

Potential Conflict of Interest President Director PT Pacific Furniture from a Overseas Company at the Extraordinary General Meeting of Shareholders

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Abstract: Actions that contain conflicts of interest are prohibited in the limited liability company law because they have a negative impact on the company and shareholders. One of the actions that is prohibited because it has the potential to cause a conflict of interest is representing the votes of shareholders in voting at other general meetings of shareholders by members of the board of directors, members of the board of commissioners, and employees of the company. However, the managing director of PT Pacific Furniture actually carried out the act of representation on the grounds that the represented party was a company established abroad so that it was not obedient and subject to Indonesian law. In fact, the managing director of PT Pacific Furniture held multiple positions because he declared himself a legitimate representative because he was the president director of a company established abroad. This becomes a problem because whether the actions of the managing director who votes for himself and represents a company established abroad meet the qualifications of a conflict of interest and what are the legal consequences of the decision of the Other GMS which contains a conflict-of-interest Research using normative juridical methods with analytical descriptive specifications through literature study data collection techniques and qualitative normative analysis methods. The purpose of this research is to find out the qualifications of conflict of interest and its consequences on the decision of the extraordinary general meeting of shareholders containing conflict of interest so as to provide a basis for determining criteria regarding conflict of interest.

Keywords: conflict of interest; concurrent position; general meeting of shareholders

1. Introduction

In voting, shareholders can exercise their voting rights in accordance with the number they own either personally or represented by a power of attorney, but such representation does not apply to members of the Board of Directors, members of the Board of Commissioners, and employees of the Company concerned in accordance with Article 85 paragraph 4 of the Company Law. This is implemented in order to avoid conflict of interest in the general meeting of shareholders (GMS) vote. As is known, conflict of interest has a negative impact because it can lead to abuse of power and authority from the organs of the board of directors, board of commissioners, and employees of the company, collaboration of decisions in the GMS which can harm minority shareholders, non-implementation of the principle of openness, and unfairness and objectivity of decision making in the GMS (Riyanto 2017).

Conflict of interest is a situation where there are two conflicting economic interests (Odong 2008). Conflict of interest has a relationship with the principle of fiduciary duty. The principle of fiduciary duty is the duty and responsibility to carry out the day-to-day management of the company in the interests of the company and in accordance with the aims and objectives of the company. (Simanjuntak and Mulia 2009). The principle occurs when a party does something for the benefit of another party by putting aside his personal interests, but for the benefit of the other party (Fuady 2002).

Then, the board of directors in carrying out their duties must carry out in good faith, carry out with proper purpose, carry out with freedom full of responsibility, and have no conflict of duty and interest in accordance with Article 97 paragraph (2) of the Company Law which explains that the directors in carrying out their duties must be in good faith and full of responsibility for the interests

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and business of the company.¹ However, in the case studied, the president director of PT Pacific Furniture (PTPF) violated Article 85 paragraph (4) of the Company Law by representing the votes of the shareholders of PTPF on the grounds that he was a legitimate representative due to his status as president director of the overseas company and the company represented was a company established abroad so that it was not obedient and subject to Indonesian law.² Moreover, the president director of PTPF unilaterally approved the agenda of the extraordinary GMS which contained a conflict of interest resulting in losses for the dissenting shareholders. Thus, the purpose for this research is to find out the qualifications of conflict of interest of the president director's actions to cast vote for himself and represent a company established overseas at extraordinary general meeting of shareholders (EGMS) and its consequences on a general meeting of shareholders' decisions containing conflict of interest.

2. Methods

This research uses normative juridical, which is legal research based on primary and secondary legal materials that refer to legal norms contained in laws and regulations (Soekanto and Mamudji 2003). With the descriptive analytical method, researchers can collect data which is then compiled, processed and analyzed to get a qualitative picture of the existing problems (Sugiyono 2008). Data collection will be carried out by literature study with a qualitative normative analysis method. Analysis that refers to legal norms contained in laws and regulations and related court decisions as well as doctrines and opinions from existing experts (Zainudin 2010).

3. Results and Discussion

Qualification of Conflict of Interest of the President Director's Actions to Cast Vote for Himself and Represent a Company Established Overseas at EGMS

Conflict of interest is defined as a situation that people face in their daily actions in any capacity (Emmy and Tri, 2002). It can also be interpreted as a situation where a person is in a position of authority and power to complete the tasks of the company or organization that assigns so that the person has professional and personal interests that intersect. The situation in question, for example, as an employee of a company in carrying out his obligations, cannot have personal interests that can at any time influence his decisions in carrying out his obligations as an employee of the company.

Personal interests and professional interests (company employees) can go together, but problems arise if the two collide or conflict with each other. This can be seen if a person who has two positions or the same professional path at the same time, but he/she must provide professional services to two service recipients, both of which conflict with each other (Emmy and Tri, 2002).

From the understanding obtained, the first qualification of conflict of interest is a position that has authority or power in the company. One of the company organs that has such authority or power is the board of directors. According to Article 1 paragraph (5) of the Company Law, the board of directors is an organ of the company that is authorized and fully responsible for the management of the company for the benefit of the company, in accordance with the aims and objectives of the company and represents the company, both inside and outside the court in accordance with the provisions of the articles of association.³

The appointment made by the GMS to the board of directors is based on the principle of fiduciary duty, namely the responsibility to prioritize the interests of the company. The result of the appointment results in two functions of the board of directors that is the management function and the representation function. The management function makes the board of directors responsible for the progress or failure of the company in realizing its goals so that it must be equipped with the authority to carry out legal actions (Budiyono 2011). The representation function makes the board of directors a representative in and out of court, causing the company as a legal entity to be bound by transactions or agreements made by the board of directors on behalf of and for the benefit of the company (Fuady 2002).

The principle of fiduciary duty requires the directors of a company to have high standards of integrity and loyalty, be skilled, and act in the interests of the company *bona fides*. Fiduciary duty is carried out by directors by: (Ridwan, 2009)

1. Performed with *bona fides*;
2. Performed with proper purposes;
3. Performed with responsible freedom;
4. Having no conflict of duty and interest.

The liability of directors is not only on intentional dishonesty, but also acts of mismanagement, negligence, failure or not doing something important for the company. The good faith of the board of directors is truly seen when the board of directors prioritizes the interests of the company, shareholders, and stakeholders. Some aspects of management that must be carried out in good faith, namely: (Yahya 2011)

1. Must be trusted (fiduciary duty) and honest;
2. Must carry out management for reasonable or feasible purposes (duty to act for proper purpose);
3. Must obey the laws and regulations (statutory duty);
4. Must be loyal to the company and must keep all company information confidential (confidential duty of information); and
5. Must avoid personal interests with the interests of the company (avoid conflict of interest).

There are several actions that contain conflict of interest, that is: (Emmy and Tri 2002)

1. Biased assessment, in assessing an action of a corporation or board of directors carried out by professionals such as advocates or accountants. However, a professional assessment that is not objective because the appraiser gets a certain kind of gift so that the assessment becomes the assessment requested by the giver has a conflict of interest;

¹ Article 97 paragraph (2) Company Law No. 40 Year 2007 - Director duty. <https://peraturan.bpk.go.id/Details/39965>

² Article 85 paragraph (4) Company Law No. 40 Year 2007 - Representing votes. <https://peraturan.bpk.go.id/Details/39965>

³ Article 1 Paragraph (5) Company Law No. 40 Year 2007 - Director definition. <https://peraturan.bpk.go.id/Details/39965>

2. Direct competition, for example an employee who conducts a business that competes with the office business or his boss with the capital of knowledge and experience stolen from the company, this is an act that contains a conflict of interest;
3. Misuse of position, for example a manager who is asked by the board of directors of a real estate company to choose a qualified contractor and suggest a contracting company that he owns or his brother. Then the contractor is selected and the manager has committed abuse of office;
4. Taking advantage by leaking business secrets, if a certain expert leaks information for his own benefit, such as an advocate, doctor or a broker or insider who sells information that should be kept to obtain benefits for himself, friends or other affiliated parties, is clearly an act that contains a conflict of interest.

One form of mismanagement of the board of directors is the abuse of position or power which can potentially lead to a conflict of interest. Conflict of interest is divided into two types: (Peters and Handschin 2012)

1. Due and undue interest, Due interest or primary interest is an interest that should be pursued by the agent / position holder. Then for undue interest or secondary interest is an interest that is defined as any form of influence, loyalty, concern, emotion, or other features of a situation or consists of financial benefits and other personal benefits that may be psychological, social, or political in nature;
2. Multiple roles, a conflict of interest occurs when a person holds the same two roles or in other words wears two hats at once. Multiple roles are prone to abuse of position or power because when they have intersecting interests it is difficult to satisfy both interests. A person who has multiple roles is charged with the principle of fiduciary duty to prioritize interests over personal or other interests. However, multiple positions or concurrent positions are not prohibited or allowed in the Company Law, even the Company Law does not mention multiple positions.

However, the Monopoly Law explains concurrent positions in Article 26.⁴ In essence, the article determines that concurrent positions are prohibited for a director or commissioner of a company to concurrently become a director or commissioner of another company if the companies are not in the same market, have close links and fields and or types of business, and together can control the market share of certain goods and or services.

Concurrent positions, also known as interlocking directorates, is the business practice of members of the board of directors of a company also serving as members of the board of directors of other companies or in the management of other companies (James Chen, 2022). The reason for concurrent directorships is that it brings benefits to the company, namely horizontally (helping communication), vertically (determining the best decision), experience (being able to use the experience he has in solving problems in other companies), and reputation (having respected board members gives value to the company) (Joanna 2011). Nonetheless, concurrent positions can cause two problems, that is:

1. Economically, it damages the balance of the free market (monopoly and unfair competition); and ethically, it creates conflicts of interest; and
2. Ethically, it creates a conflict of interest.

Therefore, concurrent positions often lead to abuse of power - such as acting in a way that benefits the individual while harming the company and shareholders (Joanna 2011).

Concurrent positions are not only in different companies, but also in one company. The Company Law does not prohibit concurrent positions in one company. The concurrent position in question is that a shareholder also becomes a member of the board of directors and a member of the board of commissioners. Article 101 paragraph (1) of Company Law explains that members of the board of directors are obliged to report to the company regarding the shares owned by the relevant member of the board of directors and / or his family in the company and other companies to be recorded in a special register. For members of the board of commissioners,⁵ Article 116 letter b explains that they are obliged to report to the company regarding their share ownership and/or their families in the company and other companies.⁶ Both have in common to be recorded in a special register which is used to suppress conflicts of interest that may arise. Therefore, the dual position of a shareholder as a member of the board of directors or board of commissioners is not prohibited as long as it meets the requirements under the Company Law.

Furthermore, the second qualification of conflict of interest is having a position to complete the tasks of the company or the assigning organization, in other words, having duties assigned by the company. The duties of a director include managing the company, managing the company's assets, entering into agreements or contracts, representing the company both inside and outside the court, and others as determined by the articles of association as long as they do not conflict with the law.

The duties of the board of directors in representing the company inside and outside the court are regulated in Article 98 paragraph (1).⁷ However, there are exceptions regarding the representation, i.e. Article 99 paragraph (1) which reads: Members of the Board of Directors are not authorized to represent the Company if there is a case in court between the Company and the member of the Board of Directors concerned or the member of the Board of Directors concerned has a conflict of interest with the Company.⁸ Letter b indicates that directors in carrying out their duties to represent the company, such as entering into contracts with third parties, are restricted from having conflicts of interest with these third parties. Such restrictions apply not only in entering into agreements or contracts, but also in establishing cooperation, conducting transactions, representing shareholders in voting, and others related to other parties.

4. Article 26 Monopoly Law No. 5 Year 1999 - Concurrent position. <https://peraturan.bpk.go.id/Details/45280/uu-no-5-tahun-1999>

5. Article 101 Paragraph (1) Company Law No. 40 Year 2007 - Director obligation to report regarding owned shares. <https://peraturan.bpk.go.id/Details/39965>

6. Article 116 letter b Company Law No. 40 Year 2007 - Board of commissioner obligation to report regarding owned shares. <https://peraturan.bpk.go.id/Details/39965>

7. Article 98 Paragraph (1) Company Law No. 40 Year 2007 - Director duty regarding representation of the company. <https://peraturan.bpk.go.id/Details/39965>

8. Article 99 Paragraph (1) Company Law No. 40 Year 2007 - Director prohibited to represent the company. <https://peraturan.bpk.go.id/Details/39965>

Article 85 paragraph (4) explains that in voting, members of the board of directors, members of the board of commissioners, and employees of the company concerned are prohibited from acting as proxy for the shareholders as referred to in paragraph (1).⁹ Paragraph (1) explains that shareholders, either personally or represented by a power of attorney, are entitled to attend the GMS and exercise their voting rights in accordance with the number of shares they own. The prohibition in representing shareholders is not necessarily prohibited, but prohibited in casting votes so that the representation of shareholders to fulfill the quorum is still taken into account.

Then, the last qualification of conflict of interest is having intersecting professional and personal interests. There are three elements of conflict of interest, such as (Harnoko 2002):

1. The presence of personal interests, which are interests that the directors have internally, for example, a director has financial or family interests;
2. Official duty, a director has an interest in being responsible for prioritizing the interests of the company even ahead of his personal interests;
3. Professional responsibility, objective professional judgment. a director in carrying out his duties must be objective and independent in accordance with what has been regulated by law and the articles of association.

These elements are not cumulative, it is just that conflict of interest occurs when the element of personal interest clashes with official or professional responsibilities. Not only that, looking at the previous explanation, the first type of conflict of interest is due and undue interest. Due interest or primary interest is the interest of a person who has a position in carrying out his duties, while undue interest or secondary interest is an interest that a person/person has. Similar to the elements of conflict of interest, the interests owned by a person/persons are interests that conflict with other interests.

Based on the qualifications of the conflict of interest, for the first qualification, namely indicating the existence of a position held by being given authority or power. Based on Decision No. 375/Pdt/G/2022/PN/Smg, Deed No.1/2020 is shown which shows the composition of the management in PTPF which consists of 2 organs of the company, namely members of the board of directors (main director and directors) and the board of commissioners (main commissioner and commissioner). Therefore, the president director of PTPF has met the first qualification of conflict of interest.¹⁰

It is not only limited to the authority or power possessed, but continues with one's actions in using that authority or power. One of the actions that contain a conflict of interest is misuse of position. The action of PTF's president director who concurrently holds the position of president director of a company established overseas (one of PTPF's shareholders) is an action that has the potential to cause a conflict of interest.

Moreover, the second type of conflict of interest is multiple roles that have the same role at the same time or in other words, concurrent positions. However, the prohibited dual positions are those that fulfill the provisions of Article 26 of the Monopoly Law, so if they do not fulfill these provisions, the dual positions can be said to be allowed. PTPF is a limited liability company engaged in manufacturing, while the overseas company is a limited liability company engaged in consulting (business & management) which has the purpose of investing, holding, owning, acquiring, leasing, improving, managing, operating, developing, granting, selling, and exchanging. Therefore, referring to Article 26 of the Monopoly Law, the two companies are not engaged in the same market so that the prohibited concurrent positions are not fulfilled, so the concurrent positions held by the president director of PTPF are not prohibited.

However, the dual position carried out by the PTPF president director is a dual position within the company, namely being the president director of PTPF and the president director of the overseas company (one of PTPF's shareholders) which is still unclear from the Company Law so it does not mean eliminating the potential conflict of interest that can occur. In the event that the two companies cooperate or enter into an agreement, there is great potential for a conflict of interest, either directly or indirectly if it is proven that there are losses due to the actions of the PTPF president director for the company and shareholders who can be held liable.

The second qualification of conflict of interest indicates a position that has duties assigned by the company. The author was unable to find the articles of association of PTPF regarding the duties of PTPF's president director, directors, chief commissioner and commissioners. However, it can be said that the duties of a president director and director are the same as what is described according to the law, namely managing and managing the company and its assets and representing the company both inside and outside the court.

Based on the case, the issue of the actions of the president director for his duty is to represent the company. Not only representation for the interests of the company, but also representation for the interests of shareholders. First, representing the interests of shareholders, especially regarding voting at Other GMS. The action of the president director representing the shareholders in voting is an action prohibited in Article 85 paragraph (4). In his defense, the president director considered that the representation referred to in the article was a representation using a power of attorney, while the representation made by the president director was a representation of his duties as president director of the overseas company.

The representative is a legal representative based on the articles of association document and General Information Sheet (GIS) Amended for the year 2021 Stock Corporation CXJ1 Holding Inc (the overseas company) document established in Fllipina. This shows that the president director of PTPF is a legitimate president director and therefore does not need a power of attorney to represent the overseas company. Moreover, based on these documents, the overseas company is deemed to only comply with and be subject to the laws of the Philippines and not Indonesia so that Article 85 paragraph (4) does not apply to the president director of PTPF. The defense is used to avoid the prohibition of Article 85 paragraph (4) and Article 99 paragraph (1) letter b regarding the prohibition to represent the company if there is a conflict of interest. If we look at the purpose of holding the PTPF Other GMS, it is to increase capital and convert receivables into shares.

On the other hand, PTPF is a limited liability company established in Indonesia by notarial deed in the Indonesian language in accordance with Article 31 of Law No. 24 of 2009 on the National Flag, Language, Emblem and National Anthem.¹¹ Therefore, PTPF

⁹. Article 85 Paragraph (4) Company Law No. 40 Year 2007 - Representing votes. <https://peraturan.bpk.go.id/Details/39965>

¹⁰. Decision No. 375/Pdt/G/2022/PN/Smg

¹¹. Article 31 National Flag, Language, Emblem, and National Anthem No. 24 Year 2009 - Notarial deed in Indonesian language. <https://peraturan.bpk.go.id/Details/38661/uu-no-24-tahun-2009>

is a company that complies with and is subject to Indonesian Law. Moreover, the overseas company is a shareholder of PTPF, in other words, the overseas company is an investor in PTPF. Based on Articles 15 and 16 of Law No. 25 Year 2007 on Capital Investment, It explains that one of the obligations and responsibilities of investors is to comply with all provisions of laws and regulations.¹² Therefore, the overseas company is obliged and responsible to comply with and be subject to Indonesian law even though it is established in the Philippines.

Therefore, the actions of the president director of PTPF have met the second qualification of conflict of interest regarding the position that has been assigned by the company and violated the articles in the Company Law that violate actions that have the potential to result in conflict of interest.

The last qualification of conflict of interest is the existence of personal interests and professional interests that intersect. The Other GMS held by PTPF has three agendas, i.e. to discuss and approve PTPF's plan to increase capital, namely authorized, issued, and paid-up capital by issuing new shares to existing shareholders, to discuss and approve, in connection with the capital increase, the plan for the overseas company as one of the shareholders to take a majority of the new shares to be issued by PTPF / indirect acquisition, and to discuss and approve PTPF's plan to convert the loan of a shareholder, that is the president director of PTPF into shares issued as part of the capital increase.

The third agenda of the EGMS is the agenda of the president director's interest, which is his personal financial interest. The first type of conflict of interest is due interest and undue interest. The personal financial interest of the president director is an example of undue interest or secondary interest. On the other hand, the president director also has an interest as the chairman of the PTPF EGMS meeting for the three agendas. The chairman of the meeting is not explained regarding the requirements for his election in the Company Law, only that the chairman of the meeting has the right to determine who is entitled to attend the GMS by taking into account the law and the articles of association and sign the minutes of the GMS. The chairman of the meeting also has an interest in being responsible for the smooth running of the GMS.

Due to the responsibility held by the president director as chairman of the meeting, the interest as chairman of the EGMS meeting is a due interest or primary interest that must be prioritized. On the other hand, the president director of PTPF also has an interest as president director of the overseas company which based on the principle of fiduciary duty is an interest that must be prioritized coupled with the interests of PTPF which must also be prioritized as the president director. Based on the elements of conflict of interest, the president director of PTPF has fulfilled these three elements. He has a personal interest, i.e. a financial interest in converting his receivables into shares, has an official interest, i.e. an interest as the main director of PTPF and president director of the overseas company that must be prioritized, and a professional interest as chairman of the EGMS meeting.

Therefore, the president director of PTPF has met the third qualification of conflict of interest, i.e. the existence of intersecting personal and professional interests. The three interests owned can be said to intersect because they face each other at the same time, making it difficult for the president director to act objectively as chairman of the meeting for shareholders with the agenda of converting receivables into shares that benefit personal interests and prioritize the interests of the company from personal interests. The actions of PTPF's president director, who has met the three qualifications regarding conflict of interest, have a great potential to have a negative impact on the company and shareholders, namely the abuse of power and authority, the collaboration of GMS decisions that can harm minority shareholders, and the non-implementation of the principles of openness, unfairness, and objectivity of GMS decision making.

Legal Consequences of EGMS Resolutions Suspected of Containing an Element of Conflict of Interest

The validity of a GMS based on the law is determined by several conditions, i.e., the place where the GMS is held, the invitation to the GMS, the continuation of the GMS, the decision making, and the minutes of the GMS. First, the place where the GMS is held, Article 76 paragraph (1) of the Company Law explains that the GMS is held at the domicile of the company or the place where the company conducts business.¹³ In fact, the implementation of the PTPF EGMS is not carried out physically, but is carried out using online video conferencing or online. Online implementation is allowed in Article 77 of the Company Law as long as it complies with the quorum requirements and the minutes of the GMS are approved and signed by all GMS participants.¹⁴

Second, the invitation to the GMS, Article 82 paragraph (1) explains that the board of directors makes an invitation to the GMS to shareholders no later than 14 days before the date of the GMS.¹⁵ The invitation to the GMS made by PTPF for shareholders is in accordance with the time period, namely the invitation on January 5, 2020 and the implementation of the GMS on January 20, 2020 by not taking into account the date of the invitation and implementation. Third, the continuity of the GMS, namely the fulfillment of the quorum with the purpose of the GMS of merger, consolidation, acquisition, or separation in Article 89 paragraph (1) explained that at least $\frac{3}{4}$ of the total number of shares with voting rights are present or represented.¹⁶ The quorum of PTPF EGMS is in accordance with the required quorum. Fourth and fifth, the adoption of GMS resolutions and GMS minutes.

GMS resolutions with the objectives previously described in Article 89 paragraph (1) are valid if approved by at least $\frac{3}{4}$ of the total number of votes cast. The adoption of PTPF's EGMS resolution became a problem in the GMS approval process because PTPF's total shareholders amounted to 8 shareholders, while the GMS resolution is valid if approved by at least $\frac{3}{4}$ of the total votes cast so that at least 6 votes must be cast. However, the holders who voted to approve the EGMS amounted to 5 shareholders and 3 who rejected, so it did not comply with the requirements specified in the law.

The minutes of the GMS according to Article 90 paragraph (1) must be made and signed by the chairman of the meeting and at least 1 shareholder appointed from and by the participants of the GMS in each GMS, but the intended signature is not required if it is

¹² Article 15 & 16 Capital Investment Law No. 25 Year 2007 - Investor obligations to comply with Indonesian law. <https://peraturan.bpk.go.id/Details/39903/uu-no-25-tahun-2007>

¹³ Article 76 Paragraph (1) Company Law No. 40 Year 2007 - GMS place held. <https://peraturan.bpk.go.id/Details/39965>

¹⁴ Article 77 Company Law No. 40 Year 2008 - Online GMS. <https://peraturan.bpk.go.id/Details/39965>

¹⁵ Article 82 Paragraph (1) Company Law No. 40 Year 2007 - GMS invitation. <https://peraturan.bpk.go.id/Details/39965>

¹⁶ Article 89 Paragraph (1) Company Law No. 40 Year 2007 - GMS Approval. <https://peraturan.bpk.go.id/Details/39965>

made by notarial deed.¹⁷ The facts of the case explain that after the decision is made with qualified approval, the minutes of the GMS should still be made, but what is done is by using a notarial deed so that in this case it does not require the signature of the chairman of the meeting and at least 1 shareholder.

The actions of PTPF's president director who has met the qualifications of conflict of interest in the voting process at the EGMS have an impact on the decision-making of the EGMS. Based on the previous explanation, the decision-making process carried out by the president director of PTPF as the chairman of the meeting was carried out unilaterally by not meeting the requirements of at least $\frac{3}{4}$ of the total votes cast.

The takeover process carried out by the overseas company is an action that contradicts Article 125 paragraph (4) which explains that a takeover carried out by a legal entity in the form of a company, the board of directors before carrying out the legal act of takeover must be based on a GMS decision that meets the attendance quorum and provisions regarding the requirements for making GMS decisions in accordance with Article 89.¹⁸ In fact, the decision-making process of the EGMS did not meet the requirements for approval of the votes cast, so the action of PTPF's president director to declare unilaterally should have been contrary to the law.

There are 3 provisions explained in Company Law regarding the invalidation of a GMS resolution, i.e Article 20 paragraph (1) which explains the amendment of the articles of association of a company declared bankrupt without the approval of the curator is declared invalid, Article 95 paragraph (1) jo Article 112 (paragraph 1) which explains the appointment of directors and commissioners who do not meet the requirements is declared invalid and void, and Article 37 paragraph (2) which explains the repurchase of shares, either directly or indirectly contrary to paragraph (1) is declared invalid and void.¹⁹ For other matters outside of these provisions, the Company Law does not clearly determine the criteria for the invalidation or revocability of a GMS resolution.

However, the decision of the GMS is an agreement between the shareholders which results in a deed/ minute so that its cancellation or revocability can refer to Article 1320 of the Civil Code which explains the 4 conditions for the validity of an agreement, namely:²⁰

1. agreement of those who bind themselves / agreement of the parties;
2. the ability to make an agreement / the capacity of the parties;
3. a certain subject matter / a certain thing; and
4. a forbidden cause / halal cause.

Therefore, GMS resolutions that comply with these legal requirements can be binding on the parties. The first and second conditions concern the subject, while the third and fourth conditions concern the object (Satrio 2001). The meaning of a certain thing is what is agreed upon the rights and obligations of both parties, such as goods that are determined in type and are tradable goods.²¹ Forbidden / halal cause based on Article 1337 of the Civil Code, namely if the cause is prohibited by law or contrary to decency or public order.

If the objective conditions are not met, the agreement is invalid and void, which means that from the beginning no agreement was born and if the subjective conditions are not met, one of the parties can request that the agreement be canceled (J. Satrio, 2001). The legal consequences of invalid and void and can be canceled in principle are the same, namely resulting in legal actions becoming invalid or having no legal effect so that in general the cancellation results in the situation between the two parties being returned as at the time the agreement was not made (Subekti 1987).

Based on the actions of the President Director of PTPF who unilaterally took the decision of the GMS which was not in accordance with the conditions or in other words contrary to the law, it resulted in the decision of the EGMS being invalid and void because it did not comply with the objective requirements of the agreement, namely a lawful cause. Therefore, the decision of the EGMS which is considered contrary to the applicable laws and regulations, in this case Article 89 paragraph (1) jo Article paragraph (4), the decision of the EGMS is invalid. Moreover, looking at the subjective requirements of the agreement regarding the agreement of the parties, the actions of the president director of PTPF also violate these requirements in the same way as violating the requirement of a lawful cause, namely making decisions unilaterally in the decision of the EGMS.

The reason for the disapproval of the aggrieved shareholders was because there was a conflict of interest by the president director PTPF in conducting the EGMS. The issue of the president director PTPF authority to represent the overseas company was questioned by the shareholders who disagreed with the decision of the EGMS. The shareholder considers that the action of the president director representing the overseas company's vote in the voting is an action prohibited in the law in Article 85 paragraph (4). Then, the actions of PTPF's president director representing the votes of the overseas company not only violate Article 85 paragraph (4), but also violate Article 99 paragraph (1) letter b which explains that members of the board of directors are not authorized to represent the company if the member of the board of directors concerned has a conflict of interest with the company. PTPF's president director also acts as president director of the overseas company.

These are the basic reasons why some shareholders disagree with the process of organizing the EGMS led by the President Director of PTPF as the chairman of the meeting because it is considered to violate the principle that prohibits conflict of interest which results in some shareholders being disadvantaged because their shares are diluted due to the abuse of power and authority of the President Director of PTPF, the potential for collaboration in decision making, and the unfairness and objectivity of decision making in the GMS.

There are rights of shareholders who feel aggrieved by the GMS resolution, i.e. individual rights, the right to file a lawsuit against the company to the district court which is considered unfair and without reasonable grounds as a result of the decision of the GMS,

17. Article 90 Paragraph (1) Company Law No. 40 Year 2007 - GMS minutes. <https://peraturan.bpk.go.id/Details/39965>

18. Article 125 Paragraph (4) Company Law No. 40 Year 2007 - GMS takeover requirements. <https://peraturan.bpk.go.id/Details/39965>

19. Article 20 Paragraph (1), Article 95 Paragraph (1) jo Article 112 Paragraph (1), & Article 37 Paragraph (2) Company Law No. 40 Year 2007 - Regarding the null and void of GMS. <https://peraturan.bpk.go.id/Details/39965>

20. Article 1320 Civil Code - Validation of an agreement. <https://jdih.mahkamahagung.go.id/legal-product/kitab-undang-undang-hukum-perdata/detail>

21. Simanjuntak, Ricardo.2024. Definisi dan Syarat Sah Perjanjian. <https://jdih.sukoharjokab.go.id/berita/detail/definisi-dan-syarat-sah-perjanjian>

board of directors, and or board of commissioners in accordance with Article 61 paragraph (1) with the aim of canceling the GMS resolution. However, shareholders can also exercise the right to appraise the share price/sell shares for disapproval of the takeover of the overseas company to request the company to purchase their shares at a fair price if they do not approve the company's actions that are detrimental to shareholders or the company, such as amendments to the articles of association, transfer or pledge of the company's assets that have a value of more than 50% of the company's net assets; or merger, consolidation, acquisition, or separation in accordance with Article 62 paragraph (1).

The right to appraise the share price/sell shares is the only right that can be used if the shareholders do not agree to the merger, consolidation, acquisition, or separation action in accordance with Article 126 paragraph (2).²² However, referring to Article 127 paragraph (1), it is explained that the GMS resolution regarding merger, consolidation, acquisition, or separation is declared valid if it complies with the provisions of Article 87 paragraph (1) and Article 89.²³ Returning to Article 87 paragraph (1) and Article 89 is a quorum and approval requirement and in fact the approval requirement has not been fulfilled, even the President Director of PTPF as the chairman of the EGMS meeting makes decisions unilaterally. Therefore, shareholders can choose the right to file a lawsuit to the district court to request that the decision of the Other GMS be canceled or the right to sell their shares back to the company.

4. Conclusion

The qualifications of conflict of interest are divided into 3, namely the existence of a position that has power or authority, has duties assigned by the company, and has professional interests and personal interests that intersect. The actions of PTPF's president director who has fulfilled the three qualifications are contrary to the law to prevent conflict of interest by representing the votes of shareholders in voting at the EGMS, acting on behalf of the overseas company as president director, and chairing as chairman of the EGMS meeting with the agenda of converting receivables into shares he owns shows that the actions of PTPF's president director have violated the principle of conflict of interest. As a result of the actions of PTPF's president director which contained a conflict of interest, the shareholders did not agree to the process of organizing the Other GMS. The conflict with the approval requirement results in the GMS resolution becoming invalid and can be canceled or the dissenting shareholders can exercise their right to sell their shares back to the company. The government should revise the Company Law, especially regarding conflicts of interest, because the explanation of this matter is still unclear and general, as well as an explanation of concurrent positions within the company, namely the concurrent positions of the company's directors and shareholders who are legal entities in order to prevent concurrent positions that have the potential to cause conflicts of interest. In carrying out the EGMS, members of the PTPF board of directors should pay attention to the regulations stipulated in the Company Law regarding actions that are prohibited because they have the potential to cause a conflict of interest and the requirements for the validity of the GMS.

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²² Article 125 Paragraph (2) Company Law No. 40 Year 2007 - Investors only rights regarding takeover process <https://peraturan.bpk.go.id/Details/39965>

²³ Article 127 Paragraph (1) Company Law No. 40 Year 2007 - Takeover must meet the requirements regarding quorum and approval <https://peraturan.bpk.go.id/Details/39965>