

CIRCULAR RESOLUTION, CONFLICT OF INTEREST, AND CORPORATE BANKRUPTCY: A LEGAL STUDY OF THE ACTIONS OF DIRECTORS AS SHAREHOLDERS

Zulfikar Ardiwardana Wanda

Universitas Airlangga

zulfikar.ardiwardana.wanda-2025@fh.unair.ac.id

Muhammad Dito Zakharia

Universitas Airlangga

muhammad.dito.zakharia-2025@fh.unair.ac.id

ABSTRACT

A Limited Liability Company (PT) as a legal entity, has a decision-making mechanism that, in principle, is implemented through a General Meeting of Shareholders (RUPS). However, Law No. 40 of 2007 on Limited Liability Companies also recognizes a decision-making mechanism outside the RUPS through bulletin decisions as a more efficient alternative. Legal issues arise when bulletin decisions are used in strategic agendas such as voluntary bankruptcy petitions, especially in situations where Directors also act as shareholders. This situation has the potential to create conflicts of interest, especially if the bankruptcy of the corporation is due to the mistakes or neglect of the relevant Directors. This is a normative legal study with a legislative and conceptual approach, which aims to analyze bulletin decisions and the implications of the bulletin decision mechanism on the responsibility of the Director's Board in bankruptcy cases. The study finds that circular resolutions can be misused to avoid responsibilities regulated in Article 104 of Law Number 40 of 2007 concerning Limited Liability Companies, given that circular resolutions require unanimous shareholder approval. This study emphasizes the importance of reforming the circular resolution mechanism.

Keywords: Circular resolution; Bankruptcy; Directors' liability.

INTRODUCTION

Indonesia is a developing country with an economy that continues to grow every year. One of the factors supporting economic development is the significant amount of business activity in Indonesia. One of the most common forms of business activity in Indonesia is a Limited Liability Company (PT).¹ According to Article 1 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT), a Limited Liability Company (PT) is a legal entity of capital association, established based on a contract, carrying out business operations with fully divided capital that becomes equities, and complying with the provisions that have been determined by this law and its guidelines. Thus, A PT is a corporate entity and legal entity with certain obligations and rights. As a corporate entity, a PT also has an internal structure that consists of a Board of Commissioners, a Director's Board, and a General Meeting of Shareholders (RUPS).

¹Johari Santoso, "Perseroan Terbatas Sebagai Institusi Kegiatan Ekonomi Yang Demokratis," *Jurnal Hukum IUS QUIA IUSTUM* 7, no. 15 (2000): 194–203, <https://doi.org/10.20885/iustum.vol7.iss15.art15>.

It is important to note that the main aspect of exercising rights and obligations toward the company is decision-making, which is carried out through the RUPS as the decision-making body and the most important body in managing the Company. In addition, RUPS itself is a forum for shareholders to express their opinions to reach an agreement related to the company's interests. Examples of agreements involving the RUPS include the removal and appointment of Director and Commissioner, approval of profit and loss statements, amendments of the Articles of Association, approval or rejection of mergers, acquisitions, and consolidations, as well as approval or rejection of voluntary bankruptcy petitions.² Voting rights in the RUPS are obtained by purchasing Company shares through a "one share, one vote" mechanism. However, shareholders in the Company also have their interests protected, for example, through the separation of assets between the Board of Directors and the Board of Commissioners. This is possible because the Company is a private limited entity.³

In contrast, in public companies, anyone can buy shares, including Members of the Board of Directors and the Board of Commissioners. Therefore, when Directors or Commissioners own shares in the Company, their legal position is not limited to their role as management and supervisory bodies, but also includes their status as shareholders who have voting rights at the RUPS.

This dual role potentially harms the Company, and such practices are currently common in the business world. Under the UUPT, there is no prohibition on directors or commissioners serving as shareholders, but the potential for conflicts of interest is high and can lead to breaches of fiduciary duty.⁴ This can occur if, in the decision-making process through a RUPS, the agenda involves matters related to the position of the Commissioner or Director, such as a voluntary bankruptcy petition, and at the same time, the Commissioner or Director is also a shareholder. In this situation, there is a conflicting issue in the decision-making procedure, which is a new issue that has not been discussed in other articles.

As explained above, shares in the Company can be purchased by anyone regardless of their domicile and position. Currently, decision making in the Company can be carried out through mechanisms outside the RUPS, namely through circular resolutions, for reasons of efficiency outside the RUPS. Decision-making also raises a number of issues, particularly when the matter involves the Board of Directors, such as a voluntary bankruptcy petition filed by a company that is also a shareholder. Furthermore, the use of circular resolutions in voluntary bankruptcy petitions may affect the liability of directors who are also shareholders. Normatively, there is no prohibition. However, this could create a loophole that allows directors to avoid liability for mistakes that lead to a company's bankruptcy.

²Anak Agung Ngurah Bagus Wiradhanta Adipratama, "Pengaturan Rapat Umum Pemegang Saham Dalam Anggaran Dasar Perseroan Terbatas," *Jurnal Hukum Sasana* 8, no. 2 (2022), <https://doi.org/10.31599/sasana.v8i2.1280>. The exclusive authority in the articles of association is solely based on the will of the RUPS which is ratified and approved by the Minister of Justice which can be changed through amendments to the articles of association as long as it does not conflict with the Company Law. Regulation of RUPS in PT is regulated, Article 94, 102 and Article 104. Company Law No. 40 of 2007 appoints members of the Board of Directors, and determines certain restrictions for the Board of Directors that require RUPS approval. Article 63 of the Company Law states that the RUPS has all powers not granted to the Board of Directors, or Commissioner Article 69, all activities including approval of financial statements and ratification of financial statements as well as reports on the supervisory duties of the Board of Commissioners are carried out by the General Meeting of Shareholders. Article 64 of Law No.1 of 1995 as amended by Article 76 of Law No.1 of 2007 concerning Limited Liability Companies, determines the location of the RUPS. Paragraph (1)

³Muhammad Yusron Yuwono, "PERKEMBANGAN KEWENANGAN RAPAT UMUM PEMEGANG SAHAM (RUPS) PERSEROAN TERBATAS DI INDONESIA," *Notarius* 8, no. 2 (2015): 207–35, <https://doi.org/10.14710/nts.v8i2.10265>.

⁴Prawira Kamila et al., "Pelanggaran Prinsip Fiduciary Duty oleh Direksi yang Rangkap Jabatan," *Locus Journal of Academic Literature Review*, March 20, 2023, 261–68, <https://doi.org/10.56128/ljoalr.v2i3.142>.

METHOD

This research applies the normative legal research method, which involves processing written legal materials to understand the legal norms in applicable regulations and analysing primary and secondary legal materials related to the legal issues under discussion. In particular, this study adopts a statutory approach to analyse laws and regulations relevant to the legal issues under investigation. It includes, but is not limited to, the UUPT and related regulations. The conceptual approach is used to understand the theories and concepts that can serve as a basis for this study, drawing on corporate law.⁵ This study uses a descriptive-legal analytical technique, given the need to gain deeper knowledge and a comprehensive understanding of the regulations governing the bankruptcy law system. The law materials collected were afterwards reviewed with a focus on the relevant theoretical basis.

ANALYSIS AND DISCUSSION

Differences in decision-making mechanisms through RUPS and circular resolutions

The General Meeting of Shareholders (RUPS), as part of the company's management body, plays a central role in deciding the company's policies and strategic plans, as well as making fundamental decisions for business continuity. The decisions of the General Meeting of Shareholders (RUPS) are then implemented by the Board of Directors and supervised by the Commission Board. The RUPS consists of an Annual RUPS and an Extraordinary RUPS, which are regulated in Article 78 of the Limited Liability Company Law (UUPT). The annual RUPS must be held no later than 6 months after the end of the fiscal year. RUPS decisions are made in a direct meeting attended by shareholders. The General Meeting of Shareholders (RUPS) must take place at the Company's head office in the Republic of Indonesia, and this must be specifically stated in the Company's Articles of Association, as stipulated in Article 5, paragraph (1), of the UUPT.

The Company's head office is also its headquarters. According to Article 5 paragraph (1) in connection with Article 76 paragraph (1) of the UUPT, it can be understood that in order for a RUPS to be declared valid. In principle, it must be convened at the Company's headquarters. Therefore, the initial benchmark in determining the validity of the RUPS is whether the RUPS is convened at the Company's head office as stipulated in the Company's Articles of Association. However, the requirement is not absolute, due to Article 76 paragraph (3) of the UUPT explicitly stipulating that a RUPS held at the Company's head office can only be declared valid if the location is within the Republic of Indonesia, so the existence of the Company's head office under Indonesian jurisdiction is an important prerequisite for the validity of the RUPS.⁶

Furthermore, regarding implementation, Article 76, paragraph (4), of the UUPT also states that the RUPS can be held electronically. The UUPT introduces a method of conducting the RUPS electronically, which has not yet been adopted in Law Number 1 of 1995 concerning Limited Liability Companies. Conducting a RUPS electronically can facilitate shareholders and participants who are unable to physically present at the location where the RUPS takes place. According to Article 77 paragraph (1), Electronic RUPS can be held via conference calls, online video meetings, or other virtual media. Thus, conducting an electronic RUPS using video conferencing will make it easier for RUPS participants, as they can gather in one

⁵Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana, 2019), 137.

⁶M. Yahya Harahap, *Hukum Perseroan Terbatas* (Sinar Grafika, 2022), 309.

place even though they are physically located in different places. However, they can still listen to and watch the RUPS proceedings as they would in a conventional meeting.⁷

In addition to provisions regarding the venue for the RUPS, the UUPT also requires that a quorum of attendance and a quorum for decision-making be met as conditions for the RUPS to be valid. Regarding the issue of quorum, this is regulated in Articles 86, 88, and 89 of the UUPT. According to these articles, there are different quorum percentages, which depend on the agenda items being discussed, as classified below:

a. Quorum for ordinary general meetings

For ordinary meetings, Article 86 requires a minimum quorum of more than 1/2 of all shares with voting rights, both in attendance and presence by proxy. If this quorum is not met, a second RUPS must be held with a quorum of 1/3 of all shares with voting rights, both in attendance and presence by proxy. Decisions shall be binding if accepted by at least one-third of all voting rights cast.

b. Quorum for the RUPS regarding the agenda for Articles of Association amendments.

Concerning quorum for agendas related to Article of Association (AD) amendments, a minimum of 2/3 of total voting rights must be attended and representative at the RUPS, and such resolutions shall be legitimate if they are agreed by at a minimum of 2/3 of total shares represented. But if the quorum is failed to be fulfilled, a second RUPS may be held with a minimum attendance quorum of 3/5 of such total voting shares attending and representing such shares at the RUPS, and such resolution shall be binding upon the affirmative vote of at a minimum of 2/3 of the shares voting at such meeting.

c. Quorum for the RUPS agenda items in accordance with Article 89 paragraph (1)

Article 89 paragraph (1) regulates several meeting agendas, including the merger of a Company, consolidation of a Company, takeover of a Company, separation of a Company, petition for bankruptcy, extension of the company's term, and liquidation of a Company. The quorum for these agendas is 3/4 of the total voting shares represented at the RUPS, and the decision is considered legitimate if accepted by at least 3/4 of the votes cast. But if the quorum is not fulfilled, a second RUPS will be held with a minimum quorum of 2/3 of total voting shares attending and representing the RUPS, and will be deemed legitimate if agreed to by at least 3/4 of votes cast.

In terms of the minimum quorum for the three agenda items of the RUPS, both the first and second convocations may be determined with a higher quorum as stipulated in the Company's Articles of Association (AD). On the other hand, if it turns out that each agenda item held for the second time still does not meet the specified quorum, the Company shall submit a request to the head of the District Court in accordance with the jurisdiction of the Company's domicile. This was done so that the District Court Chief Justice could decide on the minimum required quorum of shareholders for the third RUPS.⁸

Besides the annual RUPS, there is also a type of extraordinary RUPS (RUPSLB). This is not explicitly regulated in the UUPT, but is implicitly regulated in Article 78 paragraph (1) and paragraph (4). However, the explanation of Article 78 paragraph (1) declares that what is meant by "other RUPS" in reality usually refers to an RUPSLB held at any time, in which case an RUPSLB may be convened anytime based on the needs or urgency of the Corporation itself.

⁷Mira Nila Kusuma Dewi, "KEDUDUKAN HUKUM AKTA RISALAH RAPAT UMUM PEMEGANG SAHAM (RUPS) MELALUI MEDIA ELEKTRONIK," *Arena Hukum* 9, no. 1 (2016): 112–31, <https://doi.org/10.21776/ub.arenahukum.2016.00901.7>. video conference and other electronic media, based on article 77 paragraph (1)

⁸Zaky Zhafran King Mada, "ANALISIS YURIDIS KEPUTUSAN RAPAT UMUM PEMEGANG SAHAM YANG MEMILIKI PERSENTASE KEPEMILIKAN SAHAM YANG SEIMBANG PADA PERSEROAN TERBATAS," *Jurnal Magister Ilmu Hukum: Hukum Dan Kesejahteraan* 8, no. 1 (2023): 1–15, <https://doi.org/10.36722/jmih.v8i1.1877>. akan tetapi dalam kenyataannya permasalahan mengenai ini tetap ditemui. Penelitian ini di latarbelakangi oleh 2 (dua

Thus, decisions can be made through the Annual RUPS or the RUPSLB. However, there is a mechanism for decision-making outside the RUPS, namely circular resolutions or circulated resolution proposals, which are stipulated in Article 91 of the UUPT. Although circular resolutions can be a mechanism for decision-making outside of the RUPS, these resolutions can be used for any agenda set out in the RUPS and disregard all RUPS requirements, such as quorum.⁹ Nevertheless, circular resolutions as regulated in the UUPT are an alternative or *ultimum remedium* if conventional and electronic RUPS cannot be held.¹⁰

A circular resolution may be made by mailing a proposal in writing to be voted upon by all shareholders, and such resolution shall be valid if all shareholders entitled to vote in the Company give their written consent by signing the circular Resolution proposal. The signatures affixed to the circular resolution decision serve as proof that the concerned shareholders have read and understood the intent and purpose of the circular resolution. Thus, if even one shareholder does not give their approval to the circular resolution proposal, this will result in the circular resolution decision not being implemented. In other words, the quorum for approval of a circular resolution is 100%. If it is still enforced, the circular resolution is invalid and legally flawed, but if it is approved in its entirety, the circular resolution is a binding and legal decision with the same validity as a decision of the RUPS.¹¹ However, it should also be noted that this circular resolution does not apply to registered shares.

Then, the final results of the annual RUPS, RUPSLB, and circular resolution should be recorded in an authentic deed. If the RUPS or circular resolution decision is not recorded in a deed, then the decision is invalid and considered never to have existed. This intersects with the deed's function as a formal cause.¹² As a result, everything decided in the RUPS or circular resolution cannot be implemented.

The Application of Circular Resolutions in Voluntary Bankruptcy Petitions May Affect the Liability of Directors Who Are Also Shareholders

In bankruptcy practice, under Article 2, paragraph (1), of the Bankruptcy and Suspension of Debt Payment Law (hereinafter referred to as UUKPKPU), debtors may file for bankruptcy on their own behalf, a process often referred to as a voluntary petition. However, if the debtor is a company that wishes to file for bankruptcy on its own behalf, this cannot be done directly by the Board of Directors. Based on Article 104 paragraph (1) of the Limited Liability Company Law, the Board of Directors does not have the authority to propose bankruptcy on behalf of the company to the Commercial Court without the agreement of the RUPS in accordance with the predetermined agenda and quorum. However, if the RUPS to discuss the voluntary bankruptcy petition cannot be held, then postal voting is used as the decision-making mechanism.

In practice, members of the Board of Directors often also act as shareholders. In this type of structure, the directors' board not only has duties as a corporate body, but also has personal economic interests as shareholders. In this situation, a conflict of interest becomes evident, particularly when a company files for voluntary bankruptcy. In corporate bankruptcy cases, such as the bankruptcy of PT Mandala Airlines in Decision No. 48/Pdt.Sus-Pailit/2014/PN.Niaga.Jkt.Pst, if the Board of Directors also serves as shareholders in PT Mandala Airlines,

⁹Inzafani Rahman Putri, "Kepastian Hukum Keputusan Pemegang Saham Dengan Metode Circular Resolution Dalam Penggantian Direksi Perseroan Terbatas," *Jurnal Multidisiplin Indonesia* 2, no. 9 (2023): 2972–3002, <https://doi.org/10.58344/jmi.v2i9.574>.

¹⁰Jeva Fitri Fadilla and Daly Erni, "Kepastian Hukum Terkait Kewenangan Notaris Dalam Mengesahkan Akta RUPS Yang Diselenggarakan Secara Elektronik," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7, no. 1 (2023): 49–63, <https://doi.org/10.58258/jisip.v7i1.3996>.

¹¹M. Yahya Harahap, *Hukum Perseroan Terbatas* (Sinar Grafika, 2022), 341.

¹²Fernando Kobis, "KEKUATAN PEMBUKTIAN SURAT MENURUT HUKUM ACARA PERDATA," *LEX CRIMEN* 6, no. 5 (2017), <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/16675>.

and the bankruptcy is reasonably attributable to the directors' misconduct, and the shareholders subsequently file for voluntary bankruptcy using a circular resolution, there is clearly a conflict of interest between the shareholders and the directors who also serve as shareholders, as they seek to mitigate the consequences of the bankruptcy caused by the directors' misconduct to avoid personal liability.

Based on Article 104 paragraph (2) of the UUPT, if the Company's bankruptcy happens due to the Director Board default or omission and the company assets are unable to fulfil the responsibilities arising from the bankruptcy, every Board of Directors member is collectively and personally liable for compensation, unless other Board of Directors members can show that it wasn't its own fault.¹³

The use of circular resolution in decision-making related to voluntary bankruptcy petitions may pose the risk of the Board of Directors avoiding legal responsibility, as explained above, circular resolutions require every shareholder with the right to vote to accept the proposal of a circular resolution by signing the proposal in writing related to the voluntary bankruptcy petition.¹⁴ If a Board of Directors member who is also a shareholder aware that the Company's bankruptcy was caused by his or her mistake or negligence, then there should be an initiative from that Board of Directors member to oppose the proposed voluntary bankruptcy petition. This rejection is not based on the interests of the Company, but solely to avoid personal liability as provided for in Article 104 paragraph (2) of the UUPT. In this situation, the bulletin resolution actually serves as a self-protection mechanism for the Board of Directors, not as an objective decision-making mechanism.

This situation may blur the line between the Company as a legal entity and its internal organs. When the Board of Directors exploits its status as a shareholder to prevent a bankruptcy filing that is objectively necessary, the "piercing the corporate veil" doctrine also becomes relevant to apply. This is because the directors, who in this situation also act as shareholders, directly and with malicious intent exploit the Corporation for personal gain namely, to avoid personal liability. This doctrine is also regulated in the UUKPKPU, which explains that bankruptcy may result from the fault or negligence of members of the Board of Directors and/or members of the Board of Commissioners. Therefore, they are jointly and severally liable for the Company's obligations if the Company's assets are insufficient.¹⁵

The business judgment rule (BJR) is often used by the Board of Directors to protect itself from legal liability. Essentially, the BJR aims to protect the Board of Directors and its officers from liability for policies or decisions made in the best interests of the Company. The BJR can be invoked as a defense if the directors and board members make decisions in accordance with the principles of good faith, due diligence, and responsibility. On the other hand, BJR also arises from the application of fiduciary duties.¹⁶ However, this protection is not absolute. Decisions or actions taken by the Board of Directors based on personal interests, particularly to avoid legal liability such as avoiding liability for bankruptcy due to the directors' negligence or errors clearly fall outside the scope of the BJR doctrine itself.

In a situation where the Company intends to file for voluntary bankruptcy, the Board of Directors' refusal to accept a proposal from a circular resolution solely due to concerns about personal liability cannot be categorized as an action protected by the BJR doctrine. Such a refusal is not a rational business decision oriented toward the Company's interests, but rather

¹³Sutan Remy Sjahdeini, *Sejarah, Asas, Dan Teori Hukum Kepailitan* (Prenada Media Group, 2018), 533.

¹⁴Yamani Naufal, "PERLINDUNGAN HUKUM BAGI DIREKSI YANG MENGALAMI PAILIT PADA PERSEROAN TERBATAS MELALUI KEPUTUSAN CIRCULAR RESOLUTION," *JURNAL DARMA AGUNG* 32, no. 1 (2024): 58–66, <https://doi.org/10.46930/ojsuda.v32i1.3963>.

¹⁵Nindyo Pramono, *Hukum Perseroan Terbatas* (Sinar Grafika, 2025), 373.

¹⁶Rahmad Alan Kurniawan et al., "Analysis of Corruption Crimes in the Management of BUMN Finances by BUMN Directors," *COSMOS: Jurnal Ilmu Pendidikan, Ekonomi Dan Teknologi* 2, no. 3 (2025): 656–74.

an act of personal self-defense. Therefore, the Board of Directors cannot use the BJR as a defense to justify its actions. BJR is often used by the Board of Directors to protect itself from liability. The BJR is fundamentally intended to protect the Board of Directors and its officers from policies or decisions made in the best interests of the Company. BJR can be invoked as a defense if the directors and their members make decisions in accordance with the principles of good faith, prudence, and responsibility. As in Supreme Court Decision No. 121.K/Pid. Sus/2020, which essentially acquitted the directors of acts detrimental to the corporation. On the other hand, the BJR also arises from the application of fiduciary duties. However, this protection is not absolute. Decisions or actions taken by the Board of Directors based on personal interests, particularly to avoid legal liability, clearly fall outside the scope of the BJR doctrine itself.

CONCLUSION

Based on the discussion above, it can be concluded that decision-making through circular resolutions is a valid and recognized method under UUPT as a last resort when neither a conventional nor an electronic RUPS can be held. However, the use of circular resolutions in the context of a voluntary bankruptcy petition carries significant legal risks, particularly if the Board of Directors also acts as shareholders. In such situations, circular resolutions have the potential to be abused by a Board of Directors that has actually caused the company's bankruptcy to reject a voluntary bankruptcy petition in order to avoid personal liability. Such a rejection cannot be protected by the BJR doctrine and may even serve as a basis for the application of the doctrine of piercing the corporate veil. Therefore, it is recommended to impose limitations on matters that can be decided via circular resolution, establish clear rules prohibiting the use of circular resolutions in cases of conflict of interest, and require a quorum for attendance similar to that applicable to a RUPS.

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