and commit themselves to make that world happen[86]. Preliminary agreements may also enforceable when the parties settle some terms, leaving others for further negotiation. In such cases, the parties agree, expressly or impliedly, to negotiate the open terms in good faith. They may have agreed as well to perform the settled terms even if no final contract is reached. In both situations, the parties have discretion in the ensuing negotiation.

[85] intentional dishonest act by not fulfilling legal or contractual obligations, misleading another, entering into an agreement without the intention or means to fulfill it, or violating basic standards of honesty in dealing with others. Most states recognize what is called "implied covenant of good faith and fair dealing" which is breached by acts of bad faith, for which a lawsuit may be brought (filed) for the breach (just as one might sue for breach of contract). The question of bad faith may be raised as a defense to a suit on a contract.

[86] Alan Schwartz & Robert E. Scott, *Precontractural Liability and Preliminary Agreements*, 120 Harv. L. Rev. 661 (2007).
https://scholarship.law.columbia.edu/faculty_scholarship/338. Accessed Desember 03 2019.

They must exercise that discretion for reason allowed by the preliminary agreement. Consequently, when the preliminary agreement settles some of the terms for the final agreement, a party acts in bad faith if it refuses to reach an agreement on the open terms because it becomes dissatisfied with the settled terms. Similarly, when the parties agree to limit their discretion as to open terms, a party acts in bad faith by rejecting all reasonable proposals for the open terms. In either case, an arty who refuses to conclude the final agreement for such reasons breaches the preliminary agreement. If the elements of the aborted final contract can be ascertained with reasonable certainty, damages based on the benefit of that bargain can be awarded. [87]

On the Islamic perspective, Allah command us for fulfilling the promises as mentioned in QS Al Maidah verse 1;

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ ۚ أُحِلَّتْ لَكُمْ بَهِيمَةُ الْأَنْعَامِ إِلَّا مَا يُتْلَىٰ عَلَيْكُمْ غَيْرَ مُحِلِّي الصَّيْدِ وَأَنْتُمْ حُرُمٌ ۗ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ

"O you who believe, fulfill the aqad-aqad. It is permissible for you cattle, except for those that will be read to you. (That way) by not justifying hunting when you are doing the pilgrimage. Indeed, Allah decrees laws according to His will.
" (QS. Al Maidah: 1).

This verse was revealed before the Prophet Muhammad Saw went on a pilgrimage. That's why this verse explains the law of pilgrimage passed on to the

[87] *Op.Cit*. Steven J Burton, p 10.

Muslims. In this verse, it is offended about the illegality of hunting of animals in a state of JAMA. But the main and important point of this verse is at the beginning which is also the beginning of this letter. It points to messages that show commitment to the agreement. This agreement means very broad terms including written and oral agreements, agreements with strong or weak, agreements with friends or foes and agreements with God or humans. According to Islam and based on this verse, a Muslim must be committed to the agreement he made. They must be loyal to the contents of the treaty even with the hypocrites or the wicked. This commitment must be demonstrated by a Muslim, the other party who signed the agreement also obeys the agreement. When they break the agreement, there is no commitment for a Muslim to obey the terms of the agreement.

Pacta Sunt Servanda[88] is a principle by which people must obey their promises. Associated with the agreement of the parties making the agreement must implement or the agreement they made. According to this principle, the agreement of the parties is binding as appropriate the law for the parties that make it. While the promise there arises the willingness of the parties to achieve each other, there is a willingness to bind themselves to one another. These contractual obligations become a source for the parties to freely determine the will with all its legal consequences. Based on this will, the parties freely meet their respective wills. It is these parties' wishes that form the basis of the contract. The occurrence of legal acts is determined based on an agreement. With the consensus of the parties, the agreement raises the power of binding agreement as appropriate for

[88] *Pacta Sunt Servanda* is a Latin means for "agreements must be kept", a brocard, is a basic principle of civil law, canon law, and international law.

the law (*pacta sunt servanda*). What is stated by someone in a relationship becomes law for them. It is this principle that becomes the power to bind the agreement. This is not a moral obligation, but also a legal obligation whose implementation must be obeyed.[89]

The modern concept of freedom of contract constitutes a significant basis in the lexicon of contract law and the significance that parties to the contract have the right of autonomy to determine their own bargains and demand fulfillment of what they agree on. With the consensus of the parties, the power of binding contracts arises as appropriate for the law. What is stated by a person in a legal relationship becomes law for them *(cum nexum faciet mancipiumque, uti lingua mancouassit, ita jus esto)*. It is this principle that becomes the power of binding the contract *(verbindende kracht van de overereekomst)*. This is not only a moral obligation, but a legal obligation whose implementation must be obeyed. As a consequence, neither the judge nor the third party interferes with the contents of the agreement.[90]

Furthermore, a decision the judge ruled that the defendant had been proven to have committed an unlawful act related to the legality of the EGMS held on March 18rd 2005, under the existing limited liability company law. The plaintiff stated that the actions taken by PT Berkah Karya Bersama had fulfilled an element of lawlessness. The judge's decision is not in accordance with the existing limited liability company law.

First, the EGMS fulfilled the procedure by calling the shareholders on

[89] Ridwan Khairandy, *Hukum Kontrak Indonesia*,Yogyakarta , FH UII PRESS, 2014, p 91.

[90]*Ibid*, p 113.

March 10, 2005. In the law limited company number 40 of 2007 article 86 point (8) states that:

> *"the calling of the second and third GMS is carried out within a period of no later than 7 days before the GMS is held. The plaintiff has called the shareholders for a period of 8 days before the GMS is held. Second, the judge also stated that the actions of the defendant on behalf of all shareholders in the EGM were illegal acts."*

The limited liability company law in article 85 paragraph 1 states that:

> *"Shareholders, either alone or represented under a power of attorney, have the right to attend the GMS and use their voting rights in accordance with the number of shares they have".*

Owned by the defendant (PT Berkah Karya Bersama) of 75%, the defendant has the right to represent the shareholders at the EGM as stated in article 86 paragraph 1 law on limited liability companies". The GMS can be held if more than 1/2 (one half) of the GMS is held. Part of the total number of shares with voting rights presents or represented unless the Act and/or articles of association determine a larger quorum.

Third, the decision of the Supreme Court judge to grant the claim of the plaintiff is very detrimental to the creditor in a debt agreement. As stipulated in article 126 of the law on limited liability companies which states that

> *"The legal acts of Merger, Consolidation, Acquisition and Separation must pay attention to the interests of the Company, minority shareholders, employees of the Company, creditors and other business partners of the Company, and the community and fair competition in doing business."*[91]

[91] Article 126 Company law no 40 of 2007.

I. Conclusion

In this case, power of attorney on the agreement on 7 february 2003 and on 3 june 2003 is irrevocable and has legally binding for the others parties, if the power of attorney revokes by the principal, The EGMS conducted by invetsors is legally valid, whereas the EGMS held by the previous shareholder is invalid and null and void because it violates the investment agreement. Everything that investor do is valid for the achievment of the objective of the agreement. That in additions to cash deposit, capital deposit, are also possible in others form (quasi inberg). Moreover, based on the Good Faith Principle if the principal cancel the EGMS the principal has violated this agreement its Breach of Contract. And the investor as a grantee has the rights to additional cost which the investor has done by calculating the costs in accordance with those agreed by the parties in the agreement.