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Legality of shareholders' circular decisions that are not contained in a notarial deed

Indah Herlina, Dwi Tatak Subagiyo, Fries Melia Salviana
Faculty of Law, Wijaya Kusuma Surabaya University, Indonesia

Abstract
This research examines the Legality of Circular Decisions of Shareholders of a Limited Liability Company which are not stated in a notarial deed. The problems formulated in the research are First, what is the legality of circular resolutions regarding changes to the company's articles of association that are not contained in a notarial deed. Second, what is the responsibility of the company organs for the legal consequences that arise from circular decisions that are not stated in the notarial deed. The type of research in this research is normative juridical with a statutory and conceptual approach, analyzed qualitatively. The research results show that firstly, the Circular Decision of PT Bumimas Megah Prima remains valid and binding as law because it is basically an agreement made by shareholders. Second, the responsibilities of the company's organs, namely: Responsibilities of the Board of Directors are fully personally responsible for losses to the company if the person concerned is guilty or negligent in carrying out their duties in managing the company. Responsibilities The Board of Commissioners is not responsible for losses caused by the actions of the directors, as long as the board of commissioners has supervised and provided advice to the Board of Commissioners. The responsibility of Shareholders is unlimited, especially to PT Intitacon Lestari and Djajang Tanuwidjaja as shareholders who in bad faith use the Company for personal interests, namely canceling or withdrawing circular decisions without the approval of PT Duta Jakarta Sejahtera. The suggestions given are the need to increase the capacity of limited liability company organs to understand their respective responsibilities and authorities so that they will not cause legal problems in the future.

Keywords: Circular decision, limited liability company, notarial deed

Introduction

Limited Liability Companies in the country's economy have a very vital role. Limited Liability Companies are one of the main elements in the life of modern society, because they are one of the centers of human activity to fulfill their daily lives. Meanwhile, for the state, the existence of a limited liability company is a means of channeling labor and also has a significant contribution as a source of state income, especially from the tax sector [1].

Limited liability companies are regulated in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT). The Company Law regulates in detail the form and activities of limited liability companies, as well as the rights and obligations of limited liability companies. A limited liability company is a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and meets the requirements stipulated in the Company Law and its implementing regulations [2].

In this definition, it is stated that a limited liability company carries out business activities with authorized capital which is entirely divided into shares. This is what differentiates a limited liability company from other legal entities, where in a limited liability company there are shares controlled by shareholders. So it can be said that a limited liability company is a collection of shares [3]. As a collection of shares in the form of a legal entity, a limited liability company has the following characteristics [4]: 1. Have their own assets that are separate from the people who carry out the activities of the legal entity; 2. Have rights and obligations that are separate from the rights and obligations of the people carrying out the activities of the legal entity; 3. Have a specific goal; 4. Continuous existence

The Company as a legal entity is a "true reality", which is the same as the nature of human personality. Because like human personalities, companies also have goals, purposes and desires [5]. In carrying out its business activities, a limited liability company has important organs that have their respective duties and authorities. In Article 1 point 2 of the Company Law, it is regulated that there are three organs in a Limited Liability Company, namely the General Meeting of Shareholders (hereinafter referred to as the GMS), Directors and Commissioners. The board of directors has the main task of carrying out and carrying out the management (beheer, administration or management) of the company or it can be said that the company is managed, managed and regulated by the directors [6]. Apart from being administrators and managers of a company, directors also have the capacity to represent the company, both outside and inside court. Meanwhile, commissioners have the function of monitoring the performance of the company's board of directors. The commissioner has the authority to examine the books of accounts, reprimand the directors, give instructions, and can dismiss the directors by holding a GMS to make a decision on whether the directors will be dismissed or not [7].

Based on Article 1 point 4 of the Company Law, the GMS is a company organ that has authority that is not given to the directors or board of commissioners within the limits specified in the Company Law and/or the company's articles of association. Therefore, the GMS is an organ that represents the interests of all shareholders in a Limited Liability Company. The authority of the GMS as regulated in the Company Law includes, among other things, changing the company's articles of association, approving shareholder deposits in forms other than money, buying back issued shares, increasing or reducing the company's

capital, appointing and dismissing directors and commissioners, and so on. A very important decision as mentioned previously, until the decision to dissolve the company was given to the GMS.

Basically, these three organs have equal and side by side positions in accordance with the separation of their authority as regulated in the Company Law, however, if we look at their authority, it can be said that the GMS has a higher position than directors and commissioners. Each organ of a limited liability company can make a decision in accordance with the Company Law and the previously agreed Articles of Association [8].

A GMS is held by calling all shareholders, directors and board of commissioners to gather (physically) in one place to discuss the meeting agenda. However, in reality, this is often difficult to do because not all shareholders have the same domicile as the company's domicile. These limitations can be overcome by the existence of several other alternatives in terms of implementing decision making.

The UUPT regulates several new materials, one of which is decision making outside the General Meeting of Shareholders or what is known as Circular Resolution. Circular decisions have never been mentioned in the 1995 UUPT and are only mentioned 1 (one) time in the Elucidation to Article 91 of the 2007 UUPT. This term is not widely used because studies regarding circular decisions are still limited [9].

Decision making outside the GMS (circular decisions) is regulated in Article 91 of the Company Law, which states: "Shareholders can also take binding decisions outside the GMS provided that all shareholders with voting rights agree in writing by signing the relevant proposal."

Furthermore, in the Explanation of Article 91 of the PT Law, it is stated: "What is meant by "decision making outside the GMS" is in practice known as a circular resolution proposal." Decisions like this are made without a physical GMS being held, but decisions are taken by sending a written document of the proposal to be decided to all shareholders and the proposal is approved in writing by all shareholders. What is meant by "binding decision" is a decision that has the same legal force as the GMS decision."

Based on the quote above, shareholder decisions made outside the GMS are carried out by circulating written proposals to shareholders and have binding force like the GMS decisions, provided that all shareholders give their approval and sign the circular decision unanimously without exception.

Yahya Harahap categorizes circular decisions as part of the Extraordinary GMS, because Article 78 of the Company Law states that there are other ways to make GMS decisions. Another way to make GMS decisions is by means of a written circular signed by all shareholders. Although the explanation of Article 78 of the Company Law does not explain the Extraordinary GMS [10].

Making circular decisions can also cause problems, such as the Decision of the Supreme Court of the Republic of Indonesia Number 1320K/PDT/2016 dated 16 August 2016 jo. DKI Jakarta High Court Decision Number 493/PDT/2015/PT.DKI dated 13 October 2015 jo. South Jakarta District Court Decision Number 193/Pdt.G/2014/PN.Jkt.Sel dated January 14 2015, in a case between PT. Duta Jakarta Sejahtera (as Plaintiff/Defendant of Counterclaim) Vs PT. Intitacon Lestari (Defendant I/Plaintiff), Br. Djajang Tanuwidjaja (Defendant II), PT Bumimas Megahprima (Co-Defendant I), Br. Haryanto, SH (Notary/Co-Defendant II), Br. Scientist Dektrit Supatmo, SH., MH (Notary/Co-Defendant III), Indonesian Ministry of Law and Human Rights (Co-Defendant IV). The chronology begins in March 2009, all shareholders of PT Bumimas Megahprima have signed a Shareholders' Decision Outside the General Meeting of Shareholders (Circular Decision) which decides and approves the following proposals [11]: a. Changes to all PT Articles of Association; b. Dismissal of all members of the Board of Directors and Commissioners of PT Bumimas Megahprima; c. Restate the composition of PT Bumimas Megahprima Shareholders; d. Starting from the date of issuance of the letter of approval of the Articles of Association by the Minister of Law and Human Rights of the Republic of Indonesia regarding the amendments to all Articles of Association as mentioned above, reappoint members of the Board of Directors and Commissioners for a period of 5 (five) years after the date of appointment; e. Authorize the Company's Directors with the right of substitution to sign the necessary deeds in connection with this decision and the provisions required by the competent authority.

Defendant II as Director refused to put the circular decision into a notarial deed and of course it was not reported to the Ministry of Law and Human Rights on the grounds that the person concerned had not read the contents of the deed stating the decision of the shareholders. Later it was discovered that this happened because Djadjang Tanuwidjaja, who is the Director of PT Bumimas Megahprima and also a shareholder of PT Bumimas Megahprima and a shareholder of PT Intitacon Lestari, tried to withdraw their approval as shareholders regarding the March 2009 Circular Decree.

On April 14 2009 PT Bumimas Megahprima held an Extraordinary General Meeting of Shareholders (hereinafter referred to as the EGMS), with the agenda/items of the GMS including the cancellation of the March 2009 Circular Decision. 12 In this RPUSLB Defendant I acted as a shareholder of PT Bumimas Megahprima and represented PT Intitacon Lestari as shareholder. One of the decisions taken at this EGMS was to accept the statement by Djadjang Tanuwidjaja and PT Intitacon Lestari to withdraw their approval in the Circular Decision of March 2009, therefore the approval given by Djadjang Tanuwidjaja and PT Intitacon Lestari in the Circular Decision was declared invalid and not binding.

The actions of Defendant I and Defendant II to unilaterally withdraw the March 2009 circular decision without the approval of other shareholders (PT Duta Jakarta Sejahtera) and the EGMS with the agenda of revoking the March 2009 Circular Decision was also not attended by all shareholders, is an action that deviates from the applicable legal provisions.

In the case above, the Supreme Court decided that the March 2009 circular decision was valid and could be included in a Notarial Deed regarding Circular Decisions in the context of approving changes to the Articles of Association and notification of changes regarding Defendant I's data, and declared all shareholder decisions null and void. published after March 2009.

With regard to circular decisions that are not contained in a notarial deed, this raises issues regarding the legality of circular decisions related to changes to the company's articles of association that are not contained in a notarial

deed and the responsibility of the parties (directors, board of commissioners and shareholders) for the legal consequences that arise from circular decisions that are not contained in a notarial deed.

Based on the background description above, the problem formulation can be drawn as follows: What is the legality of circular resolutions regarding changes to the company's articles of association that are not contained in a notarial deed.

Research Methods

1. Types and Nature of Research

The method used in this research is normative legal research, namely by researching existing secondary data in the legal field as library data using deductive thinking methods. Normative legal research can also be called doctrinal legal research [12].

2. Types and Techniques of Data Collection

The technique for collecting materials using library research is searching for legal materials by reading, viewing, or via the internet [13]. To solve legal problems and at the same time provide prescriptions, research sources are needed [14], These legal research sources consist of:

a. Primary Legal Material, namely legal material that is a legal basis. In writing this research, the primary legal materials used were:

1. Law Number 40 of 2007 concerning Limited Liability Companies;
2. Law Number 30 of 2004 concerning Notary Positions;
3. Civil Code [Burgerlijke Wetboek].
4. Regulation of the Minister of Law and Human Rights Number 4 of 2014 concerning Procedures for Submitting Applications for Legalization of Legal Entities and Approval of Changes to the Articles of Association as well as Submitting Notifications of Changes to the Articles of Association and Changes to Limited Liability Company Data.
5. Supreme Court Decision Number 1320K/Pdt/2016 jo. High Court Decision Number 493/PDT/2015/PT.DKI. jo. South Jakarta District Court Decision Number 193/Pdt.G/2014/PN.Jkt.Sel.

b. Secondary Legal Material, namely providing an explanation of primary legal material along with matters related to the content of primary legal material. In writing this research, the secondary legal materials used were various books, legal journals and internet sources that discuss circular decisions.

c. Tertiary Legal Materials, namely materials that provide instructions and explanations for primary legal materials and secondary legal materials. In writing this research, the Legal Dictionary and Black's Law Dictionary were used.

3. Research Approach

The approach used by the author is a statutory approach, a conceptual approach and does not rule out the possibility of using a case approach.

The statutory approach is carried out by examining all laws and regulations relating to the implementation of circular decisions of shareholders of a limited liability company. The benefit of using a statutory approach is to look for the legal ratio and ontological basis of a law, so you will be able to capture the philosophical content behind the law [15]. The laws used to support this research include Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 30 of 2004 concerning the Position of Notaries.

Conceptual approach (conceptual approach). The conceptual approach departs from views and doctrines that give rise to legal understandings, legal concepts and legal principles that are relevant to the legal issue at hand [16]. These concepts are used to understand the applicability of circular decisions in a limited liability company. The case approach (case study) is a study of certain cases from various legal aspects [17]. Research using cases that are relevant to the problem the author will research.

4. Data Analysis

In this research, data analysis was carried out qualitatively. Research data is analyzed according to the problem and based on the existing theoretical framework and written logically and systematically. The analysis was carried out by taking an inventory of the provisions in statutory regulations. Then it is compared with relevant theories. To make data analysis easier, the author applies stages, namely (1) research data is classified according to existing problems; (2) the results of data classification are then systematized; and (3) the systematized data is then analyzed to serve as a basis for drawing conclusions and suggestions.

Discussion

General Overview of Limited Liability Companies, General Meetings of Shareholders, Circular Decisions, Notarial Deeds, Agreements, and The "Piercing The Corporate Veil" Doctrine

A. General Overview of Limited Liability Companies

Limited Liability Company (Limited Liability Company, Naamloze Vennootschap) is the most popular form of all forms of business ventures. A Limited Liability Company is usually easily recognized in practice, namely by reading the abbreviation Limited Liability Company in front of its name [18]. The name of the limited liability company must be preceded by the words "Limited Liability Company" or PT for short. This means that the words PT must be placed in front of the company name and can only be used by business entities established in accordance with the provisions of the Company Law. Especially for public companies, apart from applying these provisions, at the end of the company name the abbreviation "Tbk" is added [19].

1. Definition of Limited Liability Company

The term Limited Liability Company consists of two words, namely Company and Limited. Company refers to the capital of a limited liability company which consists of holdings or shares. The word limited refers to a shareholder's responsibility whose extent is only limited to the nominal value of all the shares they own [20].

The basic idea that the capital of a limited liability company consists of shares can be traced to the provisions of Article 1 point 1 of the Company Law, namely: "A Limited Liability Company is a legal entity which is a capital association, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and fulfill the requirements set out in this law and its implementing regulations."

The indication of the limited responsibility of shareholders can be seen from Article 3 of the Company Law which stipulates: "The company's shareholders are not personally

responsible for agreements made on behalf of the company and are not responsible for the company's losses exceeding the value of the shares they own."

Shareholders or founders have limited liability after the company is legalized by the Minister of Law and Human Rights. This means that the company that is established already has or obtains legal entity status after its deed of establishment is ratified by the Minister. However, if the legal action is carried out by the founders before the company has legal entity status, then there will be two possibilities, namely [21]: a. The legal actions of the founders remain the personal responsibility of each founder for all the consequences that arise; or b. The legal acts of the founder are binding on the company after the company becomes a legal entity, as long as the company: c. Expressly declare acceptance of all agreements made by the founder or by other people assigned by the founder, with third parties; d. Expressly declare to take over all rights and obligations arising from agreements made by the founder or other people assigned by the founder even though the agreement is not made in the name of the company; or; e. Confirm in writing all legal actions carried out on behalf of the company.

2. Limited Liability Company as a Legal Entity

Based on Article 1 point 1 of the Company Law, a company as a legal entity has "basic capital" which is also called authorized capital, namely the amount of capital mentioned or contained in the Company's Deed of Establishment or Articles of Association [22]. The authorized capital consists of and is divided into shares or holdings (aandelen, share, stock). Limited liability company capital is divided into shares and each share is given a nominal value. The nominal value of these shares must be stated and must be in rupiah, in the UUPT system it is not recognized that there are shares without a nominal value, unless this is possible according to statutory regulations in the capital market sector [23].

A limited liability company is legally a legal entity (rechtspersoon, legal entity), an artificial person, or an intellectual body. A Limited Liability Company as a legal entity means that the limited liability company is a legal subject, where the limited liability company as a body that can be burdened with rights and obligations like humans in general [24].

The juridical consequence of the above is that a limited liability company has the authority to act for and on its own behalf (outside or in court), is legally responsible, has its own assets, and has management who will act for and on behalf of the limited liability company. In principle, the person responsible for the activities carried out by the company is the company itself as a legal entity. With several exceptions, directors, commissioners or shareholders cannot be held personally responsible for legal actions carried out by the company [25].

Article 1 point 1 of the Company Law clearly states that a Limited Liability Company is a legal entity established based on an agreement. This provision has the implication that the establishment of a limited liability company must comply with the provisions stipulated in contract law. So, in establishing a limited liability company, apart from being subject to the Company Law, it is also subject to contract law. Because a limited liability company is defined as a legal entity established by agreement, the establishment of a limited liability company must also be subject to the requirements for the validity of the agreement as determined by the Civil Code [26].

Limited Liability Company is a legal entity. The confirmation that a limited liability company is a legal entity which is a capital partnership is an affirmation that a limited liability company does not prioritize the personality traits of the shareholders within it. This confirmation is also aimed at clearly distinguishing the substance or nature of Limited Liability Company business entities compared to other business entities, such as civil partnerships [27].

3. Characteristics of Limited Liability Companies

There are five main things that characterize a limited liability company, namely [28]:

a. Limited liability company as a legal entity. As a legal entity, a company must fulfill the elements of a legal entity as specified in the Company Law, such as an organized organization (the existence of company organs), its own assets (in the form of authorized capital consisting of shares), carrying out its own legal relations (carrying out legal relations). with third parties through the Board of Directors) and also has its own objectives (objectives specified in the Company's Articles of Association).
b. Limited liability companies are established based on an agreement. The provisions of Article 7 paragraph (1) of the Company Law state that a company is established by 2 or more people with a notarial deed made in Indonesian. This formulation basically reaffirms the meaning of the agreement as regulated in the general provisions regarding agreements in the Civil Code. As a "special" agreement with a "name", this limited liability company formation agreement is also fully subject to the conditions for the validity of the agreement as regulated in Article 1320 of the Civil Code, in addition to the special provisions regulated in the Company Law.
c. The company must carry out certain business activities. Carrying out business activities means running a company, the business activities carried out by the Company are in the economic sector, including industry, trade in goods and services with the aim of gaining profits.
d. The company must have capital divided into shares. As an independent legal entity, with independent rights and obligations, independent of the rights and obligations of its shareholders and management, the company clearly must have its own assets to carry out its business activities and to carry out its rights and obligations. For this reason, when the company is established, even before requesting ratification of the company's Deed of Establishment to the Minister, the founders must place and deposit at least 25% of the entire authorized capital taken up by the founders.
e. Meet statutory requirements. Every company must comply with the requirements of the Company Law and its implementing regulations starting from its establishment, operation and termination. This shows that UUPT adheres to a closed system.

4. Characteristics of a Limited Liability Company

The Limited Liability Company as a legal entity has the following characteristics [29]: a. Have your own assets that are separate from the assets of the people who carry out the

activities of these legal entities (separate patrimony); b. Have rights and obligations that are separate from the rights and obligations of the people carrying out the activities of these bodies; c. Having a specific goal; d. It is sustainable (has continuity) in the sense that its existence is not tied to certain people, because the rights and obligations remain even if the people who carry them out change.

5. Establishment of a Limited Liability Company

Based on the Company Law, the requirements for establishing a limited liability company are as follows:

a. Established by 2 (two) or more people (Article 7 paragraph (1) UUPT). The person in question is a private person (person) or legal entity. Thus, a PT can be established by an individual or a legal entity [30]. The definition of "founders" (promoters) according to law are people who take part with intention (intention) to establish a Company. Furthermore, they are important in realizing the establishment of the Company, in accordance with the requirements determined by statutory regulations. The founders of a limited liability company must be at least 2 (two) people, if less than this number it is not possible to obtain approval as a legal entity by the Minister [31].

b. Every founder is obliged to take shares when the company is founded (Article 7 paragraph (2) UUPT). When the founders of the Company went to the notary to make a deed of establishment, each founder had already taken shares in the Company. Then this is included in the deed of establishment in accordance with the provisions of Article 8 paragraph (2) letter c of the Company Law which requires that the deed of establishment include the names of shareholders who have subscribed for shares, details of the number of shares, and the nominal value of the shares that have been issued and paid up. In the Elucidation of Article 8 paragraph (2) letter c, what is meant by "taking shares" is the number of shares taken by shareholders at the time of the establishment of the Company [32].

   This provision according to Article 7 paragraph (3) of the Company Law does not apply in the case of Consolidation. In the Elucidation to Article 7 paragraph (3) of the Company Law, it is explained that in the event of a merger, all assets and liabilities of the merging company are included in the capital of the company resulting from the merger. The founder does not take shares, so the founder of the company resulting from the amalgamation of the company merges. The name of the shareholder resulting from the consolidation is the name of the shareholder of the merging company [33].

c. The deed of establishing a limited liability company is in the form of a notarial deed in Indonesian. The establishment of a company must be made "in writing" (schriftelijk, in writing) in the form of a notarial deed (Notarriele Akte, Notarial Deed), it cannot be in the form of an underhand deed (private instrument). The obligation for a deed of establishment must be in the form of a notarial deed, not only to function as evidence of the agreement to establish the company (proationis causa). However, a notarial deed based on Article 7 paragraph (1) of the Company Law, has the nature and function of solemnitatis causa, that is, if it is not made in a notarial deed, the Company's deed of establishment does not meet the requirements, so it cannot be ratified by the minister [34].

   The articles of association are part of the deed of establishment of a limited liability company. The articles of association of a limited liability company only apply to third parties after the deed of establishment of the limited liability company is approved by the Minister of Law and Human Rights [35].

   Article 8 paragraphs (1) and (2) of the Company Law states that the company's deed of establishment contains the articles of association and other information at least [36]:

1. Full name, place and date of birth, occupation, residence and citizenship of the founder of the company, or name, place of domicile and address as well as the number and date of the Minister's decision regarding legalization of the legal entity of the founder of the company;
2. Composition, full name, place and date of birth, occupation and nationality of the first appointed members of the board of directors and board of commissioners;
3. Names of shareholders who have subscribed to shares [37], details of the number of shares, and nominal value, late placed and paid up.

d. Obtain a decision to ratify legal entity status from the Ministry of Law and Human Rights (Article 7 paragraph (4) UUPT). The requirements for the legal establishment of a company according to Article 7 paragraph (4) must obtain approval from the Minister. Starting from these provisions, in order for a company to legally exist as a legal entity (rechtperson, legal entity or legal person), it must obtain approval from the Minister [38]. The company obtains legal entity status on the date of publication of the Ministerial Decree regarding ratification of the company's legal entity [39].

As soon as the limited liability company obtains approval and has legal entity status, the limited liability company must hold its first GMS. This first GMS aims to [40]: 1) Receive all agreements made by the founder or other person assigned by the founder with third parties; 2) take over all rights and obligations arising from agreements made by the founder or other person assigned by the founder, even though the agreement is not made in the name of the company; 3) confirm in writing all legal actions carried out on behalf of the company.

6. Abolition of Limited Liability Company Legal Entity Status

The legal entity status of a company is lost if a company is dissolved. A company can be dissolved or no longer become a legal entity because: a. GMS Decision; b. The term of existence expires; c. Court Determination.

The company no longer becomes a legal entity at the same time as the company is disbanded and from that moment on, this means that the company cannot take legal action unless it is necessary to settle its assets in the liquidation or settlement process. After the company is dissolved, within 30 days, the liquidator or administrator is obliged to [41]: a. Registration of dissolution in the company register; b. Announcements in the State Gazette and two daily newspapers; c. Notify the Minister.

7. Changes to the Articles of Association

In the case of changes to the articles of association of a company that already has legal entity status, it cannot be done immediately by just going to a notary, but must go through a certain legal mechanism. Article 19 of the Company Law stipulates that changes to the articles of association are determined by a General Meeting of shareholders which is preceded by a summons or announcement to convene a GMS. Proposals for changes to the articles of association must be included in the summons or announcement. This means that the authority to change the articles of association of a legal entity limited company is in the hands of the GMS [42].

According to Article 21 of the Company Law, not all changes to the articles of association require the Minister's approval. According to Article 21 paragraph (2) of the Company Law, approval is required only and only when it concerns: a. name of the Company and/or place of domicile of the Company; b. aims and objectives as well as the Company's business activities; c. period of establishment of the Company; d. the amount of authorized capital; e. reduction of issued and paid-up capital; and/or f. the status of a closed company becomes a public company or vice versa.

When approved by the Minister, a Ministerial Decree will be issued. Apart from what is outlined in Article 21 paragraph (2), according to Article 21 paragraph (3) it is sufficient to notify the Minister. After being notified to the Minister, the Minister will issue a letter stating that the notification has been received and has been recorded in the Company Register in the Legal Entity Administration System at the Ministry.

These changes are made by notarial deed in Indonesian, no later than 30 days from the date of the notarial act containing the changes to the articles of association. In the event that the 30 day time limit is exceeded, according to article 21 paragraph (9), the application for approval or notification cannot be submitted to the Minister, or in other words, if it is submitted to the Minister, the application will not be considered by the Minister [43].

Approval or rejection of the application for approval of the deed of amendment to the limited liability company's articles of association will be given by the Minister within a maximum of 60 days from the date the application is received. Changes to the articles of association of a limited liability company come into effect from the date the approval is given by the Minister [44]. Meanwhile, changes to the articles of association of a limited liability company which only need to be notified to the Minister come into effect from the date the Minister issues a letter of acceptance of the notification of changes to the articles of association.

The Minister may reject a request for approval of changes to the limited liability company's articles of association with written notification and accompanied by reasons for the rejection within 60 days after the request is received, namely if [45]: a. contrary to the provisions regarding procedures for amending the articles of association; b. the content of the changes is contrary to statutory regulations, public order and/or morality; c. there was objection from creditors regarding the GMS decision regarding capital reduction.

8. Limited Liability Company Organs

Even though a Limited Liability Company is a legal subject that can carry out legal relations, own wealth, and can be sued and sue before the court on its own behalf, unlike humans, a Limited Liability Company as a legal entity does not have its own thinking power, will and awareness. He must act as a natural person who is the administrator of the legal entity. The actions of the administrators are not for themselves, but for and on behalf of and under the responsibility of the legal entity [46].

As an imaginary entity (artificial person), the company cannot possibly act alone. The company does not have the will to run itself. For this reason, people are needed who have the will to run the company, in accordance with the aims and objectives of establishing the company. The individuals who will run, manage and administer the company are called company organs [47].

Article 1 point 2 of the Company Law clearly states that the company's organs consist of the General Meeting of Shareholders (GMS), Directors and Commissioners. These three organs have their respective duties and authorities.

a. General Meeting of Shareholders (GMS)

Article 1 paragraph (4) of the Company Law states that the GMS is a company organ that has authority that is not given to the directors or board of commissioners within the limits determined in this law and/or the articles of association. From these provisions it can be concluded that the GMS is not the highest organ in the company. This organ only has exclusive authority which is not given to the directors or board of commissioners [48].

Article 3 paragraph (1) of the Company Law determines that company shareholders are not personally responsible for agreements made on behalf of the Company and are not responsible for the Company's losses in excess of the shares they own. Article 3 paragraph (2) UUPT determines that the provisions in Article 3 paragraph (1) UUPT do not apply if: 1) the requirements for the company as a legal entity have not been or are not fulfilled; 2) the shareholder concerned, either directly or indirectly, in bad faith, uses the company for personal interests; 3) the shareholder concerned is involved in an unlawful act committed by the company; or 4) the shareholder concerned, either directly or indirectly, unlawfully uses the company's assets, which results in the company's assets being insufficient to pay off the company's debts.

The provisions of article 3 paragraph (2) are known as a legal doctrine called "piercing the corporate veil", namely that the limitation of liability of a limited liability company can be placed on the management, if the legal action they take on behalf of the limited liability company contains a conspiracy in bad faith that causes losses to other parties [49].

b. Directors

Based on the Company Law, the Board of Directors is a company organ that has full authority and responsibility for managing the company in the interests of the company, in accordance with the company's aims and objectives and representing the company, both inside and outside the court in accordance with the provisions of the articles of association [50]. The Board of Directors is one of the organs of a limited liability company which has duties and is fully responsible for managing the company for the benefit of the company's objectives and representing the company both inside and outside the court in accordance with the

provisions of the articles of association. The board of directors has a very central function and role in the limited liability company paradigm. This is because the directors will carry out the management and representative functions of the limited liability company [51].

If a member of the board of directors abuses his or her position as a trustee of the company or if he is guilty or negligent in carrying out his duties which results in the company suffering losses, then each member of the board of directors is personally responsible [52]. In this regard, Article 97 paragraph (3) of the Company Law determines that each member of the board of directors is fully personally responsible for the company's losses if the person concerned is guilty or negligent in carrying out their duties in managing the company. Article 97 paragraph (4) of the Company Law stipulates that if the board of directors consists of 2 (two) or more board members, this personal responsibility applies jointly and severally to each member of the board of directors.

Article 97 paragraph (5) of the Company Law states that members of the board of directors cannot be held personally responsible for losses that befall the company if they can prove: 1) the loss is not due to fault or negligence; 2) has carried out management in good faith and prudence in accordance with the aims and objectives of the company; 3) have no conflict of interest, either directly or indirectly, regarding management actions that result in losses; and 4) have taken action to prevent the occurrence or continuation of the loss.

The Board of Directors only has the right and authority to act on behalf of and in the interests of the company within the limits permitted by statutory regulations and the company's articles of association. Every action taken by the board of directors outside the authority stated in the articles of association and statutory regulations is called an Ultra Vires action [53]. If the board of directors commits Ultra Vires actions, then each member of the board of directors is personally responsible.

In carrying out the management of the company, the Board of Directors is not only bound by what is expressly included in the aims and objectives and business activities of the company but can also support or facilitate their (secondary) duties, but are still within the permitted limits or still within the permitted limits or still within the scope of their duties and obligations (intra vires) as long as they are in accordance with custom, fairness and propriety (no ultra vires) [54].

c. board of Commissioners

According to the Company Law, the Board of Commissioners is a Company Organ tasked with carrying out general and/or specific supervision in accordance with the articles of association and providing advice to the Board of Directors [55]. Article 114 paragraph (1) determines that the board of commissioners is responsible for supervising the company regarding management policies, the course of management in general, both regarding the company and the company's business. Article 114 paragraph (2) of the Company Law states that every member of the board of commissioners must act in good faith, be careful and be responsible in carrying out their duties of supervision and providing advice to the directors and in accordance with the aims and objectives of the Company.

Article 114 paragraph (3) of the Company Law stipulates that each member of the board of commissioners is personally responsible for the Company's losses if the person concerned is guilty or neglects to carry out their duties. In this regard, the Elucidation to Article 114 paragraph (3) of the Company Law states that the provisions in this paragraph confirm that if the board of commissioners is guilty or negligent in carrying out their duties, resulting in losses to the Company due to the management carried out by the directors, the members of the board of commissioners are also responsible to the extent of the error. or negligence.

In the event that the members of the board of commissioners consist of 2 (two) people or more, this responsibility applies jointly to each member of the board of commissioners [56].

Article 114 paragraph (5) UUPT determines that members of the board of commissioners cannot be held responsible for the losses mentioned above if they can prove: 1) has carried out supervision in good faith and prudence for the interests of the Company and in accordance with the aims and objectives of the Company; 2) has no personal interest, either directly or indirectly, in the management actions of the Board of Directors which result in losses; and 3) has provided advice to the Board of Directors to prevent the occurrence or continuation of such losses.

If the error or negligence of a member of the board of commissioners results in the company suffering losses, shareholders have the right to file a derivative lawsuit [57]. In this regard, Article 114 paragraph (6) of the Company Law determines that on behalf of the Company, shareholders representing at least 1/10 (one tenth) of the total number of shares with voting rights can sue any member of the Board of Commissioners whose error or negligence causes losses. against the Company to the district court.

Closing

A. Conclusion

Based on the results of research and discussion, the following conclusions can be drawn:

Circular Decisions made by shareholders regarding changes to the company's articles of association which are not contained in a notarial deed can be said to be valid and binding as law for those who make them as contained in Article 1338 of the Civil Code, because Circular Decisions are basically an agreement or agreement made by shareholders. The legality of a circular decision is said to be valid as long as all shareholders with voting rights agree in writing and sign the proposed circular decision and fulfill the conditions for the validity of an agreement as intended in Article 1320 of the Civil Code.

In practice, as stated in the Circular Decision of PT Bumimas Megah Prima March 2009, it has been signed and initialed on each page of the circular decision document which is proof that the shareholders agree to everything stated in the circular decision document and have fulfilled all the conditions specified for the validity of an agreement as intended. in Article 1320 of the Civil Code, Article 1 number 1 UUPT, Article 7 paragraph (1) and Elucidation of Article 7 paragraph (1) UUPT and Article 91 UUPT. As a legal consequence of a valid agreement, in this case a valid circular decision, in accordance with the provisions of Article 1338 of the Civil Code, it applies as law for the makers (shareholders). Even though the Circular Decree of PT Bumimas Megah Prima containing changes to the articles of association has not been contained in a notarial

deed and has not been registered with the Minister of Law and Human Rights of the Republic of Indonesia, it is still valid and binding as law for its creators, namely shareholders, the process of registering changes to the company's articles of association is good. requires ministerial approval or changes to the articles of association that simply need to be notified to the Minister, regarding their applicability to third parties.

B. Suggestions

Apart from this, according to the researcher's opinion, there are several thoughts as suggestions that can be given as follows: There is a need to increase the capacity of limited liability company organs to understand their respective responsibilities and authorities, both in their capacity as directors, board of commissioners and shareholders in implementing circular decisions. existing ones so that they will not cause legal problems in the future.

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