

Amendments to the Articles of Association and Corporate Data of a Limited Liability Company Without the Approval of Series A Shareholders (Case Study of Decision Number 79/Pdt.G/2021/PN JKT SEL)

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<i>Article Info</i>	<i>Abstract</i>
<i>Received: 04-03-2026</i> <i>Revised: 13-03-2026</i> <i>Accepted: 24-06-2026</i> Keywords: <i>Company Law</i> <i>Limited Liability Company</i> <i>General Meeting of Shareholders (GMS)</i> <i>Shareholders' Voting Rights</i> <i>Notary Liability</i>	<i>A Limited Liability Company is regulated under Law Number 40 of 2007 concerning Limited Liability Companies. In a Limited Liability Company, there is a capital partnership consisting of Authorized Capital and Issued/Paid-up Capital. In determining an agenda at the General Meeting of Shareholders (GMS), shares play a significant role in determining the outcome of resolutions. Shares are classified according to the share classifications stipulated in Article 53 paragraph (4) of the Company Law. In decision-making, voting shares are required. The research method used in this study is normative juridical research by examining secondary data through library research. The legal materials used are based on statutory regulations and literature materials such as books, journals, and other references. The validity of changes to the management structure without the approval of the majority shareholders is generally considered invalid. Important aspects that must be considered relate to the procedures of the GMS, namely the summons procedure; the implementation of the GMS, including attendance quorum, approval quorum, and the venue of the GMS; and the submission of data into the Legal Entity Administration System (SABH). If these procedures have been carried out in accordance with the applicable laws and regulations, then the changes to the management structure may still be deemed valid. However, in this case, the changes to the management structure were invalid because shareholders holding voting rights were not involved in the decision-making process regarding the changes to the management structure. The liability of the Notary who executed the deed of amendment to the management structure without a valid GMS may result in civil sanctions, causing the deed executed by the Notary to become null and void by operation of law.</i> Keywords: <i>General Meeting of Shareholders (GMS), Notary, and Shareholders</i>

I. Introduction

A Limited Liability Company is regulated under Law Number 40 of 2007 concerning Limited Liability Companies¹ (hereinafter referred to as the Company Law). Article 1 point 1 of the Company Law provides as follows: "A Limited Liability Company, hereinafter referred to as a Company, is a legal entity constituting a capital partnership, established based on an agreement, conducting business activities with authorized capital entirely divided into shares, and fulfilling the requirements stipulated under this Law and its implementing regulations." As a legal entity, a Company must fulfill the following requirements¹:

1. It constitutes a capital partnership;
2. It is established based on an agreement;
3. It conducts business activities; and
4. The establishment of the Company is carried out through a legal process in the form of government approval.

Within a capital partnership, shares are used as partnership capital, forming the Authorized Capital as well as the Issued and/or Paid-up Capital. The parties who may own such shares are referred to as shareholders, who may consist of either individuals or legal entities.² Shares that may be owned by legal subjects can be classified in accordance with Article 53 paragraph (4) of the Company Law, which provides as follows:

"(4) The classification of shares as referred to in paragraph (3) may include:

- a. shares with voting rights or without voting rights;
- b. shares granting special rights to nominate members of the Board of Directors and/or the Board of Commissioners;
- c. shares which, after a certain period of time, may be redeemed or exchanged for another classification of shares;
- d. shares granting their holders the right to receive dividends prior to holders of other classifications of shares, whether cumulatively or non-cumulatively; and
- e. shares granting their holders the right to receive the remaining assets of the Company in liquidation prior to holders of other classifications of shares.³"

The number of shares owned by an individual or legal entity influences the decision-making process within a Limited Liability Company. Decisions concerning a Limited Liability Company as a legal entity are made through the convening of a General Meeting of Shareholders (GMS). The GSM constitutes

the highest authority within a Limited Liability Company.⁴ Through the GMS, legal actions or amendments to the Articles of Association of a Limited Liability Company may be carried out. One form of amendment to the Articles of Association is a change in the management structure of the Company.

The case under discussion concerns a company in which a legal entity, PT BS, acted as the majority shareholder holding 70% Series A shares, while FO, another shareholder, acted as the minority shareholder holding 30% Series B shares of all issued shares of the Company, based on the Minutes of Meeting of 2018. In 2020, there were amendments to the Articles of Association and changes to the company's corporate data through the Deed of Statement of Meeting Resolution (PKR Deed) Number 01 dated 1 October 2021 before a Notary. The amendments included changes to the Company's purposes and objectives, changes to the Board of Directors and Board of Commissioners, as well as changes to the shareholders. The change in shareholders involved RN becoming the majority shareholder with 98% ownership, while FO held 2% ownership. These changes were carried out without the knowledge, attendance, or approval of PT BS as the majority shareholder.

Based on the above case, this journal discusses and focuses on Amendments to the Articles of Association and Corporate Data of a Limited Liability Company without the approval of Series A Shareholders. The research questions examined in this study are as follows:

1. What is the validity of changes to the management structure made without the approval of the majority shareholder?
2. What is the liability of a Notary who executes a deed of amendment to the management structure based on an invalid GMS?

2. Research Method

The type of research used in this study is normative juridical research, namely research conducted by examining secondary data or library materials as the primary basis for the study.⁵ The legal sources used consist of primary legal materials and secondary legal materials. The primary legal materials used include Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law. The secondary legal materials used consist of books, journals, and other relevant references. The data collection technique employed in this

research is library research. Library research is a data collection technique conducted by studying relevant literature. The legal material analysis technique applied in this study is legal interpretation, specifically systematic interpretation, by correlating one regulation with another in order to analyze a particular legal case comprehensively.

3. Results and Discussion

A. Validity of Changes to the Management Structure without the Approval of the Majority Shareholder

In principle, every Limited Liability Company may make changes to its management structure. The provisions governing decision-making in a General Meeting of Shareholders (GMS) require the Board of Directors of the Company to fulfill the following requirements:

1. Summons/Notice of Meeting
2. Implementation of the GMS
3. Legal Entity Administration System (SABH) Procedures

1. Summons/Notice of Meeting

With respect to amendments to the Articles of Association, a summons to the GMS must first be conducted as stipulated in Article 82 paragraph (1) of the Company Law, which provides that the summons for a GMS must be made no later than 14 (fourteen) days prior to the date of the GMS, excluding the date of the summons and the date of the GMS itself.⁶ Further examination shows that the procedures for summoning a GMS are regulated under Article 82 paragraph (2) of the Company Law, which states that the summons to the GMS shall be made by registered mail and/or by advertisement in a newspaper. However, there is an exception or dispensation to these requirements as provided under Article 82 paragraph (5) of the Company Law, which states: "In the event that the summons does not comply with the provisions referred to in paragraphs (1) and (2), and the summons does not comply with paragraph (3), the resolutions of the GMS shall remain valid provided that all shareholders with voting rights are present or represented at the GMS and the resolutions are approved unanimously."

2. Implementation of the GMS

Once the summons has been properly conducted, the GMS may be convened

by the parties provided that the attendance quorum and approval quorum requirements stipulated under Articles 86–89 of the Company Law are fulfilled.⁷ Each agenda item of the GMS has different quorum requirements. It should be noted that the Company Law regulates the minimum quorum requirements that must be applied by a Limited Liability Company. Nevertheless, the Articles of Association may stipulate stricter quorum requirements than those provided under the Company Law.

3. SABH (Legal Entity Administration System)

After the GMS has been conducted, a copy of the resolutions is prepared by the Notary. Once all required documents have been completed, the data input process may be carried out. In practice, the input into the Legal Entity Administration System (SABH) is conducted by the Notary based on the authority granted by the shareholders or authorized parties of the Company. Following the SABH submission, the Minister of Law and Human Rights of the Republic of Indonesia issues the relevant legal products depending on the agenda, such as: Decree of Legalization of Establishment; Ministerial Approval Decree; Receipt of Notification of Amendments to the Articles of Association; and Receipt of Notification of Changes to Corporate Data.⁸

Accordingly, based on the formal requirements for the execution of a deed amending the Articles of Association, the validity of changes to the management structure without the approval of the majority shareholder must first consider whether the summons to the GMS was properly conducted for the purpose of making such resolutions. In 2020, based on a privately executed GMS resolution prepared by PT Manusela Prima Mining, the Notary in the Deed of Statement of Meeting Resolution (PKR) failed to include the existence of the Minutes of GMS Deed Number 174 dated 14 March 2018. Consequently, the PKR contained an error regarding the parties who were required to provide approval in the GMS. Therefore, although the amendments to the Articles of Association and changes to the corporate data had been carried out in accordance with procedural requirements, there was an error concerning the shareholders involved in the Extraordinary General Meeting of Shareholders (EGMS) dated 28 September 2020, resulting in PKR Deed Number 1 dated 1

October 2020 being declared null and void.

Liability of a Notary Who Executes a Deed of Amendment to the Management Structure Based on an Invalid GMS

A Notary is one of the parties who plays an important role in relation to the establishment of a Limited Liability Company as well as amendments to the Articles of Association or changes to corporate data. The establishment of a Limited Liability Company is required under the Company Law to be set forth in a Notarial Deed, as stipulated in Article 7 paragraph (2) of the Company Law. Likewise, amendments to the Articles of Association pursuant to Article 21 paragraph (4) of the Company Law must also be contained in a Notarial Deed.

The role of the Notary is not limited merely to incorporating the establishment or amendments of a Limited Liability Company into a Notarial Deed. A Notary is also required to carry out registration with the General Legal Administration System (AHU) in order to obtain a Ministerial Decree concerning the establishment of the Company. In relation to amendments to the Articles of Association, the Notary is responsible for obtaining ministerial approval for such amendments or submitting notification of amendments to the Minister, as regulated under Article 21 paragraphs (7) and (8) of the Company Law. In carrying out his or her duties and functions, a Notary is subject to several obligations as stipulated under Article 16 paragraph (1) letter a of the Law on the Position of Notary, namely:

1. acting in a trustworthy manner;
2. acting honestly;
3. acting carefully and diligently;
4. acting independently;
5. remaining impartial; and
6. safeguarding the interests of the parties involved in the legal act.

In carrying out these obligations, a Notary may incur liability if such obligations are not properly fulfilled. According to Hans Kelsen, responsibility is closely related to obligation, although the two are not identical. Obligations arise because positive law regulates them and imposes them upon legal subjects. Such legal subjects are required to fulfill these obligations, and failure to do so may result in sanctions. Hans Kelsen further explains that legal subjects subjected to sanctions must bear legal responsibility for the violations they have committed.⁹

In principle, where a Notary commits an error, the Notary may be held liable under administrative law, civil law, or criminal law, depending on the actions committed by the Notary and the decision rendered by the court.¹⁰ In the present case, there was a deed in which the party signing the deed was not a person authorized to perform the legal act in question. Nevertheless, the deed was still executed by the Notary, and the deed was subsequently reported by the Notary to the Minister of Law and Human Rights of the Republic of Indonesia in order to obtain approval for amendments to the Articles of Association and acknowledgment of the notification of changes to the Company's corporate data.

In this matter, the judge held the Notary liable for failing to exercise due diligence in examining the latest amendment data of the Company that became the object of the dispute. Consequently, the court declared that the Notary had committed an unlawful act.¹¹

The obligation of a Notary to act carefully and diligently is regulated under Article 16 paragraph (1) letter a of the Law on the Position of Notary. The term "careful and diligent" means that a Notary must be responsive and attentive in analyzing a legal event in order to determine the appropriate legal action and ensure that the legal act complies with positive law. If the legal act cannot lawfully be carried out because it is inconsistent with prevailing laws and regulations, the Notary should firmly refuse to proceed. Administrative sanctions arising from violations of Article 16 paragraph (1) letter a of the Law on the Position of Notary are regulated under Article 16 paragraph (11), whereby a Notary may be subject to the following sanctions:

1. Written warning;
2. Temporary suspension;
3. Honorable dismissal; or
4. Dishonorable dismissal.

In determining sanctions against a Notary, the Notary Supervisory Council will consider the nature of the violation committed by the relevant Notary and subsequently determine the appropriate sanction to be imposed.

With regard to civil sanctions, the Panel of Judges determined that the

Notary had committed an unlawful act, the elements of which, as provided under Article 1365 of the Indonesian Civil Code, consist of¹²:

1. An act;
2. The act being unlawful;
3. Fault or negligence;
4. Loss or damages; and
5. A causal relationship between the act and the damages suffered.

According to J. Satrio, the consequence of an unlawful act is that the person committing the unlawful act is obligated to compensate the injured party, and the injured party is entitled to such compensation.¹³ Therefore, in this case, due to the Notary's negligence, PT BS (the Plaintiff) suffered losses and lost its rights over its shares. As a consequence of such losses, the Notary must compensate PT BS, and PT BS is entitled to claim such compensation. With respect to criminal sanctions, because the matter arose from negligence on the part of the Notary, it does not constitute a violation of criminal law provisions.

Fundamentally, if a Notary executes a deed concerning changes to the management structure based on an invalid GMS, the deed executed by the Notary becomes null and void by operation of law. Furthermore, if the Notary was aware that the GMS convened was invalid, the Notary may also be held liable for negligence in carrying out his or her duties as a Notary.

4. Conclusion 12pt Bold

The General Meeting of Shareholders (GMS) may only be convened if all formal requirements of the meeting have been fulfilled, beginning with the summons to the GMS as stipulated under Article 82 paragraph (1) of the Company Law. Once the summons has been properly conducted, the GMS may be held in accordance with the attendance quorum and approval quorum requirements as provided under Articles 86–89 of the Company Law. After the GMS has been conducted, the resolutions are set forth in a Notarial Deed and subsequently entered into the Legal Entity Administration System (SABH) if the agenda of the GMS results in amendments to the Articles of Association that must be registered within the SABH system. In the case discussed in this study, the Plaintiff held Series A shares, which, according to the judgment, constituted the only class of shares carrying voting rights and also represented the majority shareholding. In the judgment, changes were made to the composition of shareholders. However, the shareholder entitled to exercise voting

rights in the GMS, namely PT Bina Sewangi Raya, was not included in the GMS. Consequently, the changes to the management structure resolved in the meeting became null and void by operation of law. Therefore, the court's judgment was legally appropriate.

In the establishment of a Company or amendments to its Articles of Association, the role of the Notary is essential. In carrying out his or her duties, a Notary also bears legal responsibility. A Notary may be held liable under administrative law, civil law, or criminal law depending on the actions committed. The judgment discussed in this research concluded that the Notary who executed the deed concerning changes to the management structure in the Articles of Association negligently failed to include the previous composition of shareholders, resulting in PT Bina Sewangi Raya suffering losses as a consequence of the Notarial Deed executed. Accordingly, the liability of the Notary in this case relates to civil liability arising from an unlawful act and the obligation to provide compensation to the injured party. The researcher agrees with the court's consideration that the Notary is responsible for compensating the injured party.

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