



The Assets Transfer of A Limited Liability Company by A Director That Has Not Been Authorized in The Articles of Association

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ABSTRACT

Decision Number 98/Pdt.G/2022/PN.Bgr validates an underhanded sale agreement between GS and JS for LTD SIS assets. Crucially, LTD SIS assets were uncertified at the agreement's time, JS lacked official director approval, and no Ministry of Law and Human Rights sanction existed. This normative legal study employs qualitative data to address these issues. Transferring company assets by a director without proper corporate approvals (articles of association, Ministry decree) constitutes an ultra vires act. JS's actions in Decision 98/Pdt.G/2022/PN.Bgr are deemed ultra vires, harming LTD SIS by selling assets without authorization and receiving payments personally. Based on Article 97 (1) and (2) of the Indonesian Company Law, JS is personally liable, as directors must manage the company with good faith and full responsibility.

Keyword: Transfer, Director, Ultra Vires

1. Introduction

There are 2 (two) legal subjects, namely a person or group of people who act to carry out legal acts or carry out legal actions with the requirement of legal capacity.¹ The term person in general is human, namely a human being/natural person, as an antonym of artificial person. The term "person" from a legal perspective can include companies, organizations, partnerships, and others that cannot be categorized as legal entities unless they have met certain requirements or criteria.² A legal entity is called a legal entity, namely an artificial human or legal person or *rechtspersoon*.³

One form of legal entity is a Limited Liability Company (LTD), a separate legal entity from individual legal subjects even though there are shareholders or founders of the LTD. This separation is at the essence of the doctrine of corporate separate legal personality, where a company is different from the person who founded it.⁴ The doctrine of a separate legal entity in LTD, as a company with legal status, is different from that used in *Commanditaire Venootschap (CV)*, *Firma*, and *Civil Partnership*, as companies without legal status.⁵

LTD is an artificial legal subject, so it requires several people to run the company according to the intent and purpose of the establishment of the company, which are referred to as the company's organs. As per Article 1, paragraph 2 of Law Number 40 of 2007 concerning Limited Liability Companies, hereinafter referred to as the LTD Law, LTD organs are divided into 3 (three), namely the GMS (General Meeting of Shareholders), Board of Directors, and Board of Commissioners.⁶

LTD has special characteristics that distinguish it from business entities that are not legal entities. The establishment of an LTD must create articles of association consisting of the name, capital, business field, address, and others made by a Notary in the form of a Deed. The deed of establishment of an LTD must be approved by the Minister of Law and Human Rights of the Republic of Indonesia (MENKUMHAM RI) with the following requirements that must be met⁷:

- 1) Not contrary to morality and public order;
- 2) Made based on the Law; and
- 3) The minimum capital placed and paid up is 25% (twenty five percent) of the basic capital.

LTD is based on the principle of corporate personality, which means that it is a legal subject that exists independently of shareholders, members of the board of directors and board of commissioners, thus it is called an independent legal subject.⁸ Any legal action before the LTD is ratified by MENKUMHAM, meaning that the action will be considered as a personal action based on Piercing the Corporate Veil then must be personally responsible. Exceptions when there is a clear statement that the LTD will be responsible for actions before ratification to accept all actions made by the LTD with a third party or the LTD states to take over the action in writing.⁹

¹ Hardijan Rusli, *Perseroan Terbatas Dan Aspek Hukumnya*, 1st edn (Jakarta: Pustaka Sinar Harapan, 1996). . 17

² Zaeni Asyhadie and Budi Sutrisno, *Hukum Perusahaan & Kepalitan* (Jakarta: Erlangga, 2012). . 70

³ *Ibid*

⁴ Maulana Hasanudin Hidayat, 'Badan Hukum, Separate Legal Entity Dan Tanggung Jawab Direksi Dalam Pengelolaan Perusahaan', *NJL: National Journal of Law*, 1.1 (2019), 65–80.

⁵ *Ibid*

⁶ C.S.T. Kansil, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia* (Jakarta: Balai Pustaka, 1989).

⁷ Ahmad Yani and Gunawan Widjaya, *Seri Hukum Bisnis Perseroan Terbatas* (Jakarta: Raja Grafindo Persada, 2000). 7

⁸ Patricya Wedha Hutapea, 'Arti Dan Ciri Personalitas Perseroan Terbatas', *Hukumonline.Com*, 2024 <<https://www.hukumonline.com/klinik/a/arti-dan-ciri-personalitas-perseroan-terbatas-lt5b3057223eb8f/>> [accessed 2 February 2025].

⁹ Paramita Pranangtyas, *Buku Ajar Hukum Perusahaan* (Semarang: Penerbit Yoga Pratama, 2019). . 76

Legal entities have rights and obligations like humans, so likewise fellow legal entities, or with people, can enter into legal relationships (*natuurlijkpersoon*).¹⁰ The legal actions in an LTD that can be carried out by the board of directors with the main authority are¹¹:

- 1) Managing the company to realize the main objective of seeking profit;
- 2) Recording (administration) of all company assets; and
- 3) Representing (representing as an agent) for legal acts for the benefit of the company.

One of the legal acts that can be carried out by a LTD is the transfer of assets owned by the LTD for which there are special provisions as regulated in Article 102 paragraph (1) of the LTD Law regarding the transfer of company assets of more than 50% (fifty percent), then the Board of Directors is required to request approval from the GMS, as regulated in the articles of association. Company assets include all goods as stipulated in Article 503 and Article 504 of the Civil Code.¹²

As stated in the LTD Law, the GMS is an LTD organ that has special authority, meaning that there is authority that cannot be possessed by the Commissioners and Directors. The GMS has the authority to appoint, dismiss, and demand accountability from the Directors and the Board of Commissioners. In addition, the GMS is also authorized to change the articles of association, determine the allocation of dividends and reserve funds, and determine the company's strategic policies, such as decisions related to mergers, consolidations, or acquisitions.¹³

Then Article 78 paragraph (1) states that there are two types of GMS, namely annual and other. The GMS held every fiscal year of the company is called an annual GMS, while the GMS held when something happens that is immediately needed by the LTD is called another GMS.¹⁴ The LTD Law stipulates that every member of the board of directors in exercising their authority for the interests and business of the company must act in good faith and must be responsible.¹⁵ Therefore, the board of directors is fully responsible for the management of LTD.

*Fiduciary duty is given to directors to be responsible for carrying out the interests of other people or parties (the company).*¹⁶ The *ultravires* doctrine and the *intravires* doctrine are doctrines adopted by LTD because they are independent. The *ultravires* doctrine means something that is beyond the authority of a limited liability company, while the *intravires* doctrine means the power, authority or ability of the LTD.¹⁷

The case that the researcher will link to the writing of the journal is the transfer of LTD assets by a Director who has not been officially appointed through a private sale and purchase agreement (PPJB underhanded) with the case position of Decision 398 / PDT.G / 2019 / PN.Cbi that the initials GS (Plaintiff) is the buyer of a plot of customary land in full to JS as the Seller (Co-Defendant I) through the mechanism of PPJB underhand Number No. 1 dated June 1, 2015. In Deed Number 3 Dated June 18, 2015 is an amendment to the deed of the Limited Liability Company with the initials LTD. SIS (Defendant) made before Notary EAP, S.H., M.Kn (Co-Defendant II), whose articles of association have been approved by the Minister of Law and Human Rights of the Republic of

¹⁰ Titik Triwulan Tutik, *Hukum Perdata Dalam Sistem Hukum Nasional* (Jakarta: Kencana, 2008). . 47

¹¹ Agus Sardjono and others, *Pengantar Hukum Dagang* (Jakarta: Raja Grafindo Persada, 2014). . 81

¹² Adi Rangga Yudistira, 'Hambatan Hukum Dalam Pengalihan Aset Hak Atas Tanah Perseroan Terbatas Terkait Status Pengikatan Jual Beli Dengan Pihak Developer (Studi Kasus Di PT. Syirkah Usaha Bersama)' (Universitas Brawijaya, 2015). . 44

¹³ *Op Cit*, Sardjono and others. . 79

¹⁴ *Ibid*

¹⁵ Munir Fuady, *Perseroan Terbatas Paradigma Baru* (Bandung: Citra Aditya Bakti, 2003). . 82

¹⁶ *Op Cit*, Hidayat.

¹⁷ *Op Cit*, Asyhadie and Sutrisno.

Indonesia No. AHUAH. 01.03-0943951 dated June 19, 2015 which in the deed stipulates JS as the President Director.¹⁸

In the PPJB object under the hand, the object of the sale and purchase is the ownership of the Defendant based on the Deed of Release of Rights dated January 31, 2013, Number 11, which was made before Co-Defendant II and was only certified on September 15, 2016. The object of the sale and purchase was sold before Co-Defendant II was appointed as the President Director, so that in this case, there was no authority to sell.¹⁹ The plaintiff demanded his right to obtain proof of land ownership and physical handover because he had paid in full when the PPJB underhand took place. The land object is located in Bogor Regency, but the Cibinong District Court, which should have the authority, does not have the authority because the PPJB underhand dated June 1, 2015 in Article 19 states that the settlement of the dispute will be held at the Bogor District Court (the area of authority of the City of Bogor).

In this verdict, it states that the defendant's exception is rejected in its entirety, the Cibinong District Court is not authorized to decide and examine the case and the plaintiff must pay the court costs.²⁰ After the verdict, the Plaintiff filed a lawsuit Number 98/Pdt.G/2022/PN.Bgr to the Bogor District Court, which is a default decision that the Plaintiff is GS, the Defendant is LTD. SIS and the Co-Defendant is Notary EAP, S.H., M.Kn (who made the Deed of Establishment of LTD. SIS) that the Judge in this decision stated that the Defendant had been properly summoned but was not present and did not order anyone else to appear as his representative,²¹ so the decision was made by default, the Land and Building Sale and Purchase Agreement No. 001/SISCSP/PPJBLEGAL/VII/2015 is valid and binding on the parties, stating that the Defendant has committed a Default and ordering the Defendant to sign the Deed of Sale and Purchase (hereinafter abbreviated as "AJB") and punishing the Defendant to pay all costs incurred and rejecting the Plaintiff's lawsuit in addition to and the rest.²² Based on the case, it can be said that it is important to conduct supervision before giving trust and inauguration to the Director to become the Director of an LTD.²³

In this case, the author will discuss matters that have not been discussed in the decision namely, the authority of the Directors. The actions taken by JSJS are invalid according to the theory of fiduciary duties and the doctrine of ultra vires because they have exceeded the authority of his position and he must be held responsible for his actions. When the assets owned by LTD SIS were sold, they were still state land because they had not been certified; this means that there was no legal certainty regarding land ownership.

The State of the Art of this study includes an in-depth analysis of the actions taken by a director in transferring company assets, which are reviewed from a legal perspective, or their legality, which is based on the authority of a director himself as per applicable legal provisions.

The formulation of the problem to be discussed is "What are the legal consequences of transferring assets of a limited liability company that have not been registered into assets sold underhand by a director that has not been ratified in the articles of association?" This study aims to determine the legal consequences of transferring assets of a limited liability company that have not

¹⁸ Pengadilan Negeri Cibinong, *Putusan 398/PDT.G/2019/PN.Cbi* (Bogor: Mahkamah Agung Republik Indonesia, 2019).

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Nuzula Syafrial Ardi, 'Perlindungan Hukum Bagi Pt Terhadap Penggunaan Aset Pt Untuk Kepentingan Pribadi Oleh Pemegang Saham', *Jurnal Perspektif*, 23.1 (2018), 45 <<https://doi.org/10.30742/perspektif.v23i1.634>>.

²² Pengadilan Negeri Bogor, *Putusan Nomor 98/Pdt.G/2022/PN.Bgr* (Bogor: Mahkamah Agung Republik Indonesia, 2022) <<https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-bogor/>>.

²³ Ari Hernawan, 'Makna Dan Penerapan Uang Pisah Pada Pemutusan Hubungan Kerja Dalam Hukum Ketenagakerjaan Indonesia', *Jurnal Hukum Ius Quia Iustum*, 30.3 (2023), 475–96 <<https://doi.org/10.20885/iustum.vol30.iss3.art1>>.

been registered into assets sold underhandedly by a director who has not been ratified in the articles of association.

2. Research Method

Researchers will conduct data analysis, with data collection taking place qualitatively. The data obtained in the data collection process consists of primary, secondary, and tertiary data, which is data that must be processed by researchers to find answers to problems in this research object²⁴, namely as follows:

- 1) Legislation must not conflict with other Legislation;
- 2) Must pay attention to the hierarchy of Legislation;
- 3) Aims to seek legal certainty; and
- 4) Seek Living Law or law that lives in society, both written and unwritten.

3. Results and Discussion

Legal Consequences of Transfer of Unregistered Limited Liability Company Assets to Assets Sold Under Their Own Hands by A Board of Directors Which Has Not Been Approved in The Articles of Association

In developing its business, LTD makes share capital deposits which can be made in the form of money and other forms assessed by experts who are not affiliated with the LTD as per Article 34, paragraph (1) and paragraph (2) of the LTD Law.²⁵ The principle of corporate personality adopted by LTD means that a company has a personality that is different from individual legal subjects. This principle means that when there is its own identity in the form of its own interests that do not stop or restart from the replacement of members of the management or shareholders.²⁶ The following are authorities in a company that are not given to directors and commissioners, but the authority is given to the GMS:²⁷

1. Changes to the articles of association;
2. Dissolution;
3. Decisions on mergers, amalgamations, takeovers, and/or separation of companies;
4. Decisions on applications for declaration of bankruptcy;
5. Decisions on extension of the term of the company's existence; and
6. Appointing and dismissing members of the board of directors and commissioners.

The GMS has its own authority, which is not given or possessed by other LTD organs, namely the board of directors and board of commissioners. In its implementation, it refers to the LTD Law and the LTD's articles of association.²⁸ The Extraordinary GMS is held with the aim of holding a meeting for an agenda that discusses company management and requires shareholder approval.²⁹ The authority held by the directors and commissioners is limited because there are certain matters

²⁴ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2010). . 32

²⁵ Widya Harnisa, Nyulistiowati Suryanti, and Betty Rubiati, 'Status Hak Atas Tanah Yang Dijadikan Modal Perseroan Terbatas Tanpa Pendaftaran Peralihan Hak Atas Tanah', *ACTA JOURNAL: Jurnal HUKUM Kenotariatan Dan Ke-LAND DEED OFFICIAL-An*, 1.2 (2018), 175–86.

²⁶ *Op Cit*, Asyhadie and Sutrisno. 71

²⁷ Jabalnur and others, 'Akibat Hukum Rapat Umum Pemegang Saham (RUPS) Terhadap Direksi', *Halu Oleo Law Review*, 8.1 (2024), 112–28.

²⁸ *Ibid*

²⁹ Muhammad Yusron Yuwono, 'Perkembangan Kewenangan Rapat Umum Pemegang Saham (RUPS) Perseroan Terbatas Di Indonesia', *Notarius*, 8.2 (2015), 207–33.

that must be approved by shareholders.³⁰ The principle of limiting the authority of the Board of Directors granted by the GMS is based on Article 98, paragraph (4) of the LTD Law, that the GMS Decision may not conflict with the provisions of the Law and/or the company's articles of association.³¹

A LTD that will make changes to the composition of the board of directors must follow the provisions of Article 94 paragraph (7) of the LTD Law that in the appointment event, replacement, and dismissal of members of the board of directors, the board of directors must notify the change in members of the board of directors to the Minister to be recorded in the Company register within a maximum period of 30 (thirty) days from the date of the GMS decision.

M. Yahya Harahap, in his book entitled Limited Liability Company Law, explains that there are two effective sides internally and externally in changes to the board of directors. Internally, it is effective from the date the GMS decision is taken, unless there are other provisions that are expressly regulated by the effective time, and externally, it is effective from the time the notification is received and recorded in the company register by the Minister of Law and Human Rights.³²

Suppose there is a change in the composition of the board of directors. In that case, it must be reported to the Minister of Law and Human Rights within 30 days, as stipulated in the Limited Liability Company Law. Thus, the new board of directors will directly carry out the task of managing the company. This is in line with Article 105 paragraph (5) of the Limited Liability Company Law which states that the dismissal of members of the board of directors is effective since the General Meeting of Shareholders is closed or on another date decided in the GMS, which internally signifies the transfer of rights, authority, and responsibilities from the old board of directors to the new board of directors.³³

The fiduciary duty given to the board of directors is intended to ensure legal protection for shareholders and the limited company itself. This is because both shareholders and the company are not always able to fully protect themselves from potentially detrimental actions by directors, considering that the board of directors acts on behalf of the company entity and shareholders. Therefore, in order to prevent misuse of company assets and authority by directors, they are burdened with fiduciary obligations.³⁴

In a limited company, the board of directors has two main functions: namely the management function and the representative function. This representative function is related to both the Company itself and the General Meeting of Shareholders, as one of the important organs of the company that has special authority that is not given to the board of directors or board of commissioners.³⁵

³⁰ Niru Anita Sinaga, 'Hal-Hal Pokok Pendirian Perseroan Terbatas Di Indonesia', *Jurnal Ilmiah Hukum Dirgantara*, 8.2 (2014) <<https://doi.org/10.35968/jh.v8i2.253>>. 23

³¹ *Op Cit.* Jabalnur and others. . 123

³² M. Yahya Harahap, *Hukum Perseroan Terbatas* (Jakarta: Sinar Grafika, 2016). 365

³³ Candyna Muthiah Bepa, 'Kapan Perubahan Direksi Efektif Berlaku?', *Hukum Online*, 2025 <<https://www.hukumonline.com/klinik/a/kapan-perubahan-direksi-efektif-berlaku-lt524a776b2b5ef/>> [accessed 30 January 2025].

³⁴ Ridwan Khairandy, *Perseroan Terbatas, Doktrin, Peraturan Perundang-Undangan Dan Yurisprudensi* (Yogyakarta: Kreasi Total Media, 2009). 206

³⁵ Anisitus Amanat, *Pembahasan Undang-Undang Perseroan Terbatas Dan Penerapannya Dalam Akta Notaris* (Jakarta: Rajawali Press, 1996). . 130-132

Transfer of wealth/assets in an LTD is one of the authorities of the Board of Directors in the management function, following the basic provisions of the transfer of such wealth. Article 102 paragraph (1) of the Limited Liability Company Law defines "company assets" as all assets, both tangible and intangible, movable or immovable, owned by the company.³⁶ The phrase "in one or more transactions, whether related to each other or not" means one or more transactions whose cumulative value, when combined, exceeds the threshold of 50%. To determine the value of more than 50% of net assets, the assessment is based on the book value according to the latest balance sheet approved by the General Meeting of Shareholders.

The Limited Liability Company Law, specifically Article 102 paragraph (1) letter a, explains that legal action to transfer company assets that exceed 50% of the total net assets of the company, either in one or more transactions, requires the approval of the General Meeting of Shareholders of the company concerned.³⁷

The GMS is a company organ that holds the highest power and highest authority in the company, which is not handed over to the directors and commissioners. The General Meeting of Shareholders can be divided into two, namely:³⁸

A. Annual GMS

Conducted when the management must submit documents of activities and the company's annual report, which must be held no later than 6 months after the closing of the books.

B. Extraordinary GMS

Conducted when there are company interests that must be carried out immediately / in the near future.

The authority of the board of directors to manage and represent the company comes from the Law. This means that it does not come from the founders of the company or from shareholders through the GMS.³⁹ Land that will be used as one of the shares of an LTD, including other forms of share deposits, must comply with the provisions for the transfer of land rights based on the deed of entry into the company or inbreng made by an authorized LAND DEED OFFICIAL and registered at the local Land Office.⁴⁰

The provisions regarding the mechanism for inclusion or inclusion of land into a company, as regulated in Article 37 paragraph (1) of the Government Regulation on Land Registration, state that the transfer of rights must be proven by a deed from an authorized LAND DEED OFFICIAL.⁴¹ Article 92 explains the authority of the board of directors, which in paragraph (1) of the LTD Law states that in carrying it out it must be in line with the aims and objectives of the company, which is continued in paragraph (2) that the authority of the board of directors in carrying out the management of the company is in accordance with the policies as stated in the LTD Law and/or the

³⁶ Robert B. Thompson, 'PIERCING THE CORPORATE VEIL: AN EMPIRICAL STUDY', *Cornell Law Review*, 76.2 (1991) <<http://scholarship.law.cornell.edu/clr/vol76/iss5/2>>.

³⁷ Ali Abdullah, 'Kajian Penggunaan Kuasa Direksi Dalam Pelaksanaan Pengadaan Barang Dan Jasa Dari Perspektif Hukum', *Jurnal Ilmiah Living Law*, 17 (2025), 1–11. . 7

³⁸ Orinton Purba, *Petunjuk Praktis Bagi RUPS, Komisaris Dan Direksi Perseroan Terbatas Agar Terhindar Dari Jerat Hukum* (Jakarta: Raih Asa Sukses, 2011). . 27

³⁹ Febriana Rahmadhani, 'Perubahan Susunan Anggota Direksi Dalam Ruang Lingkup Hukum Perusahaan', *UNES Law Review*, 6.2 (2023), 4092–98.

⁴⁰ *Loc Cit.*, Widya Harnisa, Suryanti, and Rubiati.

⁴¹ *Op Cit.*, Widya Harnisa, Suryanti, and Rubiati.

articles of association.⁴² The directors must be responsible and act in good faith as regulated in Article 97, paragraph (1) and paragraph (2) of the LTD Law.⁴³ Article 97 paragraph (3) of the LTD Law states that the directors are fully personally responsible for the company's losses if they are guilty or negligent in carrying out their duties as they should.⁴⁴

The transfer of land rights to a legal entity company must be stated in the deed of entry into the company made by the local LAND DEED OFFICIAL. It must be registered at the local Land Office to carry out the change of name on the certificate.⁴⁵ When the transfer of land rights is not registered, the proof of ownership is still listed by the old owner, so there is no legal certainty regarding the new owner's ownership, which causes losses to the parties.⁴⁶

LTD in carrying out asset transfer actions is a legal act carried out based on the provisions of the articles of association of the relevant LTD. Legal acts by LTD, such as individuals, are carried out on the condition that they do not violate the law. Legal acts by LTD when something is found that exceeds the limits of intent, purpose, and business activities become invalid because there is no agreement (unanimity) in the GMS.⁴⁷ Based on the explanation above, the authority to carry out the transfer, namely the sale of LTD assets, lies with the Board of Directors of LTD, by considering the provisions of the Articles of Association of LTD regarding the requirement for approval from the Commissioner or GMS. The transfer of assets must follow the decision in the Company's Articles of Association.⁴⁸ Alexander, in his book *Laws of Corporation*, divides the authority to manage an LTD into two categories: express power, which is carried out based on the articles of association, and implied power, which is not regulated by the articles of association and is used to fulfill the intent and purpose of the LTD. This means that actions that are not included in the two categories are *ultra vires*.⁴⁹

LTD as a legal entity gives trust to the Board of Directors to carry out the management of the company as the basis for the formation of a fiduciary relationship (fiduciary duties) where the management is always the party trusted to act with its authority only for the benefit of the company. The principles adopted by the fiduciary duty towards the board of directors are:⁵⁰

- A. The Board of Directors, in exercising its authority, is only for the benefit of the company, not for other purposes such as the needs of Third Parties or their personal needs;
- B. The Board of Directors is prohibited from using their position as managers to gain personal gain or for third parties, except with official approval from the company; and

⁴² Uul Fathur Rahmah, 'Kewenangan Direksi Dalam Pengurusan Perseroan Terbatas', *Lex Economica Journal*, 1.1 (2023), 55–67.

⁴³ Raffles Raffles, 'Tanggung Jawab Dan Perlindungan Hukum Direksi Dalam Pengurusan Perseroan Terbatas', *Undang: Jurnal Hukum*, 3.1 (2020), 107–37 <<https://doi.org/10.22437/ujh.3.1.107-137>>.

⁴⁴ Sriwati, 'Peralihan Kekayaan Perseroan Yang Lebih Dari Lima Puluh Persen Jumlah Kekayaan Bersih Perseroan Melalui Rapat Umum Pemegang Saham Luar Biasa Yang Tidak Mencapai Kuorum Menurut Undang-Undang Perseroan Terbatas', *Jurnal Education and Development*, 8.4 (2020), 72–76 <<http://repository.ubaya.ac.id/38661/>>.

⁴⁵ *Ibid*

⁴⁶ *Ibid*

⁴⁷ *Op Cit.*, Asyhadie and Sutrisno. . 75

⁴⁸ Ryamirzad Ryamirzad and Galang Fauzan Prawinda, 'Karakteristik Persetujuan Dewan Komisaris Terhadap Kewenangan Direksi Menjamin Aset Perusahaan', *Jurnal Perspektif*, 25.2 (2020), 84 <<https://doi.org/10.30742/perspektif.v25i2.765>>.

⁴⁹ *Op Cit.*, Sardjono and others. . 82

⁵⁰ *Ibid*

- C. All company assets may not be used or misused by the Board of Directors for personal gain or the interests of third parties.

Based on Decision Number 398/PDT.G/2019/PN.Cbi JS transferred LTD SIS assets personally claiming to be a representative of LTD SIS by conducting a sale and purchase transaction with payment through JS's account as the Seller on June 1, 2015 with proof of receipt dated October 10, 2015 but until 2019 there has been no legal and physical transfer, this is what caused the case to arise. At the time JS transferred the LTD's land assets, the basis was still the Deed of Release of Rights dated January 31, 2013 Number 11 made before EAP, S.H., M.Kn, which had just been certified as a Building Use Right on September 15, 2016 based on the Decree of the Head of the Bogor Regency Land Office Number 43/HGB/BPN-10.10/2016, meaning that when the agreement was made, LTD did not officially have the object of land rights because proof of ownership was only based on the Deed of Release of Rights. In this case, some factors cause disputes to arise:

- A. JS's ignorance as a buyer that the sale and purchase of land rights must be made in the presence of an authorized official;
- B. The negligence of the board of directors in the management function to archive land ownership documents;
- C. The delay in land registration through a deed of entry into the company / inbrenng so that the assets are not officially owned by the LTD; and
- D. JS took actions that exceeded his authority.

LTD SIS gave JS approval as one of the directors/directors based on deed number 3 dated June 18, 2015 whose articles of association have been approved by the Indonesian Minister of Law and Human Rights No. AHU-AH.01,03-0943951 dated June 19, 2015. This means that administratively JS has not been officially appointed by the LTD or by the Minister of Law and Human Rights at the time the private sale and purchase agreement took place. At the time the case was filed and decided, JS had legally become a director who was part of the board of directors of LTD SIS.

In the case described above, it does not mention in detail the basis for the transfer of land rights based on the GMS, but with evidence of the deed of release of rights which was subsequently registered in 2016 to become the property of the LTD, it has carried out land registration for land rights that have not been certified. The basis for the change of name owned by the company must of course use a deed of entry into the company (inbrenng), especially since this is based on the provisions. LTD as a legal entity in carrying out the transfer action must be carried out by the people whose names are listed in the articles of association unless there is authentic power of attorney to represent the board of directors / board of commissioners.⁵¹

When the land was certified in 2016, there were no objections from any party. So in this case, it can be said that LTD SIS, which has the authority, has the right to the land if viewed from the perspective of proof of land ownership based on the certificate. Any actions of the Board of Directors that deviate from the company's activities in the sense that they are not in accordance with the intent and purpose of the LTD's articles of association, then the Board of Directors has

⁵¹ *Op Cit* Abdullah. . 44

taken actions outside its authority or what is called *ultra vires* as the limitations on the Board of Directors' authority have been regulated according to Article 92 paragraph (1) of the LTD Law.⁵²

LTD SIS can impose sanctions on JS to be held accountable for his actions that harm the company by holding an extraordinary GMS so that the board of directors, board of commissioners and other shareholders are aware of the actions that have harmed the company.⁵³ After there is a quorum decision at the extraordinary GMS, JS must accept all sanctions. Article 97 paragraph (3) of the LTD Law states that every member of the board of directors, in this case JS as Director of LTD SIS, must be responsible up to his personal wealth that causes losses to the company due to errors in the company's management actions. The GMS that can be implemented is one that is guaranteed to be valid by meeting the requirements, namely the implementation procedure, quorum, and the number of votes needed to make decisions that are binding.⁵⁴

4. Conclusion

There is a conclusion that the transfer of LTD assets by one of the directors / directors before obtaining approval in the company's articles of association and in the Decree of the Minister of Law and Human Rights of the Republic of Indonesia, then there is an excess of authority (*ultravires*). JS's liability as Director at the time the case 98/Pdt.G/2022/PN.Bgr was decided is included in the *ultravires* category because it is detrimental to the company that sold assets in the name of LTD SIS before being authorized and receiving land payments through a personal account. JS must be personally responsible for this based on Article 97 paragraph (1) and (2) of the LTD Law regarding the obligation of directors to manage the company in good faith and with a full sense of responsibility.

The suggestion of this research is that LTD SIS can impose sanctions on JS to be held accountable for his actions that are detrimental to the company by holding another GMS so that the board of directors, board of commissioners and other shareholders are aware of the actions that have been detrimental to the company. After there is a quorum decision at the extraordinary GMS, JS must accept all sanctions as per Article 97 paragraph (1) and (2) of the LTD Law regarding the obligation of the board of directors to manage the company in good faith and with a full sense of responsibility.

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⁵²Adhisti Kinanti, Hendro SaLtdono, and Siti Mahmudah, 'Tanggungjawab Direksi Dalam Tindakan Ultra Vires Menurut UU Nomor 40 Tahun 2007 Tentang Perseroan Terbatas', *Diponegoro Law Journal*, 5.3 (2015), 1–13.

⁵³Widijaya Widijaya and Peny Peny, 'Tata Kelola Perusahaan Dan Pengaruhnya Terhadap Struktur Modal', *Jurnal Ekonomi Modernisasi*, 16.3 (2020), 132–43 <<https://doi.org/10.21067/jem.v16i3.5060>>.

⁵⁴*Op Cit.*, Sardjono and others. . 74

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