The Limited Company Shares Transfer Through Circular Decree Out Of The Shareholders Meeting

Aliya Sandra Dewi[1], Dian Fitriana[2]
E-mail : dosen00217@unpam.ac.id, dosen00098@unpam.ac.id
[1]Lecturer in Law Faculty of Pamulang University, South Tangerang City, Indonesia
[2]Lecturer in Law Faculty of Pamulang University, South Tangerang City, Indonesia

ABSTRACT

The authorized capital of the Company is *divided into shares. Shares are movable objects that give the owner the right to attend and cast votes at the General Meeting of Shareholders, receive dividend payments and the remaining assets resulting from liquidation, as well as exercise other rights based on Law Number 40 of 2007 concerning Limited Liability Companies ("Company Law"). Article 56 of the Company Law stipulates that the transfer of rights to shares is carried out by means of the transfer of rights deed. The transfer of rights deed can be made in the form of a notarial deed or a private deed. The transfer of rights deed or a copy thereof is submitted in writing to the Company. The Board of Directors must record the transfer of rights to shares, the date and day of the transfer of rights in the register of shareholders or special register and notify the change in the composition of shareholders to the Minister to be recorded in the register of the Company no later than 30 (thirty) days as of the date of recording the transfer of rights. Many of these deeds are made based on circular decisions outside the General Meeting of Shareholders.*
Keynote : Company Law, Shares Transfer, Shareholders.

A. Introduction

Article 1 number (11) of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as LLC), regulates the definition of takeover as follows:

"A takeover is a legal act carried out by a legal entity or individual to take over the shares of the company which results in the transfer of control over the company".

As for the takeover as referred to in Article (1) number 11 of the Company Law, it can be carried out in two ways, namely through the Company's Board of Directors or from direct shareholders. Thus, each of them is regulated by different legal procedures in the Company Law. Then, in the case of a process of taking over shares of a company, there is a change in control or not causing a change in control in the company.[1]

Requirements regarding the transfer of rights to shares can also be regulated in the articles of association of the Company, namely:

1. Offer in advance to shareholders with certain classifications or other shareholders;
2. Obtain prior approval from the Company's Organs; and/or
3. Obtain prior approval from the competent authority in accordance with the provisions of the legislation.

The requirements as referred to above do not apply in the case of the transfer of rights to shares due to law. What is meant by legal transfer is the transfer of rights due to inheritance or transfer of rights as a result of a Merger, Consolidation, or Separation. However, the transfer of rights due to inheritance must still meet the requirements of obtaining prior approval from the

[1] Maria Amanda, Pemindahan Hak Atas Saham, November 27th 2012, https://www.hukumperseroanterbatas.com/pemegang-saham-2/pemindahan-hak-atas-saham., accessed on July 21st 2021, at 12.00 pm. p.11.

competent authority in accordance with the provisions of the legislation, which can be seen in the Company's Articles of Association.[2]

The articles of association of the company (Articles of Association/Incorporation) are the company's charter.[3] It can also be said that it is an agreement that contains written provisions regarding the powers and rights that can be exercised by the management of the company. As an agreement, in accordance with the system adoLCed by the book of Transfer of Rights to Shares of Limited Liability Companies, which is an open system, the management of the company can make as many agreements (statutes of association) as they want in any form, as long as they fulfill the legal requirements of an agreement. Therefore, if the articles of association of the company do not contain the provisions as formulated in Article 57 paragraph (1), then in the case of the transfer of rights to shares, the party transferring rights to shares is not obliged to:

(a) offer in advance to shareholders with certain classifications or other shareholders;
(b) obtain prior approval from the Company's Organs; and/or
(c) obtain prior approval from the competent authority in accordance with the provisions of laws and regulations.

If the articles of association require shareholders wishing to sell shares to first offer their shares to shareholders of a certain classification or to other shareholders, then the offering of shares to shareholders of a certain classification or other shareholders shall be made for a period of 30 (thirty) days from the date of offer. If within a period of 30 (thirty) days from the date of the offer, it turns out that the shareholder has not purchased the shares offered, then the shareholder who wishes to sell his shares may offer and sell his shares to a third party. Shareholders who wish to sell their shares and are required by the articles of association to offer their shares have the right to withdraw the offer after the expiry of the 30 (thirty) day period.

Approval for the transfer of rights to shares by the Company's Organs or their refusal must be given in writing within a maximum period of 90 (ninety) days from the date the Company Organs receive the request for approval of the transfer of rights. If the period of 90 (ninety) days has passed and the Company's Organ does not provide a written statement, then the Company's Organ is considered to have approved the transfer of rights to the shares. The transfer of rights to shares approved by the Company's Organs is carried out in accordance with the provisions as referred to in Article 56 of the Company Law and is carried out within a maximum period of 90 (ninety) days from the date of approval. [4](voffice.co.id, 2012)

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2 *Ibid.*

3 Suryodiningrat, R . (1995). *Azas-Azas Hukum Perikatan*. Bandung: Tarsito. p.13.

4 https://voffice.co.id/jakarta-virtual-office/business-tips/pengertian-LC-perseroan-terbatas-dan-hal-lain-yang-perlu-diketahui, accessed on July 20th 2021, at 11.15 am.

Law Number 40 of 2007 concerning Limited Liability Companies or the Limited Liability Company Law classifies LC companies into 3 (three) types, namely:

1. Closed Limited Liability Company (LC)

   The shareholders in this closed company usually only come from certain circles or people who have known each other before, such as in a family company.

2. Public Limited Liability Company (LC)

   Public Company is a type of company that has met the criteria for the number of shareholders and paid-up capital in accordance with the provisions of the regulations (Ps.1 v.(8), LLC, 2007).[5] Meanwhile, Law Number 8 of 1995 concerning the Capital Market or Capital Market Law Article 1 paragraph (22) states, a company is said to be a public company if the shares are owned by at least 300 people with a minimum amount of paid-up capital of Rp. 3,000,000., (three million rupiahs).

3. Public Limited Liability Company (LC) (Tbk.)

   Public Limited Liability Company conducts public offering of shares (Ps.1 v.(8) LLC, 2007). Not only that, this type of LC must also be able to meet all the requirements needed for a Public LC, by making an offer on the Stock Exchange or selling shares to the public.

B. Focus O Problems

1. What is the entire meaning of Capital of the shareholders in a Limited Company reference to?
2. How is the procedures of the share transfer's in a Limited Company according to the Law of Limited Company in Indonesia?
3. How about The legal force of Circular Decisions outside the General Meeting of Shareholders?

C. Research Method

The method used in this research is normative law research. Normative legal research essentially examines laws that are conceptualized as norms or rules that apply in society, and become a reference for everyone's behavior. According to Soerjono Soekanto and Sri Mamudji,

[5] Pasal 1 Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, Lembaran Negara Tahun 20007 Nomor 106.

normative legal research is legal research conducted by examining library materials or secondary data. [6]

Normative legal research that examines and examines library materials, or secondary data, normative legal research is also called library law research, theoretical/dogmatic legal research. Thus, the material studied in normative legal research is library material or secondary data. Library materials are materials that come from primary and secondary sources.[7]

D. Results And Discussion

Limited Liability Company (hereinafter referred to as LC) is a type of business entity protected by law with a capital consisting of shares. A person is said to be the owner of a LC if he has a share of the amount invested. In accordance with Law Number 40 of 2007 which discusses Limited Liability Companies (LC), it is said that a company with the type of Limited Liability Company is a business entity in the form of a legal entity established based on an agreement and conducting business activities with authorized capital which is entirely divided into shares or called also with the capital alliance.[8]

1. Capital of the shareholders in a Limited Company

In running a limited liability company, the share capital owned can be sold to other parties. This means that it is very possible to change the organization or ownership of the company without having to dissolve and re-establish the company. In addition, because it was formed based on an agreement, it can be ascertained that the LC was established by a minimum of 2 (two) people. The making of this agreement must be known by a notary and a deed is made to obtain approval from the Minister of Law and Human Rights before officially becoming a limited company.

The capital to set up a limited company is basically divided into 3 (three), namely:

a. Authorized Capital

Authorized capital is the total nominal value of the shares of the company (Article 31 Paragraph 1 of the Company Law). In principle, authorized capital is the total nominal value of shares that can be issued by the company. The determination of the number of shares that

6 Soerjono Soekanto, dan Sri Mamudji, (2010), Penelitian Hukum Normatif Suatu Tinjauan Singkat, Jakarta: Raja Grafindo Persada. p.14.
7 Ishaq, (2017), Metode Penelitian Hukum, dan Penulisan Skripsi, Tesis,Serta Disertasi, Bandung: Alfabeta. p.67.
8 Muhammad, A. (2010). Hukum Perusahaan Indonesia. Bandung: Citra Aditya Bakti. p.35.

become the authorized capital is determined in the Articles of Association of the company concerned .[9]

Furthermore, Article 32 Paragraph 1 of the Limited Liability Company Law stipulates that the authorized capital of the company is at least IDR 50,000,000 (fifty million rupiah). However, this provision is no longer valid because it has been amended in Article 109 Number 3 of Law Number 11 of 2020 concerning Job Creation (UU CiLCa Kerja) which states that the amount of authorized capital for LC is determined based on the agreement of the company founders. These provisions are also in line with those stipulated in Article 3 of Government Regulation no. 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses.[10]

However, the above does not apply to companies that carry out certain business activities in which the minimum amount of authorized capital must be in accordance with the provisions of laws and regulations. For example, an insurance company that determines the paid-up capital at the time of establishment is at least IDR 150 billion. Therefore, the authorized capital of the insurance company should not be less than this amount.

b. Issued Capital

Issued capital is the number of shares taken by the founders or shareholders and some of these shares have been paid and some have not been paid. So, issued capital is capital that the founder or shareholder is able to pay off by him, and the shares are handed over to the shareholders to be owned.

Based on Article 33 Paragraph 1 of the Limited Liability Company Law and Article 4 PP 8/2021, a minimum of 25% of the authorized capital must be placed and fully paid up with valid proof of deposit. A valid proof of deposit must be submitted electronically to the Minister of Law and Human Rights within 60 days from the date of the company's deed of establishment or filling in the statement of establishment for individual companies.

c. Paid-up Capital

Paid-up capital (gestort capital or paid up capital) is the company's capital in the form of cash or other forms submitted to the founder to the company's cash at the time the company

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9 https://kontrakhukum.com/article/jenismodalperusahaan, accessed on July 25th 2021, at 3 pm.

10 Peraturan Pemerintah (PP) Nomor 8 Tahun 2021 Tentang Modal Dasar Perseroan Serta Pendaftaran Pendirian, Perubahan, dan Pembubaran Perseroan yang Memenuhi Kriteria Untuk Usaha Mikro dan Kecil, Lembaran Negara Nomor 18 Tahun 2021.

was founded.[11](Kurniawan, 2014, p.65). This is the proportion of nominal shares actually paid by shareholders.

Paid-up capital is capital that has been entered by the shareholders as payment for the shares taken as issued capital from the authorized capital of the company. Simply put, paid-in capital is shares that have been paid in full by shareholders. Same as issued capital, this provision for paid-up capital refers to Article 33 Paragraph 1, so that a minimum of 25% of the authorized capital must have been issued and fully paid up when establishing LC. That is, the amount is the same as the capital issued by the shareholders.

Further discussion regarding investment in LC made by shareholders. So we must also understand what is meant by shares. Shares are proof that a full share of the capital has been paid in by the shareholders in a Limited Liability Company, or in simple terms it can be said that shares are securities that show ownership of a company. There are several requirements that need to be considered so that the shares are considered valid so that they have a value or price as described in Article 48 and Article 49 of Law Number 40 of 2007 Limited Liability Company (LLC), namely:

Article 48:

1. The Company's shares are issued in the name of the owner.
2. The requirements for share ownership may be stipulated in the articles of association by taking into account the requirements set by the competent authority in accordance with the provisions of the legislation.
3. In the event that the requirements for share ownership as referred to in paragraph (2) have been determined and are not met, the party obtaining the share ownership cannot exercise its rights as a shareholder and the shares are not counted in the quorum that must be achieved in accordance with the provisions of this Law. and/or articles of association.

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[11] Kurniawan, (2014). Hukum Perusahaan Karakteristik Badan Usaha Berbadan Hukum dan Tidak Berbadan Hukum di Indonesia, Ctk. Pertama, Yogyakarta: Genta Publishing. p.35.

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Article 49 :

1. Share value must be stated in rupiah currency.
2. Shares without par value cannot be issued.
3. The provisions as referred to in paragraph (2) do not rule out the regulation of the issuance of shares without a nominal value in the laws and regulations in the capital market sector.

Ownership of company shares gives the shareholder the right to do the following:

1. Attend and cast votes at the General Meeting of Shareholders (GMS);
2. Receive payment of dividends and the remaining assets resulting from the liquidation;
3. Exercise other rights in accordance with the law on the company.

Not all shareholders have voting rights in the General Meeting of Shareholders (GMS). There are various classifications of shareholders. One of them is a shareholder without voting rights. This is regulated in Law Number 40 of 2007 concerning Limited Liability Companies (LLC). In general, shareholders have rights that regulated in the Limited Liability Company Law and the company's articles of association. The main rights of shareholders are regulated in Article 52 paragraph (1) of the Company Law. However, there are exceLCions to the classification of certain shares in Article 53 of the Company Law, namely shares without voting rights. There are five classifications of shares as follows:

1. Shares with voting rights or without voting rights

2. Shares with special rights to nominate members of the Board of Directors or the Board of Commissioners
3. Shares with a certain period of time
4. Shares that give the right to receive dividends first
5. Shares that give the right to receive first the remaining assets resulting from the liquidation.

The use of share classification in LC is different, according to the respective articles of association. According to Article 53 of the Company Law, the articles of association stipulate one or more classifications of shares. Each share in the same classification gives shareholders the same rights.

These types of stock classifications can be combined with each other. If the articles of association specify more than the classification of shares, then the articles of association must specify one of them as ordinary shares. In accordance with the explanation of Article 53 paragraph (3) of the Limited Liability Company Law, what is meant by ordinary shares are shares that have voting rights to make decisions at the GMS, receive dividends, and receive the remaining assets resulting from liquidation. Shareholders without voting rights cannot attend and cast votes in the GMS. However, the shareholders still have the right to receive dividend payments and the remaining assets resulting from the liquidation of the company.

2. Share Transfer Procedure

Shares are securities that prove ownership of the company, from shares to dividends for shareholders, depending on the size of the number of shares. Juridically, shares are movable objects that have value, can be transferred, pledged or placed as fiduciary security. Ownership of company shares gives the shareholder the right to do the following:

a. Attend and vote in the GMS;
b. Receive payment of dividends and the remaining assets resulting from the liquidation;
c. Exercise other rights in accordance with the law on the company.

The deed of establishment of a Limited Liability Company (LC) must state the total capital of the LC which is divided into shares. As explained earlier that shares as equity participation in the ownership of a Limited Liability Company have stages or procedures in their ownership and

beforehand we must first know that Shares must be issued in the currency of the Republic of Indonesia. [12]

Shareholders are allowed to transfer or sell their share ownership to other parties. The mechanism for selling shares is regulated in Law Number 40 of 2007 concerning the Company. In the transfer of shares, the interests of the company and other shareholders must be considered. There are several factors that cause shareholders to sell their shares, namely:

a. The holder does not agree with the amendment to the articles of association;
b. There is a transfer or guarantee of the company's assets which has a value of more than 50% of the company's net assets;
c. Disagree with the merger, consolidation, acquisition, or separation;

The things that need to be considered in selling shares are explained as follows:

1. Paying attention to the contents of the articles of association whether there are special requirements for transferring/selling shares

Before selling shares, the first thing that needs to be considered is whether in the Articles of Association of the LC there are special terms and procedures such as the need to offer first to other shareholders or obtain approval from the GMS, directors and/or commissioners first. If the requirements referred to in the Articles of Association, then the shares may not be offered to third parties (outside parties), but must be offered first to other shareholders or obtain prior approval from the GMS, directors and/or commissioners.

The obligation to offer shares to be sold first to other shareholders or to obtain approval from the GMS, directors and/or commissioners has been regulated in Article 51 paragraph (1) of the Limited Liability Company Law, namely:

• In the articles of association, it is possible to stipulate requirements regarding the transfer of rights to shares, namely:

a. Must offer first to shareholders with certain classifications or other shareholders;
b. Must obtain prior approval from the Company's Organs; and/or;
c. Must obtain prior approval from the competent authority in accordance with the provisions of the legislation.

[12] Hardijan Rusli. (1997). Perseroan Terbatas dan Aspek Hukumnya. Jakarta: Pustaka Sinar Harapan. p.79.

• The requirements as referred to in paragraph (1) do not apply in the case of the transfer of rights to shares due to the transfer of rights due to law, except for the requirements as referred to in paragraph (1) letter C regarding inheritance.

2. The sale of shares is carried out by deed of transfer of rights and registered by the board of directors in the register of shareholders.

The shares to be sold are carried out using a deed of transfer of rights. This means that no sales process is carried out without a deed of transfer of rights. The deed of transfer of rights is a written agreement made between the shareholder who will sell his shares and the party who will buy the shares. Basically, the deed of transfer of rights can be made before a notary and can also be made under the hand.

After the sale of shares occurs due to the deed of transfer of rights, the next step is that the directors of the LC have the obligation to record the transfer of rights to the shares in the shareholder register or special register with the aim of being notified immediately to the Minister of Law and Human Rights.

3. Notified to the Ministry of Law and Human Rights

After the Board of Directors has performed its obligation to record the transfer of rights to shares in the register of shareholders or special register, the transfer of rights to shares shall be notified of the composition of the changes to the Minister of Law and Human Rights to be recorded in the register of the Company no later than 30 (thirty) days from the date of recording the transfer. right.

Summarized, the following are the steps that must be carried out by shareholders who will transfer their shares:

a. The selling shareholder shall notify the company in advance;
b. If it is mandated by the articles of association, it must obtain approval from other company organs. The grace period for obtaining approval is 90 (ninety) days, if during that time the other company organs do not provide answers, the company organs are considered to have agreed;
c. If mandated by the articles of association, the selling shareholder must first offer its shares to other shareholders, if within a grace period of 30 (thirty) days none of the other shareholders is willing to buy then they can offer to other parties;
d. Made in a deed of transfer of rights, either made before a notary or a private deed;
e. The deed is submitted in writing to the company;

f. The Board of Directors keeps records;
g. The Board of Directors sends a letter of notification of the change in the composition of shareholders to the minister no later than 30 (thirty) days after the recording by the board of directors is made, if within that time the Minister must reject it;

Furthermore we should know about the process of taking shares directly from the Shareholders where the procedure is simpler, namely:

1. Negotiations and Agreements

   The method of taking over the shares issued and/or to be issued by the Company through direct shareholders is carried out through negotiations and agreements by the parties who will take over with the shareholders while still taking into account the articles of association of the Company being taken over regarding the transfer of rights to shares and the agreements made by the shareholders. Company with other Parties (Article 125 paragraph (6) and (7) of the Company Law). If the Takeover is carried out by a legal entity in the form of a Company, the Board of Directors must first obtain the approval of the Shareholders Meeting before conducting negotiations and an agreement to purchase shares directly from the shareholders.

2. Announcement of Planned Agreement

   The next stage, even though the takeover of shares is directly through the shareholders and does not prepare a plan for the takeover first, must still announce the plan for the takeover agreement in 1 (one) newspaper and announce in writing to the employees of the company who will carry out the takeover within a period of no later than 30 (thirty) (thirty) days prior to the summons for the Shareholders Meeting. This is done based on Article 127 paragraph (8) of the Company Law where the provisions apply mutatis mutandis apply to announcements in the context of Acquisition of shares made directly from the shareholders in the Company.

3. Submission of Creditor's Objection

   Thus, Article 127 paragraphs (2), (3), (5), (6) and (7) of the Company Law also apply. In the event that a Creditor wishes to file an objection to the Company, it can submit it within a period of no later than 14 (fourteen) days after the announcement, but if within that period the creditor does not file an objection, the creditor is deemed to have approved the Takeover. In the event that the objection of creditors up to the date of the Shareholders Meeting cannot be resolved by the Board of Directors, the objection must be submitted to the Shareholders

Meeting for resolution. As long as the settlement has not been reached, the takeover cannot be carried out.

4. Making the Deed of Takeover before a Notary

   Then, according to Article 128 paragraph (2) of the Company Law, the deed of taking shares made directly from the shareholders must be stated with a notarial deed in Indonesian. Because the takeover is carried out directly from the shareholders, Article 131 paragraph (2) of the Company Law calls it a deed of transfer of rights to shares.

5. Notification to the Minister

   According to Article 131 paragraph (2) of the Company Law, a copy of the deed of transfer of rights to shares must be attached to the submission of notification to the Minister regarding changes in the composition of shareholders.

6. Announcement of Takeover Results

   In the last stage based on Article 133 paragraph (2) of the Company Law, the Board of Directors of the Company whose shares were taken over is required to announce the results of the Takeover in 1 (one) or more Newspapers, the obligation to announce is carried out within a period of no later than 30 (thirty) days from the date of take effect.

   The definition of Takeover as regulated in Article 1 number 11 of the Company Law is an Takeover which results in a change in Control over a Limited Liability Company. However, in the event that the takeover of the Company's shares does not result in a change of control, there is a condition that the number of shares taken over does not exceed 50% of the Company's shares.[13]

   The takeover referred to here cannot cause a change in control according to the definition of Takeover in Article 1 point 11 of the Company Law because the acquisition of shares is only a transfer of rights to shares as regulated in Article 56 of the Company Law. Thus, the legal procedure for a share takeover that does not result in a change of control within the Company, there are procedures that do not need to be carried out, namely:

   a. Shareholders Meeting decision procedure (Article 125 paragraph (4) LLC), without prejudice to the provisions of the Articles of Association of the Company concerned.

[13] Sofie Widyana P, https://www.hukumperseroanterbatas.com/akusisi-perusahaan/prosedur-hukum-Peralihan-perseroan-terbatas/, accessed on July 21st 2021, at 1 pm..

b. The procedure for drafting the takeover plan (Article 125 paragraph (6) of the Company Law).
c. The procedure for announcing the summary of the takeover plan in 1 (one) newspaper (Article 127 paragraph (2) of the Company Law).
d. Procedure for making the deed of acquisition before a notary (Article 128 of the Company Law)
e. Procedure for announcement of takeover in 1 (one) or more newspapers (Article 133 of the Company Law)

3. The legal force of Circular Decisions outside the General Meeting of Shareholders

First of all, we need to know about the types of Shareholders Meeting. In terms of the timing of the GMS, Article 78 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies ("LLC") divides the Shareholders Meeting into:

a. Annual Meeting

According to Article 78 paragraph (2) of the Company Law, the annual meeting must be held no later than 6 (six) months after the end of the financial year. At the Annual Meeting, all documents from the Company's annual report as referred to in Article 66 paragraph (2) of the Company Law must be submitted, namely:[14]

1. A financial report consisting of at least a balance sheet at the end of the last financial year in comparison with the previous financial year, a profit and loss statement for the relevant financial year, a cash flow statement, and a statement of changes in equity, as well as notes to the financial report;
2. Reports on the Company's activities;
3. Report on the implementation of Social and Environmental Responsibility;
4. Details of problems that arose during the financial year that affected the Company's business activities;
5. A report on the supervisory duties that have been carried out by the Board of Commissioners during the last financial year;
6. Names of members of the Board of Directors and members of the Board of Commissioners;

[14] Yahya Harahap. (2016) Hukum Perseroan Terbatas. Jakarta: Sinar Grafika. p.310.

7. Salaries and allowances for members of the Board of Directors and salaries or honoraria and allowances for members of the Board of Commissioners of the Company for the new past year.

b. Other Meeting/Extraordinary Meeting

According to Yahya Harahap, Article 78 paragraph (1) and paragraph (4) of the Company Law mentions Other Meeting. However, the Elucidation of Article 78 paragraph (1) of the Company Law states that what is meant by "other meeting" in practice is often known as the Extraordinary Meeting.[15]

a. Can be held any time, and
b. Depending on the need for the benefit of the company.

So it can be seen that in addition to the Annual GMS, the Company Law allows an Extraordinary GMS to be held, either at the initiative of the Board of Directors or at the request of the shareholders or the Board of Commissioners.[16]

4. Extraordinary Meeting Agenda

According to legal practitioner Irma Devita Purnamasari in the article on the General Meeting of Shareholders of the Company which we accessed from her personal website, the agenda for the Extraordinary Meeting also varied, depending on the urgency of the interests of the Company at that time. For example, the Company will receive credit from a bank, and requires the approval of shareholders to comply with the provisions in Article 12 of the Company Law of its articles of association (in accordance with the most recent LC articles of association), or to comply with the provisions stipulated in Article 102 paragraph (1) and (2) LLC to guarantee the Company's assets, the value of which is the majority of the Company's assets in 1 (one) financial year. This Extraordinary GMS can also be held in the event that the Company will change the composition of its Board of Directors and Commissioners, change the name, domicile, period of establishment of the Company, and others[17]

The Extraordinary Meeting can be held at any time depending on the company's needs. The Company Law does not provide explicit restrictions on the agenda of the Extraordinary Meeting, but usually the Extraordinary Meeting is held in the event that the

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[15] Ibid, p. 316.
[16] Irma Devitasari, https://irmadevita.com/2007/rapat-umum-pemegang-saham-perseroan/, accessed on July 25th 2021, at 11 pm.

[17] Ibid.

Company requires approval from the shareholders for a certain matter or will change the composition of the Board of Directors and Commissioners, change the name, domicile, period of establishment of the Company, and etc.

5. Shareholders Circular Decision

Circular Resolution is a decision making outside the GMS, in practice it is known as a "proposed decision that is circulated". The legal basis for making Circular Decisions by Shareholders is regulated in Article 91 of the Company Law and the explanation is as follows:

Article 91 LLC:

Shareholders may also make binding decisions outside the Shareholders Meeting provided that all shareholders with voting rights agree in writing by signing the proposal in question.

Decisions like this are made without a physical Shareholders Meeting being held, but decisions are made by sending a written proposal to be decided on to all shareholders and the proposal is approved in writing by all shareholders. The decision-making mechanism outside the Shareholders Meeting physically can be done by:

1. Send in writing the proposal to be decided on to all shareholders, and

2. The proposal is approved in writing by all shareholders.

Approval from all shareholders is an absolute requirement for the validity of decisions outside the Shareholders Meeting. No shareholder may disagree. If something like that happens, the circular resolution will be invalid.

Broadly speaking, the difference between the Extraordinary Meeting and the Circular Resolution of Shareholders is in terms of implementation (method). The Extraordinary Meeting as a type of Shareholders Meeting in general, is conducted by the shareholders being present in one place, which can be held at any time (any time) according to the needs of the company. Meanwhile, Circular Resolution is decision making by shareholders outside the Shareholders Meeting (without physical presence). This Circular Resolution has the same legal force as the physical and conventional Shareholders Meeting resolutions, provided that all shareholders give their approval to the Shareholders Meeting proposal to be decided.

E. Conclusion

Article 125 paragraph (4) of the Company Law stipulates that a takeover is carried out by a legal entity in the form of a company. The Board of Directors prior to taking legal action, the takeover must be based on a Shareholders Meeting that meets the quorum of attendance. This share transfer decision can also be made by taking Circular Decisions outside the Shareholders Meeting, because it is also a binding legal decision. What is meant by "binding decision" is a decision that has the same legal force as the decision of the Shareholders Meeting.

Based on Article 91 of the Company Law and its explanation, it can be concluded that the decision making of the shareholders by means of circulating the proposal to the shareholders (out of the Shareholders Meeting) for approval or known as the circular resolution has the same legal force as the Shareholders Meeting decision, of course with The main condition is that all shareholders must agree and sign the circular resolution unanimously without exception. In other words, the things that can be decided by the Shareholders Meeting can also be decided by the shareholders through circular resolutions while still being guided by the requirements as referred to above.

F. Recommendation

The transfer of shares, both into and out of all shareholders of the company, can be carried out by Circular Decisions out of the Shareholders Meeting, as long as all shareholders express their approval in writing. Therefore, it is better to make this Circular Decision using a notarial deed, so that the strength of the proof is perfect in the eyes of the law, for the benefit of all Shareholders in the Limited Liability Company.

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