



## Judicial Review of the Application of Ultra Vires Doctrine in Malaysia and Indonesia: A Legal Comparison

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### ABSTRACT

The Ultra Vires Doctrine serves as a fundamental principle in corporate law, delineating the boundaries of governmental authority and ensuring adherence to legal framework. This comparative study explores the application of the Ultra Vires Doctrine in the judicial systems of Malaysia and Indonesia. Through an analysis of relevant case law, statutory provisions, and scholarly literature, the study highlights similarities and differences in the interpretation and implementation of the doctrine across these jurisdictions. While both countries recognize the importance of restraining government action within legal limits, variations emerge in the extent to which courts intervene and the factors considered in determining ultra vires acts. By shedding light on these legal frameworks, this research contributes to a deeper understanding of corporate law principles in Malaysia and Indonesia and provides insights for legal practitioners, policymakers, and scholars seeking to navigate and strengthen the rule of law.

**Keyword:** Ultra Vires Doctrine, Judicial Review, Corporate Law.

### ABSTRAK

*Doktrin Ultra Vires berfungsi sebagai prinsip dasar dalam hukum perusahaan, yang menggambarkan batas-batas kewenangan pemerintah dan memastikan kepatuhan terhadap kerangka hukum. Studi perbandingan ini mengeksplorasi penerapan Doktrin Ultra Vires dalam sistem peradilan di Malaysia dan Indonesia. Melalui analisis terhadap kasus-kasus hukum yang relevan, ketentuan perundang-undangan, dan literatur ilmiah, studi ini menyoroti persamaan dan perbedaan dalam penafsiran dan penerapan doktrin di kedua yurisdiksi tersebut. Meskipun kedua negara mengakui pentingnya membatasi tindakan pemerintah dalam batas-batas hukum, variasi muncul dalam hal sejauh mana pengadilan mengintervensi dan faktor-faktor yang dipertimbangkan dalam menentukan tindakan ultra vires. Dengan menyoroti kerangka hukum ini, penelitian ini berkontribusi pada pemahaman yang lebih dalam tentang prinsip-prinsip hukum korporasi di Malaysia dan Indonesia serta memberikan wawasan bagi praktisi hukum, pembuat kebijakan, dan para akademisi yang ingin menavigasi dan memperkuat supremasi hukum.*

**Kata Kunci:** Doktrin Ultra Vires, Peninjauan Kembali, Hukum Perusahaan.



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## 1. Introduction

The welfare of the people in a country can be reflected in the quality and development of the country's economy. The role of business entities in the form of legal entities or non-legal entities together with business actors is an important instrument in improving a country's economy.<sup>1</sup> In Indonesia, a common form of business entity widely used in the business world is the Limited Liability Company (LLC), because an LLC is a capital association and an independent legal entity.<sup>2</sup> In Indonesian law, the provisions regarding Limited Liability Companies are regulated in Law No. 40 of 2007 concerning Limited Liability Companies.

A limited liability company is a legal subject that is juridically real, but not physically tangible like a human (artificial person) who is capable of performing legal actions directly. Therefore, a limited liability company requires organs as tools for the company to establish legal relationships with third parties and to realize its existence in a tangible way to conduct business. The organs in question include the General Meeting of Shareholders (RUPS), the board of directors, and the board of commissioners, each of which naturally has different duties and responsibilities.<sup>3</sup>

In carrying out the management function of the company, the Board of Directors can be compared to the life of the Company so that it is not allowed for a company not to have a Board of Directors. Conversely, it is not possible to have a Board of Directors without a company. Looking deeper, the Board of Directors is a corporate organ that is authorized and fully responsible for the management of the Company in accordance with the purposes and objectives of the Company and represents the Company.<sup>4</sup>

In relation to the above, the board of directors is required to run the company based on two fundamental principles: firstly, the fiduciary duty, which is the trust placed in them by the company, and secondly, the duty of skill and care, which requires directors to act with competence and caution. The actions of the board of directors are constrained by statutory regulations, restrictions written in the articles of association, and limitations imposed by the company's purpose and objectives. This implies that all actions of the Board of Directors that exceed the limits of authority that have been regulated in these restrictions are a violation. The actions of directors who exceed the limits of their authority are also called *ultra vires*.<sup>5</sup>

Black's Law Dictionary defines *ultra vires* as follows: "An act performed without any authority to act on the subject. Acts beyond the scope of the powers of the corporation, as defined by its charter or laws of state of incorporation. Acts are *ultra vires* when the corporation is without authority to perform it under any circumstance or for any purpose".<sup>6</sup> The *ultra vires* doctrine considers any actions taken by the organs of a Limited Liability Company (LLC) that exceed the authority given by the company's purpose as stated in its articles of incorporation to be legally null and void.<sup>7</sup> For example, if a company established to engage in mining activities according to its founding articles of association simultaneously attempts to operate in the insurance sector, which is not included in its articles, then the company can be said to be acting *ultra vires*. As a result, if the insurance business activities continue or contracts are made with third parties, the consequences are that such contracts are not recognized or are void by law.<sup>8</sup>

The *ultra vires* doctrine was initially intended to protect investors or shareholders from actions by the board of directors that could harm the LLC. Thus, it can prevent directors from committing *ultra vires* acts or later

<sup>1</sup> Risanti Suci Pratiwi. (2019). Legalitas Rangkap Jabatan Direksi Dan Dewan Komisaris Pada Badan Usaha Milik Negara yang Berbentuk Perseroan Terbatas. *Jurnal Lex Renaissance*, 4(2), p. 267. DOI: <https://doi.org/10.20885/JLR.vol4.iss2.art4>

<sup>2</sup> Zarman Hadi. (2011). Karakteristik Tanggung Jawab Pribadi Pemegang Saham, Komisaris dan Direksi dalam Perseroan Terbatas: Cetakan Pertama. Malang: UB Press, p. 2.

<sup>3</sup> Kuswiratmo Aji Bonifasius. (2016). Keuntungan dan Resiko menjadi Direktur, Komisaris, dan Pemegang Saham. Jakarta Selatan: PT Visimedia Pustaka, p. 11.

<sup>4</sup> Akbar Hidayatullah Vidi Hartono. (2023). Tanggungjawab Perseroan atas Tindakan Direksi yang Melebihi Kewenangannya (Analisa Terhadap Doktrin *Ultra Vires*). *Jurnal Publikasi Ilmu Hukum*. 1(3), p. 120. DOI: <https://doi.org/10.59581/deposisi.v1i3.720>

<sup>5</sup> Shinta Ikayani Kusumawardani. (2011). Pengaturan Kewenangan, dan Tanggung Jawab Direksi Dalam Perseroan Terbatas (Studi Perbandingan Indonesia dan Australia). *Jurnal Magister Hukum Udayana*. 2(1), p. 15. DOI: <https://doi.org/10.24843/JMHU.2013.v02.i01.p12>

<sup>6</sup> Henry Campbell Black. (1990). *Black's Law Dictionary*, St. Paul, Minn., Sixth Edition. West Publishing Co., p. 1522.

<sup>7</sup> Munir Fuady. (2002). *Doktrin-Doktrin Modern dalam Corporate Law (eksistensinya dalam Hukum Indonesia)*. Bandung: Citra Aditya Bakti, p. 111.

<sup>8</sup> Jhonny Ibrahim. (2011). Doktrin *Ultra Vires* dan Konsekuensi Penerapannya terhadap Badan Hukum Privat. *Jurnal Dinamika Hukum*. 11(2), p. 247. DOI: <http://dx.doi.org/10.20884/1.jdh.2011.11.2.184>

obtaining compensation for damages from the company. Therefore, there is a need for legal regulations to protect these investors or shareholders. In cases where the board of directors is proven to have committed ultra vires acts, the directors responsible for these ultra vires actions are personally liable for any losses suffered by the company. Furthermore, shareholders can sue them as affirmed by Article 61 of Law No. 40 of 2007 concerning Limited Liability Companies.<sup>9</sup>

The regulation of the ultra vires norm in the Indonesian Company Law (UUPT) has several shortcomings, one of which concerns the form of liability of directors in ultra vires actions, particularly regarding the restoration of the rights of shareholders that have been infringed. To address this issue, Indonesia should consider international comparisons in legal frameworks concerning ultra vires, particularly examining the ideal mechanisms used in other countries, such as Malaysia.

## 2. Method

The research conducted in this writing is normative legal research. Ediwarman in his book “Monograf Metode Penelitian Hukum” states that normative legal research is library research, which involves conducting research by examining secondary source materials<sup>10</sup>. This type of research is inherent to legal issues that are the focus of the study, emphasizing analysis of law and applicable legislation. The data sources used in this research are secondary data, which are derived from library studies aimed at obtaining theories or concepts that can be used in the research composition. The data used in the preparation of this research are legal journals, legal books, legal decisions, and some legal writings on several official internet pages.<sup>11</sup>

## 3. Results and Discussion

### 3.1 Doctrine of Ultra Vires

The object clause is historically seen as the most important part in the constitution. The objects clause in the company’s constitution sets out those acts which the company has the capacity to undertake. Acts which fall outside the scope of powers defined in the object clause are considered as ultra vires acts. In the other words, ultra vires acts which are not specified in its objects clause in the constitution of the company or not incidental to their attainment. The objects clause in the constitution of the company is the most important clause. This is because the clause may be the first things referred to by any outsiders before they decide whether to deal with the company or to invest in it or not. For example, halal business activity stated in the object clause of a company may be the attractive point for Muslim investors to invest in the company. Therefore, they may hope for the company to use their investment money only for halal activities. If the company gets involve with non-halal business activity, these Muslim investors may feel themselves been cheated and wish to object.<sup>12</sup>

#### 3.1.1 Position of Ultra Vires Doctrine under Common Law

Under Common Law, an act or transaction that was ultra vires was void and did not bind the company. Furthermore, it cannot be ratified by a unanimous consent of the stakeholders to validate it and make it binding on the company.

#### *Ashbury Railway Carriage & Iron Co. v Riche*

In this case, the memorandum of association (constitution) of the company gave it the powers to make and sell or lend on hire railway carriages and wagons, and all kinds of railway plant, fittings, machinery, and rolling stock; to carry on the business of mechanical engineers and general contractors. The directors entered into a contract with Riche on behalf of the company to purchase a concession for constructing a railway in Belgium. The shareholders ratified the director’s action. When the company refused the proceed with the contract, it was sued by the vendor for breach of contract. The question before the court was whether this contract was valid, or if not, could it be ratified by the shareholders.

The House of Lord held that the contract was not within the company’s objects and was therefore void. Moreover, the shareholder could not ratify the contract and validate it, as this would be allowing the

<sup>9</sup> Kinanti,Dkk. (2016). Tanggung Jawab Direksi dalam Tindakan Ultra Vires Menurut UU Nomor 40 Tahun 2007 Tentang Perseroan Terbatas. Diponegoro Law Journal. 5(3), p. 4. DOI: <https://doi.org/10.14710/dlj.2016.12073>

<sup>10</sup> Ediwarman. (2016). Monograf Metode Penelitian Hukum. Yogyakarta: Genta Publishing, p. 21.

<sup>11</sup> M. Agus Santoso. (2011). Kajian tentang Manfaat Penelitian Hukum Bagi Pembangunan Daerah. Yuriska Jurnal Ilmiah Hukum, 3(2), 14. DOI: <https://doi.org/10.24903/yrs.v3i2.117>

<sup>12</sup> Salmiah Salleh. (2018). Introduction to Partnership & Company Law. Malaysia: UiTM Press, p. 183.

shareholders by unanimous consent to do the very thing that law prohibited. *Re Jon Beauforte (London) Ltd* In this case, a company was incorporated to carry on the business of tailors and manufacturers of clothes and materials. It then decided to carry on an activity outside its objects that is to manufacture veneered panels. The company was a manufacturer of veneered panels. The company, however, failed to pay. The supplier of the coke sought to enforce payment of the debt. The court held that the action failed because the contract was ultra vires. The company did not have the power to manufacture veneered panels. This was despite the fact that the coke could have been used for the authorised purpose of manufacture of clothes.

The original purpose or the main advantage of this common law provision was to give protection to shareholders and creditors against any misuse of their investment money. This was so because when the ultra vires activities are void and not binding, the company was only restricted to carry on activities which were stated in the object clause of which all members and the creditors were aware. Basically, the shareholders as well as the creditors have the right to expect the money that they invested would only be used for the object specified in the object clause.

The disadvantage of the doctrine was to the third parties dealing with the company. They could not take action against the company for breach of ultra vires contract as illustrated in *Ashbury* and *Jon Beauforte's* cases above. In short, the position of ultra vires doctrine under common law was not good as it only provided protection to shareholders or investors but not to any third party dealing with the company.

### 3.1.2 Position of Ultra Vires Doctrine under Companies Act 1965

Ultra Vires Doctrine under Companies Act 1965 (CA 1965), Section 20(1) of the previous CA 1965 provided that ultra vires contract is valid. The parties are bound to perform it. This gives protection to the third party who made the ultra vires contract with the company. The company could not escape the liability under the contract by pleading lack of capacity. However, where the ultra vires contract has not been performed, a member or debenture holder of the company could bring legal action against the company under section 20(2)(a) to get the court order to restrain the company from performing the contract. By this way, a member of a debenture holder could get protection against any misuse of their investment money by the company.

Further, by section 20(2)(b), the company also could bring legal action against the officers who had caused the company to enter into ultra vires contract. The officers would be liable for any loss to the company arising from the ultra vires contract. The most severe consequences arising from ultra vires contract was that the company could be wound up by petition made by the minister charged with responsibilities for finance (section 20(2)(c)). This was another protection to the member or potential members of the company.

### 3.1.3 Position of Ultra Vires Doctrine under Companies Act 2016

Under Companies Act 2016 (CA 2016), the position of Ultra Vires doctrine is different from CA 1965. Under section 35(2)(a) of CA 2016, if the constitution set out the objects of a company, the company shall be restricted from carrying on any business or activity that is not within those objects. The company, however, shall have full capacity and power to do anything for achieving those objects. It is not ultra vires so long as the act or the activity is carried on achieving the objects. As Section 35(2)(a) prohibits the company from doing ultra vires contract whether it is valid or void. Under the previous CA 1965, section 20(1) provides that ultra vires contract was valid whereas under common law it was void.

### 3.1.4 Right or Protection to Members and Debenture Holders

Companies Act 2016 does not give any specific rights to members or debenture holders to restrain the performance of ultra vires contract as under the Companies Act 1965. However, a shareholder or debenture holder, who feel cheated or who disagree with ultra vires contract made by the company, may perhaps seek protection under the following:

1. By claiming remedy on ground of oppression

Section 346(1) of CA 2016 allows a member as well as a debenture holder to apply to the court for an order on the ground that the affairs of the company are being conducted or the powers of the directors are being conducted in a manner oppressive to one or more of the members or debenture holders including himself or in disregard of his or their interest as members, shareholders or debenture holders of the company. So, perhaps, if involving in ultra vires contract can be proven to be oppressive or their

interest been disregarded, then the member or the debenture holder may seek for the court order to remedy the matter. If satisfied the court may:

- (a) Direct or prohibit any act or cancel or vary any transaction or resolution;
- (b) Regulate the conduct of the affairs of the company in the future;
- (c) Provide for the purchase of shares or debentures of the company by other members or debenture holders of the company or by the company itself; or
- (d) Provide for the company to be wound up.

It is submitted that if the court grant an order to cancel the ultra vires contract under this section, the third party may perhaps get protection under the general remedies for frustration of contract.

## 2. Petition for winding up

Section 465 of CA 2016 provides the circumstances in which a company may be wound up by court. Among the circumstances that may be relevant in this context are:

- (a) If the directors have acted in the affairs of the company in a manner which appears to be unfair or unjust to members; or
- (b) The court is of the opinion that it is just and equitable that the company be wound up.

So, perhaps if dealing with ultra vires contract appears to be unfair or unjust to member or if they can satisfy the court that dealing in ultra vires contract is just and equitable for the company to be wound up, then winding up order would served some sort of protection to members.

### 3.2 Ultra Vires Doctrine Overview in Indonesia

In this era of globalization, where each country's legal system affects other countries, legal observers must know the implications of mixing various legal systems sourced from different legal systems with the legal system in Indonesia. Because, many of the legal systems of other countries have now been accepted as positive law in Indonesia. The legal systems of other countries that influence and are applied in Indonesia are mostly found in the field of economic law, including company law.

Modern legal doctrines sourced from Anglo-Saxon (English and American) systems, as well as from continental (European) systems, have significantly influenced the corporate legal system in Indonesia. This influence is evident in various legislative regulations related to companies since the enactment of Law No. 40/2007 concerning Limited Liability Company. Legal doctrines such as piercing the corporate veil, fiduciary duty, the principle of prudence (corporate prudential), the business judgement rule, intra vires, ultra vires, the public document rule, the doctrine of separate legal personality of a company, and others, now colour various legislative regulations in the field of company law, including being used in arguments during litigation processes.<sup>13</sup>

The emergence of economic law reform is inseparable from the spirit of creating companies based on the principles of good corporate governance, by balancing the various interests of shareholders, stakeholders, and company organs. Therefore, knowing the various legal doctrines of the legal system is very urgent, both those that have been implemented in positive law in Indonesia and those that have not and their development.<sup>14</sup>

Based on Article 1 Paragraph (5) of Law No. 40/2007 concerning Limited Liability Company, mentioned

*"The Board of Directors is an organ of the company that is fully responsible for the management of the company for the benefit of the company and the company's objectives both inside and outside the court in accordance with the provisions of the Articles of Association"*

As a party that greatly influences the success or destruction of a company, the important thing related to its existence is its duties, authority, and responsibilities in a limited liability company. It is not easy to uncover the aforementioned matters, as the provisions are scattered in various documents and in various legal theories

<sup>13</sup> Try Widiyono. (2005). *Direksi Perseroan Terbatas (Bank dan Persero)*. Bogor: Ghalia Indonesia, p. 1.

<sup>14</sup> *Ibid*, p. 2.

and doctrines. Things that must be done and things that are prohibited sometimes have thin boundaries, so that in certain circumstances, it forces directors to take legal risks.<sup>15</sup>

The existence of the Board of Directors in a Limited Liability Company is like the lifeblood of the Company. The relationship between a limited liability company and its directors is mutually supportive, meaning the existence of the company justifies the existence of the directors, and vice versa, as it is impossible to have a limited liability company without a board of directors. Therefore, there is a fiduciary relationship between the limited liability company and its directors.

If studied more deeply, managing a company is not an easy thing. In order for the company to be managed in accordance with the purpose for which it was established, it is necessary to have requirements and expertise to become a director. The existence and function of the board of directors of a limited liability company based on Law No. 40/2007 concerning Limited Liability Company ("UUPT") is contained in several provisions, which include:

1. Article 1 paragraph 2 of the UUPT: the Company's organs are the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners.
2. Article 1 paragraph 5 of UUPT: the Board of Directors is an Organ of the Company which is authorized and fully responsible for the management of the Company for the benefit of the Company, in accordance with the purposes 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. Article 92 paragraph 1 of UUPT: the Board of Directors shall carry out the management of the Company for the benefit of the Company and in accordance with the purposes and objectives of the Company.
4. Article 98 paragraph 1 of UUPT: the Board of Directors represents the Company both inside and outside the court.
5. Article 97 paragraph 2 of UUPT: each member of the Board of Directors must in good faith and with full responsibility perform their duties for the interests and business of the Company.

The definition of the board of directors is as specified in the corporation's articles of association and appointed in the general shareholders' meeting. Other officials, regardless of their title, cannot be referred to as the board of directors of the corporation, therefore the responsibility of the board of directors cannot be transferred to anyone else. If the board of directors delegates authority to another official to perform certain legal acts, the responsibility still remains with the board of directors as the authorizer.

The extensive authority granted to the board of directors does not imply that their powers are unlimited. The authority of the board of directors is restricted by their internal capacity to act, which is governed both by legal doctrines and by applicable regulations, including the corporation's articles of association.

These limitations include the doctrine of *ultra vires*, which states that the act is an act outside the authority of the board of directors. As has been explained, the obligation to manage the board of directors in the company must be based on the articles of association (vide article 1 paragraph 5 Jo article 82 UUPT). In addition, article 92 paragraph 2 of UUPT states that the articles of association can determine the limitation of the authority of members of the board of directors as referred to in paragraph 1.

If the board of directors has exceeded its authority as stipulated in the articles of association, they have violated the *ultra vires* principle, and thus are personally liable for such breaches. Third parties engaged in business with the corporation remain legally protected and valid regardless of the *ultra vires* principle. For example, if the articles of association state that certain types of agreements with other parties require written permission from the General Meeting of Shareholders (GMS), and the board executes such agreements without obtaining

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<sup>15</sup> Johnny Ibrahim. (2011). Doktrin Ultra Vires dan Konsekuensi Penerapannya Terhadap Badan Hukum Privat. *Jurnal Dinamika Hukum*. 11(2), p. 247. DOI: <http://dx.doi.org/10.20884/1.jdh.2011.11.2.184>

permission from the GMS, those agreements with third parties remain valid. However, internally, the board has breached the ultra vires doctrine.<sup>16</sup>

Even though UUPT clearly states, in article 1 paragraph 4 of UUPT, that the GMS is a corporate organ that holds the highest power in the company and holds all authority that is not delegated to the board of directors or commissioners, it must be remembered that this does not mean that the GMS can dictate or give instructions to the board of directors in carrying out the company's duties regulated in the articles of association, because this is very contrary to the principle of limited liability of shareholders stipulated in Article 3 (1) of UUPT, which states that shareholders of the company are not personally liable for agreements made on behalf of the company and are not responsible for the company's losses exceeding the value of the shares they have taken.

Limitations on the authority of the board of directors are emphasized in UUPT, among others:

1. Article 2 of UUPT, that the company's activities must be in accordance with its purpose and objectives and not contrary to laws and regulations, public order and / or decency; article 82 of the Company Law, namely in managing the company must be for the benefit and purpose of the company;
2. Article 99 paragraph 1 of UUPT, which basically states that the board of directors is not authorized to represent the company in the event of a conflict of interest;
3. Article 97 paragraph 1 of UUPT, which basically must be in good faith and full of responsibility;
4. The existence of certain legal actions that must obtain prior approval from the commissioners and or GMS which are regulated in the articles of association.<sup>17</sup>

All actions of the Board of Directors that exceed the limits of authority that have been regulated in the articles of association and the Company law are considered to have committed an act of violation. The Board of Directors in carrying out the functions and authorities in the management, the purpose is not reasonable, so such management actions are categorized as management carried out in bad faith.

Thus, it can be concluded that the authority of the board of directors to carry out the management of a limited liability company is limited:

1. Statutory regulations;
2. The purpose and objectives of the limited liability company as formulated in the articles of association,
3. Other restrictions confirmed in the articles of association.

Given the wide scope of the authority of the Board of Directors in relation to the tasks of managing the company, to avoid the abuse of authority or power of the Board of Directors against the company it manages, it is necessary to limit the authority of the Board of Directors.

One fairly comprehensive side of the application of the doctrine of ultra vires is how to regulate the juridical consequences of actions that contain elements of ultra vires. This cannot be abstracted in a general rule, although a common thread can be drawn from it that the application of the doctrine of ultra vires is more satisfactory if it is done in a casuistic manner or at least in a vocative and casuistic classification.

In Indonesia itself, although legal culture factors come into play, the juridical parameter is certainly the UUPT itself. As a modern law, this UUPT indeed implies the application of the doctrine of ultra vires in Indonesia. However, its elaboration and crystallization are not yet clear, and its application in legal and judicial practice is also not very legible.

The term "ultra vires" is applied in a broad sense, which includes not only activities that are prohibited by the articles of association, but also actions that are not prohibited, but exceed the authority granted. The term "ultra vires" is also applied not only if the company performs an action for which it has no authority, but also to actions for which it has authority, but which are carried out irregularly. Even further, an action is classified as

<sup>16</sup> Shinta Ikayani Kusumawardani. (2013). Pengaturan Kewenangan, dan Tanggung Jawab Direksi Dalam Perseroan Terbatas (Studi Perbandingan Indonesia dan Australia). *Jurnal Magister Hukum Udayana*. 2(1), p. 15. DOI: <https://doi.org/10.24843/JMHU.2013.v02.i01.p12>

<sup>17</sup>Imam Hadi. Kewenangan Direksi Perseroan Terbatas. <https://www.hukumonline.com/klinik/a/kewenangan-Direksi-perseroan-terbatas-1t4fd98a998caec/>, accessed on 19 April 2024.

"ultra vires" not only if it exceeds its explicit or implied authority (in the articles of association), but also if it is contrary to applicable regulations or contrary to public order.

The application of the doctrine of ultra vires in Limited Liability Company can be found in the regulatory articles in Law No. 40/2007 concerning Limited Liability Company. Article 2 of UUPT states that:

*"The Company must have a purpose and objective and business activities that do not conflict with the provisions of laws and regulations, public order and/or decency"*

Taking into account the contents of the provisions of Article 2 of UUPT above, it is clear that there is an ultra vires doctrine adopted therein, because the company is required to have a purpose and objective and in the next sentence it is stated that the company may not violate the purpose and objective.

Furthermore, Article 15 paragraph (1) regulates, among others: The Articles of Association as referred to in Article 8 paragraph (1) contain at least:

1. The name and domicile of the company;
2. The purpose and objectives and business activities of the company;
3. The period of establishment of the company
4. The amount of authorized capital, issued capital and paid-up capital;
5. The number of shares, the classification of shares if any and the number of shares for each classification, the rights attached to each share, and the nominal value of each share;
6. The names of positions and number of members of the board of directors and board of commissioners;
7. Determination of the place and procedure for holding the GMS;
8. Procedures for replacement, appointment, dismissal of members of the board of directors and board of commissioners;
9. Procedures for the use of profits and the distribution of dividends.

Furthermore, Article 21 paragraphs (1) and (2) of the Company Law, which states:

1. Certain amendments to the articles of association must be approved by the Minister.
2. Certain amendments to the articles of association as referred to in paragraph (1) include:
  - a. The name of the Company and/or the domicile of the Company;
  - b. The purposes and objectives and business activities of the Company;
  - c. the period of establishment of the Company.
  - d. The amount of the authorized capital;
  - e. Reduction of issued and paid-up capital
  - f. The status of a closed company to a public company or vice versa.

Strengthened by the provisions contained in Article 92 paragraph (1) of UUPT, basically the Board of Directors has limited authority where the Board of Directors in carrying out the management of the Company must remain guided and must not conflict with the Company's goals and objectives as stated in the company's articles of association. The purposes and objectives of the Company are outlined in the Articles of Association of the Company, so that the Articles of Association are the source as well as the most important limit of authority to measure the absence or excess of authority.

Further regulation in Article 155 confirms:

*"The provisions and responsibilities of directors and commissioners for their errors and omissions regulated in this law do not reduce the provisions stipulated in the criminal law"*

Basically, in Law No. 40/2007, the concept of ultra vires is not found in any article explicitly or overtly, especially in terms of terminology, this Law does not regulate the definition of ultra vires. However, this does not mean that Indonesia does not adhere to the Doctrine of Ultra Vires, simply because there are no rules or norms in the legal system that explicitly determine it.

However, the absence of the ultra vires concept in the UUPT tends to make ultra vires violations sometimes rather difficult to prove. This difficult proof is due to the fact that in the company's articles of association there



is a very broad duty of the board of directors, namely to manage the company according to its purpose and objectives. The problem is, to what extent is managing the company in accordance with the aims and objectives of the company? As long as business transactions are carried out in accordance with the aims and objectives of the company, then the engagement is difficult to be said to be a violation of ultra vires. However, in many cases, the judiciary usually uses the doctrine of piercing the corporate veil because the doctrine of ultra vires is a further development of this principle.

The ultra vires doctrine is very important to be able to measure a legal action of the company's management, whether the action is in accordance with the authority to act as stipulated in the articles of association or not. If the action exceeds the authority granted by the articles of association, then the management of the company must be responsible up to his personal property and is responsible for himself both criminally and civilly.

In the perspective of Indonesian legal system, if the management or Board of Directors of the company commits ultra vires, or in other words, the Board of Directors takes actions that exceed the limits of authority specified in the Articles of Association of the Company (ultra vires), then the law gives each shareholder the right to file a lawsuit against the company to the District Court. This is stipulated in Article 61 of UUPT which states in sub paragraph (1)

*“Every shareholder has the right to file a lawsuit against the Company to the district court if they are disadvantaged due to the Company's actions which are considered unfair and without reasonable grounds as a result of the decisions of the GMS, Board of Directors, and/or Board of Commissioners. (2). The lawsuit as referred to in paragraph (1) shall be filed with the district court whose jurisdiction covers the domicile of the Company.”*

In order to restore the rights of shareholders due to ultra vires conduct by the board of directors, shareholders may file a lawsuit with the district court. The lawsuit filed basically contains a request that the Company stop the detrimental action and take certain steps both to overcome the consequences that have arisen and to prevent similar actions in the future. The rights granted to all shareholders are granted unconditionally, and without having to represent a certain number of shares. Holders representing only one share can exercise it. It can be concluded that shareholders have the option of enforcing their rights by litigation in the Indonesian state order.

Some jurisprudence has ruled in relation to the responsibility of directors in ultra vires actions committed. One of them is the decision of the Supreme Court of the Republic of Indonesia No. 3264.K/Pdt/1992, dated August 28, 1996, in a debt and credit case between PT Oesaha Sandang Batoenoenggal (plaintiff/case applicant) against PT Dhaseng Ltd. and PT Interland Indonesia Ltd. (as defendants/appellants in cassation I and II, respectively) and Mediaro Prawiro (director of the latter two and defendant/appellant in cassation III), the judge had used the doctrine of ultra vires as one of the legal considerations in deciding the case. In the verdict, Mediaro Prawiro (as the managing director of PT Dhaseng Ltd. and PT Interland Indonesia Ltd.) made an acknowledgment of debt to PT Oesaha Sandang Batoenoenggal, which action did not have written approval from the commissioner.

The above actions, in violation of Article 11 paragraph (2) of the Articles of Association of the 1st and 2nd defendants, were deemed by the judge to be ultra vires, as they were beyond the scope of their authority. Therefore, the actions of the board of directors were unlawful and not binding in accordance with the principle of limited liability attached to respondents I and II as legal entities. This implies that the debts incurred by the director (Mediaro Prawiro) are the sole responsibility of the plaintiff (PT Oesaha Sandang Batoenoenggal).<sup>18</sup> Thus, the application of the ultra vires doctrine is expected to prevent or overcome the abuse of authority by directors against the company and or third parties in good faith. From the above decision, it is clear that shareholders' rights can be protected through litigation efforts and directors must be personally responsible for actions made in ultra vires conditions. Through the above decision it can be examined, that when the board of directors commits an ultra vires act, the Company cannot be sued for ultra vires contracts or transactions, the

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<sup>18</sup> Putusan Mahkamah Agung Republik Indonesia Nomor 3264 K/Pdt/1992. 28 Agustus 1996.

Company also cannot confirm and implement them and the General Meeting of Shareholders (GMS) cannot authorize or approve the actions of the Board of Directors that contain ultra vires.<sup>19</sup>

There is another option in restoring the rights of shareholders, namely through the ratification method of the actions of the Board of Directors that commit ultra vires acts. This method is viewed based on the modern doctrine of ratification.<sup>20</sup> Ratification is the ratification of an ultra vires agreement so that it becomes the responsibility of the company. This ratification aims to make the actions of the directors that include ultra vires included in the Articles of Association or the objectives of the Company so that they become intra vires. Thus, the Board of Directors is relieved of responsibility aimed at improving the condition of the agreement and preventing losses. Ratification is granted through a resolution of the GMS, if it receives unanimity from the results of the GMS then the articles of association must be amended.

However, there is much controversy regarding this ratification, with some literature stating that actions taken by directors that are ultra vires cannot be ratified or approved by the GMS because the purpose of the GMS is to change the aims and objectives and business activities of the company before an action is taken, and not the other way around.<sup>21</sup>

#### 4. Conclusion

Historically, the object clause within a company's constitution defines its permissible actions, with acts outside this scope deemed ultra vires. Under common law, such acts were void and non-binding, and unanimous shareholder consent could not validate them, as illustrated in *Ashbury Railway Carriage & Iron Co. v Riche and Re Jon Beauforte (London) Ltd.*

The ultra vires doctrine's original aim was to protect shareholders and creditors from investment misuse. However, it disadvantaged third parties dealing with the company, as seen in legal precedents. Under the Companies Act 1965, ultra vires contracts were valid, safeguarding third-party interests but allowing shareholders to restrain such contracts. Directors who caused ultra vires contracts could face legal action, and severe cases could lead to the company's winding-up.

Contrastingly, the Companies Act 2016 alters the Ultra Vires Doctrine's landscape, restricting companies to activities aligned with their stated objects. While the Act provides no specific remedies for shareholders or debenture holders against ultra vires contracts, they may seek recourse through claims of oppression or by petitioning for winding-up.

In Indonesia, the Ultra Vires Doctrine is influenced by global legal systems and shapes corporate law. The concept is implicit in regulations like Law No. 40/2007 concerning Limited Liability Companies. Although the doctrine's application lacks clarity, shareholders can challenge ultra vires actions through lawsuits. Directors found in breach of ultra vires obligations may face personal liability, as illustrated in legal cases.

However, controversies exist regarding the ratification of ultra vires actions by the General Meeting of Shareholders (GMS). Some argue against such ratification, emphasizing the GMS's role in setting company objectives rather than retroactively approving actions.

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<sup>20</sup> Machdi, I. Thesis, *Perlindungan Hukum Terhadap Pihak Investor Dalam Pertanggungjawaban Direksi Perseroan Terbatas Terkait Tindakan Ultra Vires*, (Jakarta : UIN Syarif Hidayatullah, 2014), p.51.

<sup>21</sup> Yahya Harahap. (2016). *Hukum Perseroan Terbatas*. Jakarta: Sinar Grafika. p.67.

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