



Legal Study of the Defects in Amendments to the Articles of Association of Limited Liability Companies in Voting at General Meetings of Shareholders

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Abstract: Law Number 40 of 2007 concerning Limited Liability Companies and the Company's Articles of Association the General Meeting of Shareholders (GMS) is the highest organ in a limited liability company that has the authority to decide on various strategic matters, including changes to the articles of association and replacement of members of the Board of Directors and its decisions are based on the quorum of attendance of shareholders. If there is a change to the articles of association, then referring to the GMS, it must meet the requirements of Article 88 of Law Number 40 of 2007 concerning Limited Liability Companies which states that decisions can be taken if the meeting is attended by at least 2/3 (two-thirds) of shareholders with voting rights. The normative legal research method is used to examine the applicable laws and regulations and their application in practice. The results of the study indicate that the judge's decision ignores the provisions of the attendance quorum, but this study found that the judge in deciding and determining the presence of shareholders must be taken unanimously. This has the potential not to provide legal protection and certainty so that it will harm the shareholders in the company.

Keywords: Amendment to Articles of Association, General Meeting of Shareholders, Shareholders.

INTRODUCTION

A Limited Liability Company as a legal entity (rechtspersoon) is a legal subject that has rights and obligations as a human being (natuurlijke persoon) (Prasetyo, 2022). In carrying out its activities, a Limited Liability Company requires organs that function as a representation of the company's will, one of which is the General Meeting of Shareholders (hereinafter referred to as the GMS). The GMS is a company organ that has exclusive authority that is not given to the Board of Directors or the Board of Commissioners within the limits determined by law and/or articles of association, as mandated in Article 1 number 4 of Law Number 40 of 2007 concerning Limited Liability Companies. In the implementation of the GMS, the quorum is often not met due to the absence of some shareholders, even though they have been legally summoned to attend the meeting (Hakeu et al., 2023). The absence is usually caused by disagreements regarding the agenda to be discussed at the GMS (Chandra, 2023). In addition, other factors such as conflicts of interest between shareholders, time constraints, and geographical distance can also be the cause of shareholders' absence from the GMS. This phenomenon does not only occur in private companies, but also in public companies that have a larger number of shareholders and are spread out (Marfiana & Andriyanto, 2021).

The validity of the GMS depends on the fulfillment of the quorum. The size of this quorum is not uniform, but is adjusted to the type of meeting agenda (Saputra & Siti, 2021). This quorum arrangement is part of the legal protection mechanism for shareholders, especially minority shareholders, so that their interests remain protected in the company's strategic decision-making. These different quorum arrangements also reflect the level of urgency and impact of the decisions to be taken on the company's sustainability (Njatrijani et al., 2019). For routine matters that are not specifically regulated in the law or articles of association, as regulated in Article 86 number (1) of the Limited Liability Company Law, the quorum required is more than 50% (fifty percent) or more than half. This provision applies to operational and non-fundamental decision-making, such as ratification of the annual report or appointment of a public accountant.

However, if the meeting agenda is related to changes to the articles of association, the required quorum is higher, as stipulated in Article 88 of the Limited Liability Company Law, namely 2/3 (two-thirds) of all shareholders entitled to vote, and the GMS decision must be approved by 2/3 (two-thirds) of the voting shareholders present. The determination of this higher quorum is based on the consideration that the articles of association are fundamental rules that form the basis for the company's operations, so that changes to them require more representative approval from shareholders (Nana Eka Wijayanti & Sumriyah, 2023). For meeting agendas involving mergers, amalgamations, takeovers, separations (as stated in Article 89 of the Limited Liability Company Law), bankruptcy petitions, extension of the period of establishment or dissolution of the company, a new GMS is considered valid if attended by at least 3/4 (three quarters) of all shareholders entitled to attend (Ali Abdullah, 2024). This provision provides stricter protection considering that these decisions can fundamentally change the existence of the company or even end it.

Problems arise when in practice, the interpretation of the provisions on quorum and decision-making at the GMS is often not uniform, even among law enforcement officials such as judges (Haerani, 2020). There is one example of a case in the South Jakarta District Court with Case Number 1050/Pdt.G/2019/PN.Jkt.Sel, namely PT Sembilan Komunikasi Utama has held a GMS, one of the agendas of which is the replacement of the company's management. The results of the meeting are stated in the deed of statement of the GMS decision. However, it turned out that there were shareholders who were not present at the meeting so that in court, the judge considered that the meeting was invalid because it was not attended by one of the shareholders. The judge was of the opinion that to make a decision, it is required to be unanimous from the shareholders and decided that the actions of the Defendants were categorized as unlawful acts and the deed of statement of the GMS decision was invalid (Nurullia & Irawaty, 2024). The decision raises questions about the legal basis used by the judge, considering that in accordance with the provisions of Article 88 number (1) of the Limited Liability Company Law, it is explained that in order to change the articles of association, the GMS must be attended by at least 2/3 (two-thirds) of the total number of shares with voting rights present, and the decision is considered valid if approved by at least 2/3 (two-thirds) of the total number of votes cast. Thus, it can be concluded that the judge did not heed the provisions of Article 88 number (1) of the Limited Liability Company Law in making the decision at the trial.

This case highlights the inconsistency between the provisions of the Limited Liability Companies Law and its interpretation and application by the courts (Hamidin, Siswantari Pratiwi, 2024). This difference in interpretation can cause legal uncertainty for the company and its shareholders, and has the potential to hinder strategic decision-making necessary for the continuity and development of the company's business (Sulaiman et al., 2024). The principle of unanimity applied by the judge in the case also raises questions about the limits of the judge's freedom in interpreting the provisions of the law, especially in the context of corporate law which has its own characteristics and dynamics. The principle of unanimity, if applied strictly, can cause a deadlock in

the decision-making of the GMS, especially in companies with a large number of shareholders and diverse interests (Javasche et al., 2025).

From the description above, the problems that will be discussed in this study are changes to the company's articles of association using unanimous votes and legal protection efforts for shareholders in making GMS decisions according to the Limited Liability Company Law. This study aims to analyze the legitimacy of implementing the unanimous vote principle in the context of changes to the company's articles of association, as well as to examine the legal protection mechanisms available to shareholders, both majority and minority, in making GMS decisions based on the applicable corporate legal framework in Indonesia.

RESEARCH METHODS

Types of Research

This study uses a normative legal method, namely an approach carried out by examining library materials or secondary data. This method was chosen to examine the legal issues related to the flawed changes to the articles of association of a limited liability company in voting at the GMS based on Law Number 40 of 2007 concerning Limited Liability Companies, with a focus on the case of PT Sembilan Komunikasi Utama in Case Number 1050/Pdt.G/2019/PNJkt.Sel at the South Jakarta District Court.

Research Approach

This study uses three complementary approaches. The statutory approach is used to examine the laws and regulations related to changes to the articles of association and decision-making at the GMS, especially Articles 86 and 88 of the Limited Liability Company Law. The case approach is carried out by analyzing the case of PT Sembilan Komunikasi Utama with a focus on the judge's considerations that decided that the GMS was invalid because it was not attended by one of the shareholders. Meanwhile, the conceptual approach is used to understand important concepts such as the validity of the GMS, quorum, decision-making, changes to the articles of association, and legal protection for shareholders.

Sources and Types of Legal Materials

This study uses three types of legal materials. Primary legal materials include Law Number 40 of 2007 concerning Limited Liability Companies, Decision of the South Jakarta District Court Number 1050/Pdt.G/2019/PN.Jkt.Sel, and the Financial Services Authority Regulation regarding the implementation of the GMS. Secondary legal materials consist of corporate law books, legal journals on GMS, previous research results, and opinions of legal experts. While tertiary legal materials include legal dictionaries, the Great Dictionary of the Indonesian Language, and other non-legal materials relevant to the research topic.

Legal Material Collection Techniques

The collection of legal materials in this study was carried out through a literature study by tracing various sources in printed and electronic forms. The researcher also traced legal documents related to the PT Sembilan Komunikasi Utama case, such as court decisions, minutes of the GMS, and other relevant documents to gain a deeper understanding of the case.

Legal Material Analysis Techniques

The analysis of legal materials in this study uses a qualitative method with deductive reasoning. The researcher identifies and classifies relevant legal materials, then analyzes the relationship between

regulations and judicial practices. The researcher also interprets the provisions of Article 88 of the Limited Liability Company Law and analyzes the judge's considerations in the case of PT Sembilan Komunikasi Utama. Furthermore, the researcher examines legal protection efforts for shareholders and formulates conclusions and recommendations. Through this analysis, the study is expected to provide a comprehensive understanding of the problems of changes to the articles of association of limited liability companies in voting at the GMS and provide recommendations for better legal protection for shareholders.

RESULTS AND DISCUSSION

Changes to the Company's Articles of Association by Using Unanimous Vote

In the business world, a limited liability company (hereinafter referred to as PT) must have an organizational structure regulated by the company's articles of association. These articles of association are documents containing various provisions regarding the company's governance, objectives and business activities (Djumardin et al., 2019). Over time, a PT may face the need to make changes to the articles of association to adjust to business developments, new regulations, or other conditions that require adjustment. One mechanism that can be used to make changes to the articles of association is through a unanimous decision. Unanimity is a decision-making mechanism in a GMS that requires the approval of all parties who have voting rights, meaning an absolute quorum, all shareholders must approve the circulated proposal (Saputra et al., 2021). In the context of changes to the articles of association, unanimous vote means that all shareholders present at the meeting must approve the proposed changes. Unanimity is used to ensure mutual agreement among shareholders, which aims to maintain harmony and stability in decision-making.

According to Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT), changes to the articles of association of a company must be approved by the GMS with a majority vote or, in certain cases, unanimous vote. Unanimity can be applied to substantial changes, such as changes to business objectives, capital structure or stock splits (Oktarini et al., 2020). This aims to protect the interests of minority shareholders and ensure that decisions taken truly reflect the collective will of all shareholders.

The procedure for making changes to the articles of association unanimously through a GMS is as follows:

1. Proposed changes to the articles of association, namely the process of changing the articles of association begins with the submission of a proposal for change that can come from the company's shareholders or directors. This proposal must be based on the company's operational needs or to comply with applicable laws and regulations. Some changes that can be proposed include changing the company's name, changing the capital structure, transferring shares or changing business objectives;
2. Notice to shareholders, after the proposed change is accepted, the Board of Directors is required to send a notification to all shareholders regarding the planned change. This notification must be made in sufficient time so that shareholders can study and assess the proposal submitted;
3. Holding a GMS which must be attended by shareholders who have voting rights. In the case of changes to the articles of association that require unanimous vote, every shareholder present at the meeting must approve the proposed changes;
4. Decisions are based on unanimous vote, which means, at the time the GMS takes place, the decision regarding the change of the articles of association must be made unanimously, meaning that no shareholder opposes the change. If there are shareholders who disagree, then the change cannot be implemented. If all shareholders agree, then the decision is considered valid and the new articles of association will come into effect.

The use of unanimous vote in the amendment of articles of association has several advantages. Among them are the following:

1. Using consensus, unanimous vote ensures that the decisions taken are the result of a consensus of all shareholders. This increases mutual trust between shareholders and company management, and creates harmony in decision making;
2. Protecting the interests of minority shareholders, with unanimous consent, the decisions taken will reflect the agreement of all parties, including minority shareholders. This is important to protect the interests of smaller shareholders so that the decisions taken do not harm them;
3. Avoiding conflict, unanimous vote minimizes the risk of disputes between shareholders, because the decisions taken have been agreed upon together. Thus, the decisions taken are more easily accepted by all parties involved.

However, the use of unanimous votes also has challenges:

1. Risk of deadlock, one of the main challenges of unanimous voting is the risk of deadlock if any shareholder opposes the change. This can hinder the company's progress and prevent important decisions necessary for the company's development;
2. Difficulty in reaching agreement, in a company with many shareholders, achieving unanimity can be very difficult. If there are sharp differences of opinion among shareholders, the decision-making process can be very long and drawn out;
3. Potential abuse of power by majority shareholders, although unanimity aims to maintain harmony, there is a potential that majority shareholders can use this system to dominate decisions. If the majority of shares are owned by a few parties, they may be able to force decisions without considering the interests of minority shareholders.

Changes to the articles of association made by unanimous vote have legal implications that need to be taken into account (Nasseri, 2021). After the amendment to the articles of association is approved in the GMS, the amendment must be registered with the Ministry of Law and Human Rights (Kemenkumham) to obtain approval. In addition, the notary also needs to make a deed of amendment to the articles of association that lists the changes that have been approved by the GMS. Without such approval, the amendment to the articles of association will not have binding legal force.

Legal Protection Efforts for Shareholders in GMS Decision Making According to the Limited Liability Company Law

The GMS is a forum where shareholders express their opinions and vote on important decisions that affect the company (Surahman et al., 2023). In every PT, the GMS plays a crucial role because the decisions taken will affect the survival of the company and the rights of the shareholders themselves. Decisions taken in the GMS often cover fundamental matters, such as changes to the articles of association, dividend distribution and the appointment and dismissal of members of the Board of Directors and Commissioners. However, even though the GMS has great power, protection of shareholders must be prioritized, especially to avoid domination by majority shareholders which can harm minority shareholders (Sudaryat, 2020). Therefore, UUPT provides regulations that aim to protect the interests of shareholders in the decision-making process.

One of the legal protections for shareholders in decision making at the GMS is voting rights (Ismoyo Aji et al., 2020). Based on UUPT, every shareholder has the right to vote in the GMS according to the number of shares they own. This protection also stipulates that important decisions, such as changes to the articles of association, must involve a sufficient majority of

votes from all shareholders present at the meeting (Sidik, 2023). The goal is that the decisions taken are not only dominated by the majority shareholders, but also provide space for minority shareholders to participate fairly. In general, in order to protect the interests of shareholders, especially in decision-making held in the GMS, the UUPT has regulated various legal protection mechanisms intended to guarantee the rights of shareholders. This protection aims to ensure that the decision-making process does not only reflect the will of the majority, but also accommodates the interests of minority shareholders who are often marginalized in important decisions (Firdaus, 2024). Therefore, UUPT strictly regulates various rules related to voting rights, quorum of attendance at meetings, and the lawsuit mechanism that can be carried out if the GMS decision is considered detrimental or invalid.

One very important aspect of this protection is that the UUPT provides an opportunity for shareholders to ensure that decisions made in the GMS are in accordance with applicable legal provisions, and are sufficient to protect their rights, both majority and minority. This can be seen in the provisions governing how votes and attendance at the GMS can determine whether a decision is valid or not (Nurudin & Nurudin, 2022). Shareholders who are not present at the GMS must still be given protection so that the decisions made do not harm them. When a decision is considered contrary to the principle of justice or does not follow the procedures stipulated in the UUPT, the UUPT provides the right for the injured party to sue the decision in court, with the main aim of protecting the rights of shareholders who feel aggrieved. This legal protection effort can be found and applied in the Decision of the South Jakarta District Court Number 1050/Pdt.G/2019/PN.Jkt.Sel, which involved PT Sembilan Komunikasi Utama (hereinafter referred to as PT SKU). In this case, PT SKU held a GMS, one of the agendas of which was the replacement of the company's management. However, one of the shareholders was not present at the meeting. The results of the meeting were stated in the deed of statement of the GMS decision, which was then tested in court. The judge in this case considered that the GMS was invalid because it was not attended by one of the shareholders who had voting rights (Ernawati & Abdullah, 2021). The judge argued that to make important decisions, such as replacing management, a unanimous vote from all shareholders was needed. Therefore, the decision in the GMS was considered invalid and the deed of the GMS decision was null and void by law (Bdg et al., 2024).

This case is very relevant to the provisions of Article 88 number (1) UUPT, which stipulates that changes to the articles of association and other important decisions are only valid if attended by at least 2/3 (two thirds) of the total number of shares with voting rights present and approved by 2/3 (two thirds) of the votes cast. The judge in this case interpreted this provision as the importance of the presence of the majority of shareholders at the meeting to provide validity to the decisions taken (Julia Fitri Yani et al., 2022). The judge's assessment that the GMS decision must be based on unanimous votes from all shareholders is actually not in line with existing legal provisions (Bluluci & Iriantoro, 2022). Article 88 of the UUPT does not require unanimous votes or the presence of all shareholders in the decision-making of the GMS. What is important is the achievement of 2/3 (two-thirds) of the approved votes from the shareholders present and voting, which has been fulfilled by PT SKU in this case.

The judge's actions in ignoring the provisions of Article 88 of the UUPT and deciding that the decision is invalid could potentially give rise to legal uncertainty (Case et al., 2025). This is because, even though the company has followed the correct procedures in accordance with applicable law, the judge's decision actually confirms that the legal requirements set out were not heeded. For PT SKU, there are several legal protection efforts that can be taken to ensure that the decisions taken in the GMS remain valid and recognized by law. First, PT SKU has the right to confirm that the decision-making in the GMS is in accordance with the provisions of Article 88 of the UUPT (Syafrida et al., 2019). This article states that the decision of the GMS is valid if attended by at least 2/3 (two thirds) of the shares with voting rights, and approved by 2/3 (two

thirds) of the votes cast. PT SKU can show that the quorum and voting requirements have been met, so that the decisions taken are in accordance with applicable procedures.

In addition, PT SKU also has the right to receive protection against the valid GMS decision. By following the procedures set out in the UUPT, PT SKU can argue that the decision must still be respected and cannot be canceled just because some shareholders are not present.(Suprayogi & Nuraeni, 2019). This is part of legal protection for companies so that decisions that have been made through legitimate mechanisms are not disturbed. The next effort is through dispute resolution based on legitimate procedures (Boboy et al., 2020). PT SKU can defend itself in court with the argument that the GMS is a legitimate channel for making company decisions. Thus, dispute resolution must refer to applicable legal provisions and decisions that have been taken should not be canceled simply because of the absence of some shareholders, as long as the stipulated requirements have been met (Felina et al., 2023).

Finally, PT SKU can present evidence supporting that the GMS process held was in accordance with legal regulations, such as a valid notarial deed that records the results of the GMS decisions and proof of the presence of at least 2/3 (two thirds) of the shares with voting rights (Merdi Aditya Putra & Siti Hajati Husein, 2022). This can strengthen the legal position of PT SKU and show that the decision taken is legitimate.(Wijaya, 2022). On the other hand, minority shareholders who sue also have the right to obtain legal protection, especially if they feel that their rights have been neglected or violated. Minority shareholders have the right to legal protection for their voting rights in the GMS (Rayan Makhfirah, 2022). They can sue if the decision taken is detrimental to their rights as shareholders, or if the procedures followed are not in accordance with the provisions contained in the UUPT. In this case, they can file a lawsuit to ensure that the decisions taken at the GMS are truly legitimate and not dominated by the majority vote which may be detrimental to minority shareholders (Yusanti et al., 2022).

Minority shareholders also have the right to request dispute resolution through a fair legal mechanism (Sayyid, 2021). If they feel that the decision taken does not represent the interests of all shareholders, they can file a lawsuit to ensure that the decision-making process is carried out in accordance with the principles of justice and that their rights remain protected (Khairunnisa, 2018). This legal process provides them with the opportunity to obtain justice and protect their interests within the company (Agista & Ngaisah, 2023). In addition, minority shareholders can submit evidence showing that the GMS decision was taken in an illegitimate manner, such as evidence of the absence of shareholders who should have been involved in the decision-making process or evidence that the decision was detrimental to the rights of minority shareholders (Zahra et al., 2024). Thus, they can strengthen their arguments in court. Finally, minority shareholders have the right to request the cancellation or amendment of GMS decisions that are considered invalid (Pradipto et al., 2023). This legal provision provides them with protection so that their rights are not ignored, even though they are in a minority position.

CONCLUSION

Amendments to the company's articles of association through unanimous vote is a mechanism that prioritizes full approval from all shareholders present at the GMS. The purpose of using unanimous vote is to reach a joint agreement that reflects the will of all shareholders, maintain harmony, and protect the interests of minority shareholders. Unanimity is important in substantial amendments to the articles of association, such as changes to business objectives or capital structure, because it can prevent decisions that are detrimental to minority shareholders. However, despite having many advantages, such as increasing consensus and reducing the potential for conflict, the unanimous vote mechanism also faces challenges. One of the challenges is the risk of deadlock if there are shareholders who disagree with the proposed changes. In addition, achieving unanimous vote in a company with many shareholders can be a long and difficult process. In fact, there is the potential for abuse of power by majority shareholders who can use this system to dominate decisions.

On the other hand, legal protection for shareholders is regulated in the Limited Liability Company Law (UUPT), which grants voting rights to all shareholders and regulates that decisions taken in the GMS not only accommodate the interests of the majority, but also protect the rights of minority shareholders. The UUPT also guarantees that important decisions must follow legitimate procedures, and if not, shareholders have the right to file a lawsuit to cancel the decision. The case of PT SKU shows the importance of fulfilling the correct procedures in making GMS decisions. Although the GMS has fulfilled the legal provisions regarding quorum and approval of the majority vote, the decision can be considered invalid if the established procedures are not followed properly. Therefore, the company must ensure that all steps taken in the GMS process are in accordance with legal provisions so that the decisions taken remain valid and avoid potential disputes. Overall, changing the articles of association by unanimous vote is a mechanism that can strengthen the legitimacy of decisions taken by all shareholders. However, it is important to ensure that the rights of all shareholders are well protected and that applicable legal procedures are followed to avoid legal uncertainty that can harm the company and shareholders.

Suggestion

1. **The Need for Reformulation of GMS Quorum Regulations:** Revise the provisions in Law No. 40 of 2007 concerning Limited Liability Companies, especially Article 88, to provide clearer guidance on the interpretation of quorum and decision-making in GMS related to changes to the articles of association. This reformulation should explicitly state that the principle of unanimity only applies to certain specific conditions, not as a general principle that can be interpreted broadly by judges.
2. **Strengthening Judges' Understanding of Corporate Law:** Conduct special training for judges in commercial and civil courts on the proper interpretation of the Limited Liability Company Law, especially regarding the decision-making mechanism of the GMS. This training needs to involve academics and corporate law practitioners to ensure alignment between theory and practice in handling corporate law cases.
3. **Consistent Development of Jurisprudence:** Encourage the Supreme Court to issue guidelines or permanent jurisprudence regarding the interpretation of Article 88 of the Limited Liability Company Law, especially regarding the validity of the GMS and the decision-making mechanism. This will provide legal certainty and prevent diverse interpretations from judges at the first instance.
4. **Increasing Legal Protection for Minority Shareholders:** Developing a more comprehensive protection mechanism for minority shareholders, such as implementing a cumulative voting system or granting limited veto rights for certain strategic decisions, without having to require unanimous votes which could hinder the company's important decision-making.

5. **Alternative Mechanism for Resolving Company Disputes:** Developing a special mediation or arbitration procedure for disputes between shareholders or disputes related to the validity of the GMS. This mechanism can be a more efficient and effective alternative to litigation in court, while also allowing for a resolution that better maintains business relations between shareholders.
6. **Standardization of GMS Procedures and Documentation:** Developing standard procedures for the implementation of GMS and documentation of its results, including a clear notarial deed format, so as to reduce the potential for flaws in GMS decisions due to procedural issues. This standardization can be stated in implementing regulations or circulars from the Ministry of Law and Human Rights.
7. **Implementation of Good Corporate Governance Principles:** Encourage the implementation of Good Corporate Governance (GCG) principles in the implementation of GMS, including transparency in the invitation of meetings, clarity of agendas, and comprehensive documentation. The implementation of GCG will increase trust among shareholders and reduce the potential for disputes related to the validity of GMS decisions.

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