Vol. 21 No. 4 March 2026

YURISDIKSI

Jurnal Wacana Hukum dan Sains

Universitas Merdeka Surabaya

ISSN print 2086-6852 and ISSN Online 2598-5892

Legal Status of Shareholder Agreements on GMS Quorum Deviations

Susiani[1]*, Budi Santoso[1], Satria Amiputra Amimakmur[1]

[1]Faculty of Law, Brawijaya University Malang, Indonesia

*Corresponding Author Email:susiwahyono87@gmail.com

Article History: Received: Oktober 22, 2025; Accepted: December 23, 2025

ABSTRACT

This study examines the legal status of the shareholders agreement, which regulates the quorum of the General Meeting of Shareholders (GMS) differently from the provisions of the Limited Liability Company Law (UUPT) and the Company's Articles of Association (AD), with a case study of a share ownership dispute and the implementation of the GMS at PT Indo Mineralita Prima. The dispute began with the sale and purchase of shares based on a share pledge agreement, which then resulted in a secret transfer of ownership and the implementation of the GMS without notification to one of the shareholders. The shareholders had previously agreed to a shareholders agreement that required that changes to the Board of Directors and Board of Commissioners must be approved by 100% of the shareholders. However, in practice, some shareholders made changes to the company's structure, share transfers, and capital increases without following these provisions. This gave rise to a lawsuit for breach of contract by PT Investasi Internasional Indonesia, as the 28% shareholder, who felt aggrieved due to share dilution and decision-making without a valid quorum. The Panel of Judges in its decision stated that the defendants had committed a breach of contract and annulled several GMS deeds as a result of the violation of the shareholders agreement. However, the author's analysis shows that the shareholder agreement cannot override the Company Law and the Articles of Association, so that the 100% quorum requirement, which is not regulated in the Articles of Association, is not binding on the company. Therefore, the shareholder agreement is only legally binding on the parties as long as it does not conflict with statutory regulations and the Articles of Association. This research emphasizes the importance of harmonizing private shareholder agreements and corporate law to create legal certainty in corporate governance.

Keywords: Legal Status, Agreement, Shareholders, GMS Quorum, Articles of Association.

1. INTRODUCTION

Shareholder agreements raise legal issues. On the one hand, they are valid based on the principle of freedom of contract as stipulated in Article 1338 of the Civil Code. However, on the other hand, their enforceability could potentially conflict with the Company Law and Articles of Association, which are mandatory. This requires legal certainty regarding the legal standing of the shareholder agreement. For example, if one of the clauses stipulated in the shareholder agreement regarding the appointment of directors and commissioners through the GMS mechanism contradicts the provisions of the Company Law or the Articles of Association, it can have serious implications, such as the cancellation of GMS decisions. This issue is increasingly relevant considering that legal certainty is one of the fundamental principles in Company law for economic development. In a country, the responsibility to encourage economic development is not only the government's responsibility, but also requires the active participation of all citizens. One form of

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real contribution to Indonesia's economic growth is through the business sector. Companies are parties that have a vital role in realizing national development through economic activities carried out in collaboration with various agencies and other related elements. (Harahap, 2009; Fuady, 2003)

Companies are a crucial element in modern society, serving as centers of economic activity that support daily needs. For the state, the existence of companies plays a strategic role, particularly as a source of state revenue through the tax sector. Furthermore, companies serve as a means of providing employment for the community. Essentially, business activities within a company can be equated with trading activities, namely activities carried out continuously and transparently with the primary goal of generating profit. (Harahap, 2009; Fuady, 2003)

Companies as business entities in Indonesia can be classified into two main forms: incorporated and unincorporated. Unincorporated companies are generally owned by entrepreneurs working together in the form of a firm or limited partnership (CV), where the legal status and responsibilities of the members are not separate from the partnership entity itself. Conversely, incorporated companies have a legal status separate from their owners, thus providing protection in the form of limited liability for paid-up capital. One of the most widely used forms in the business world is the Limited Liability Company (PT), which operates as a capital partnership characterized by share ownership and provides stronger legal certainty in carrying out business activities.

In Indonesia, the Limited Liability Company (PT) has become the dominant business form compared to other types of business entities such as cooperatives, foundations, firms, and CVs. This dominance is inseparable from the purpose of PT as a means to carry out business activities sustainably to generate profits or dividends for its shareholders. Since the colonial era, the law regarding PT has been recognized in the Indonesian legal system through the principle of concordance, a principle that allows the application of Dutch regulations in the Dutch East Indies. The PT concept, previously known as Naamloze Vennootschap (NV), was later adopted as part of the national legal system. This company form has the advantage of ease of transfer of ownership through the sale and purchase of shares without having to dissolve the company.

As a nation governed by law, Indonesia subjects all government, social, and economic activities to legal provisions. Provisions regarding corporations were initially outlined in Articles 36 to 56 of the Commercial Code (KUHD), derived from the Wetboek van Koophandel. In line with evolving business needs, Indonesia updated its regulations regarding corporations through Law Number 1 of 1995 concerning Limited Liability Companies, which was later refined by Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). This update was necessary

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to provide a more modern and adaptive legal basis to support economic growth and the needs of corporate dynamics.

The establishment of a Limited Liability Company (PT) is regulated in Chapter II, Part One, Articles 7 to 14, of the Company Law, which stipulates the formal requirements for obtaining legal entity status. These requirements include establishment by a minimum of two individuals, a notarial deed in Indonesian, the obligation of the founders to subscribe for shares, and approval by the Minister of Law and Human Rights. After obtaining legal entity status, a PT has an organizational structure consisting of a General Meeting of Shareholders (GMS), a Board of Directors, and a Board of Commissioners as the main organs that carry out their respective functions. Among these organs, the GMS is the highest organ authorized to amend the articles of association, appoint and dismiss directors and commissioners, and make other strategic decisions.

In the UUPT, GMS is divided into two types: the Annual GMS, which must be held no later than six months after the end of the fiscal year, and the Extraordinary GMS (EGMS), which can be held at any time according to the company's needs. The GMS has exclusive authority that is not held by the Board of Directors or the Board of Commissioners, but its implementation must comply with the UUPT and the provisions of the Articles of Association. Beyond this formal structure, shareholders as capital owners also play an important role because their shares grant them the right to dividends, assets, and voting rights at the GMS. Shares as proof of ownership are issued after the company is ratified and must be registered in the name of the owner in accordance with the provisions of Article 48 of the UUPT.

Share ownership allows for the transfer of rights through a share sale and purchase mechanism. This transaction constitutes a consensual agreement based on the principle of freedom of contract as stipulated in Articles 1457 and 1458 of the Civil Code, which stipulate that a sale and purchase is deemed to have occurred upon the reaching of an agreement regarding the goods and price. Once the share transfer is legally valid, the new shareholders are entitled to exercise their rights without being restricted by the provisions of the articles of association, unless the articles of association expressly stipulate certain ownership requirements in accordance with statutory provisions. Therefore, the existence of new shareholders must be recognized in determining the quorum for the GMS in accordance with the Company Law. (Harahap, 2009; Fuady, 2003)

In business practice, shareholders often feel the need to regulate their internal relationships more specifically beyond those stipulated in the Company Law and the articles of association. This is what gives rise to shareholder agreements, which contain provisions regarding rights,

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obligations, decision-making mechanisms, and certain provisions such as the quorum for the General Meeting of Shareholders (GMS), the appointment of directors, the transfer of shares, and so on. Although these agreements are valid under the principle of freedom of contract as stipulated in Article 1338 of the Civil Code, their enforceability often raises issues, particularly when they conflict with mandatory provisions of the Company Law or the articles of association.

Several court decisions have shown that discrepancies between the shareholder agreement and the GMS mechanism stipulated in the Company Law can have serious legal consequences. For example, Supreme Court Decision No. 225 K/Pdt/2023 annulled several deeds of change in directors and commissioners due to the failure to implement the GMS mechanism in accordance with the shareholder agreement and the Company Law. Similarly, District Court Decision No. 812/Pdt.G/2019/PN.Jkt.Utr demonstrated how violations of a cooperation agreement can result in the annulment of the deed and be declared a breach of contract. This situation emphasizes the tension between the principle of freedom of contract and the coercive provisions of company law. (Harahap, 2009; Fuady, 2003)

Therefore, a shareholder agreement that regulates the quorum for a GMS differs from the provisions in the articles of association, presenting legal issues that require further examination. On the one hand, such an agreement embodies the parties' autonomy in regulating their legal relationship. However, on the other hand, such provisions may conflict with the Company Law and the articles of association, which are binding and restrictive in nature. This normative tension raises questions regarding the legal standing of the shareholder agreement, its validity if it conflicts with the articles of association, and its legal implications for GMS decisions. This study is crucial given that numerous court decisions have shown that violations of the formal GMS mechanism can result in the annulment of decisions and the emergence of disputes between shareholders. (Harahap, 2009; Fuady, 2003)

2. RESEARCH METHODS

The research method used is Normative Juridical Research. The approach used in this research is carried out using the Statutory Approach and Case Approach methods. Types and Sources of Legal Materials are Primary Legal Materials, Secondary Legal Materials, and Tertiary Legal Materials. The sources of legal materials used by researchers are in legal documentation and information centers or in libraries, the internet. In the technique of collecting legal materials in this research, it is carried out by analyzing and compiling them in a structured manner to answer legal problems or legal issues in the research. Researchers will use legal material analysis techniques,

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namely applying the grammatical interpretation method, namely the interpretation of words contained in statutory regulations based on language rules and legal systems. (Harahap, 2009; Fuady, 2003)

3. RESULTS AND DISCUSSION

Legal Status of Shareholder Agreements that Regulate the Quorum of GMS Differently from the Provisions of the Articles of Association of Limited Liability Companies

Corporate law essentially outlines three main groups of issues inherent in the structure of large corporations. First, issues that arise between management and shareholders as a group, particularly concerning the delegation of authority and control over the actions of directors in running the company. Second, issues between majority and minority shareholders, particularly concerning the potential for abuse of power by the majority shareholder that could harm smaller shareholders. Third, issues that arise between company management, both as managers and as major shareholders, and non-shareholder stakeholders, including creditors, business partners, and employees. These three groups of issues demonstrate that corporate law has limitations in regulating the more specific internal relationships between shareholders. (Harahap, 2009; Fuady, 2003)

However, corporate law, in the form of the Limited Liability Company Act, does not always meet shareholders' needs regarding internal authority arrangements, control mechanisms, and other strategic agreements. This is because the articles of association and statutory regulations cannot accurately address all shareholder interests, particularly private interests that are strategic and flexible. Therefore, in modern business practice, shareholders often enter into an inter-shareholder agreement as a supplementary legal document that more deeply regulates internal relationships. This agreement is typically drafted by the founding shareholders or shareholders with a significant interest in the company's operations. (Harahap, 2009; Fuady, 2003)

Crawford, WW, and Gratias, PP, explain that a shareholder agreement is a legal document that serves as the basis for regulating the relationship between some or all shareholders in a company. The agreement has two main purposes: to regulate the circumstances and mechanisms under which the relationship between shareholders, or between shareholders and the company, must be terminated, and to explain the rights and obligations of shareholders regarding the transfer or acquisition of shares when one of the shareholders leaves the company. Thus, a shareholder agreement serves as an instrument that provides certainty and protection for shareholders in

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important situations not specifically regulated by the articles of association. (Harahap, 2009; Fuady, 2003)

Shareholder agreements can contain various provisions beyond the articles of association, including allocating certain shareholders' rights to appoint directors or commissioners, granting special voting rights, granting preferential rights when the company issues new shares, and even restrictions on share transfers to maintain control over company ownership. These provisions demonstrate that shareholder agreements are flexible instruments that can be tailored to the needs of the parties. Through these agreements, shareholders can regulate corporate governance more effectively and efficiently without having to constantly amend the formal and public articles of association. (Harahap, 2009; Fuady, 2003)

Under Indonesian positive law, provisions regarding agreements between shareholders are not explicitly regulated in Law Number 40 of 2007 concerning Limited Liability Companies or its implementing regulations. Nevertheless, the practice of shareholder agreements is widespread in the Indonesian business world because the principle of freedom of contract in Article 1338 of the Civil Code provides space for parties to regulate their own legal relationships as long as they do not conflict with the law, public order, or morality. Thus, the existence of shareholder agreements is a legitimate practice and is recognized by national civil law as a private contract binding on the parties. (Harahap, 2009; Fuady, 2003)

Generally, shareholder agreements contain provisions regarding the right of first refusal, restricted transfer of shares, call and put options, strategic decision-making mechanisms requiring unanimous consent, and non-compete clauses prohibiting shareholders from competing with the company. These provisions serve an important role in maintaining the stability of company ownership, preventing the entry of unwanted parties, and protecting minority shareholders from being disadvantaged by unilateral decisions. (Harahap, 2009; Fuady, 2003)

As a concrete example, Supreme Court Decision No. 225 K/Pdt/2023, which was upheld by High Court Decision No. 477/Pdt/2021/PT.DKI and District Court Decision No. 618/Pdt.G/2018/PN.Jkt.Sel, demonstrates how shareholder agreements are used as the basis for regulating the composition of the board of directors and commissioners. In this case, the shareholders of PT Indo Mineralita Prima entered into a private agreement on March 21, 2017, regarding the composition of the board of directors and commissioners. This agreement was made by all shareholders as a private agreement to regulate the company's leadership structure according to their respective share compositions. (Harahap, 2009; Fuady, 2003)

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The shareholders of PT Indo Mineralita Prima consist of PT Investasi Internasional Indonesia with 1,400 shares worth Rp1,400,000,000, Ninda Rahayu with 1,100 shares worth Rp1,100,000,000, and Lilis Fitriyah with 2,500 shares worth Rp2,500,000,000. With this share ownership structure, the parties have established certain provisions that are considered important to maintain the balance of decision-making within the company and prevent unilateral domination by one of the majority shareholders. (Harahap, 2009; Fuady, 2003)

Several important provisions contained in the agreement stipulate that changes to the composition of the board of directors and commissioners may only be made with the approval of all shareholders without exception, namely 100% of the voting rights. Furthermore, if a shareholder wishes to transfer their shares, they must first offer them to other shareholders, stating the price and terms of the transfer in writing to the board of directors. This provision is in place to protect the collective interests of shareholders and maintain a stable ownership composition. (Harahap, 2009; Fuady, 2003)

From the aspect of contract law, a shareholder agreement is a contract that binds the parties based on the principle of freedom of contract. As confirmed in Article 1338 of the Civil Code, every agreement made legally applies as law for the parties who make it. This means that the shareholder agreement will bind all shareholders who sign it, and the parties are obliged to carry out the agreed obligations in good faith. This agreement is valid as long as it meets the four conditions of the agreement, namely agreement, competence, certain objects, and lawful causes. (Harahap, 2009; Fuady, 2003)

Shareholder agreements must also be based on the principles of contract law, one of which is the principle of consensualism, which states that an agreement is formed when the parties reach an agreement on the principal matters of the agreement. Therefore, signing a private agreement remains legally valid because the law does not require a specific form, except for special agreements. As long as the parties' wishes are expressed freely and without coercion, the agreement is considered valid and binding. (Harahap, 2009; Fuady, 2003)

The provisions in PT Indo Mineralita Prima's shareholders' agreement are important because they regulate matters not covered by the articles of association. In many cases, the articles of association often lack specific provisions regarding specific internal mechanisms, necessitating a shareholders' agreement as a more flexible instrument. Thus, the shareholders' agreement serves to fill regulatory gaps not covered by the articles of association while also providing stronger legal protection for shareholders. (Harahap, 2009; Fuady, 2003)

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Although the articles of association are a binding document for the company and all shareholders, there is still a need to create a private shareholders' agreement. According to Vorst, there are several key reasons why shareholders choose to create a special agreement outside the articles of association. For example, the articles of association bind not only shareholders but also third parties, while the shareholders' agreement only binds the signatories. Furthermore, amendments to the articles of association must be made through a General Meeting of Shareholders (GMS) with a certain quorum, while the shareholders' agreement can only be amended with the unanimous consent of the signatories.

Vorst's view also explains that the articles of association automatically apply to new shareholders, while the shareholders' agreement is not binding on new shareholders unless approved by all parties. The articles of association are public and accessible to third parties, while the shareholders' agreement is confidential. Furthermore, the articles of association have greater legal force and violations are subject to formal sanctions. Conversely, the shareholders' agreement only regulates the contractual relationship between shareholders and has no public legal consequences. (Harahap, 2009; Fuady, 2003)

In the case of PT Indo Mineralita Prima, the shareholder agreement was made in the form of a private deed without the presence of a notary or public official. According to Article 1874 of the Civil Code, a private deed is a document made without the involvement of a public official and has evidentiary force as long as it is signed by the parties. As stipulated in Article 1875 in conjunction with Article 1867 of the Civil Code, the evidentiary force of a private deed depends on the parties' acknowledgment of their signatures, so its validity is largely determined by the good faith of the signatories. (Harahap, 2009; Fuady, 2003)

Shareholder agreements made privately are essentially valid as long as they meet the requirements for a valid agreement. Therefore, the agreement between PT Investasi Internasional Indonesia, Ninda Rahayu, and Lilis Fitriyah is legally binding because it meets the four requirements for a valid agreement. The agreement between the three shareholders demonstrates free and uncoerced consent. Furthermore, the parties are legally competent based on their age, legal status, and capacity as legitimate shareholders of PT Indo Mineralita Prima. (Harahap, 2009; Fuady, 2003)

The purpose of the shareholder agreement in this case is very clear: it regulates the rights and obligations of shareholders in making important company decisions, transferring shares, and appointing directors and commissioners. This purpose is a specific matter as required by contract law. The purpose of the agreement is also lawful because it does not conflict with any law or the

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articles of association. Therefore, this agreement is valid and can be used as the basis for a lawsuit in the event of a contractual breach. (Harahap, 2009; Fuady, 2003)

The position of the shareholders' agreement in this context demonstrates that, although not included in the articles of association, the provisions regarding the quorum for the GMS (which require 100% approval) remain binding and must be respected by the parties privately. This agreement does not bind other shareholders or third parties, but rather serves as a "private law" between the signatories. This demonstrates that the shareholders' agreement can serve as an important instrument for maintaining a balance of interests among shareholders.

Ultimately, the shareholder agreement in this case serves a protective purpose, particularly for PT Investasi Internasional Indonesia as a minority shareholder. Through provisions regarding share transfers and changes in directors and commissioners that require unanimous approval, minority shareholders are protected from potential unilateral decisions by the majority shareholder. Therefore, this agreement is not only legally valid but also plays a crucial role in maintaining fairness and internal stability of the company. (Harahap, 2009; Fuady, 2003)

Legal Consequences of the Enactment of a Shareholders' Agreement that Regulates the GMS Quorum Differently from the Articles of Association (Harahap, 2009; Fuady, 2003)

One of the primary objectives of establishing a corporation is to maximize long-term shareholder welfare by increasing its value. This corporate value is generally reflected in the stock market price, which reflects investors' expectations of the company's future prospects and performance. The higher the stock price, the higher the shareholders' welfare, as their wealth increases in line with the company's market capitalization. In other words, shareholder wealth, expressed through the stock market price, is the result of the company's managerial processes in making investment decisions, developing financing structures, and effectively managing assets. Therefore, all corporate policies related to business strategy, business expansion, and capital management must be implemented with consideration for their impact on company value. This also demonstrates that the ultimate goal of corporate governance is to achieve sustainable share value increases. (Harahap, 2009; Fuady, 2003)

Shareholders are parties who have purchased shares or taken ownership in a company, so they have certain rights and obligations under corporate law and the company's articles of association. In practice, shareholders are divided into three types based on their ownership proportions: ordinary shareholders who own at least one share; majority shareholders who control more than 50% of the shares and have dominant control in decision-making; and minority shareholders who own less than 50% and have limited voting rights, although still protected by

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corporate law. One of the important obligations of shareholders is to provide approval or ratification at the General Meeting of Shareholders (GMS) regarding the company's work plan, annual report, and use of profits. The GMS is the highest organ of the company, so the presence and involvement of shareholders in the meeting is a manifestation of the implementation of their responsibilities in corporate governance.

In the case that is the object of this research, the shareholder composition of PT Indo Mineralita Prima initially consisted of two main shareholders, namely Ninda Rahayu and Lilis Fitriyah, each holding 2,500 shares. This composition reflects balanced ownership between the two parties so that every important company decision must be mutually agreed upon. However, the situation changed when there was a transfer of shares based on deed Number 38 dated December 29, 2016 made before Notary Kartika, SH, M.Kn., which was then strengthened by the share sale and purchase deed Number 39 between Ninda Rahayu and PT Investasi Internasional Indonesia represented by its President Director, Josh Sleiman. With this transaction, the composition of share ownership underwent a fundamental change and directly affected the company's control structure. (Harahap, 2009; Fuady, 2003)

The background to the share sale and purchase was closely related to the personal problems of Ninda Rahayu's husband, Paul Sidney Burnett, who had previously entered into a share pledge agreement with PT Mitra Prima Treasure as part of fulfilling his financial obligations. In the agreement, Ninda Rahayu also bound herself as a guarantor to ensure that her husband's obligations could be fulfilled as agreed. When payment problems arose, Ninda Rahayu's only option to settle the obligation was to sell or transfer her shares in PT Indo Mineralita Prima as a form of partial repayment of her husband's debt. This incident then became the basis for the change in share ownership and became the starting point for the emergence of a dispute between the parties. (Harahap, 2009; Fuady, 2003)

The change in share ownership following the transaction resulted in a shift in the shareholder composition of PT Indo Mineralita Prima. Ninda Rahayu, who originally owned 2,500 shares, was left with only 1,100 shares, while Lilis Fitriyah remained with 2,500 shares. Meanwhile, PT Investasi Internasional Indonesia acquired 1,400 shares from the share sale and purchase transaction. This change in composition automatically altered the bargaining position and influence of each shareholder within the company, primarily due to the presence of new shareholders who now have a significant voice in the decision-making process at the GMS level. Thus, the previously relatively stable balance of shareholder relations shifted into a new constellation that requires clearer regulation. (Harahap, 2009; Fuady, 2003)

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In daily business activities, shareholders strive to safeguard their individual interests, particularly in their relationships with each other. Although these internal relationships are regulated by law and the company's articles of association, certain needs cannot be fully addressed by these provisions. Therefore, shareholders often draft a private, binding shareholder agreement to more fully define their relationships, rights, and obligations with each other. This agreement is typically drafted by the founding shareholders to regulate important mechanisms related to company control that are not explicitly addressed in the articles of association. (Harahap, 2009; Fuady, 2003)

Shareholder agreements are essentially created to meet the parties' needs in regulating company management mechanisms that are not adequately regulated by the Limited Liability Company Law and the articles of association. Academically, there is debate regarding the legality of such agreements, as they are considered to open up opportunities for shareholders to circumvent corporate law through private agreements. This debate relates to the conflict between the principle of freedom of contract and the principle of compliance with applicable positive law. Therefore, it is not surprising that various court decisions regarding shareholder agreement disputes show inconsistencies, as judges must balance the parties' freedom of contract with the principle of legal certainty in corporate law. (Harahap, 2009; Fuady, 2003)

A shareholder agreement made under Article 1338 of the Civil Code is, in principle, valid and binding as long as it meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. Therefore, its validity is privately binding, like a law, for the parties who make it. However, the agreement must not conflict with the provisions of the Limited Liability Company Law or the company's articles of association, as the law and the articles of association have a higher normative position in the corporate legal hierarchy. If there is a discrepancy between the shareholder agreement and the articles of association, the provisions in the articles of association must still take priority as they serve as the company's official guidelines. (Harahap, 2009; Fuady, 2003)

In this study, the shareholder agreement between PT Investasi Internasional Indonesia, Ninda Rahayu, and Lilis Fitriyah contains a key provision requiring that any changes to the composition of the Board of Directors and Board of Commissioners must obtain 100% unanimous approval from all shareholders. Furthermore, if a shareholder plans to transfer rights to shares, those shares must first be offered to other shareholders through written notification. This provision creates a joint control mechanism while limiting unilateral actions by shareholders in transferring shares or changing the company's management structure. (Harahap, 2009; Fuady, 2003)

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In fact, after the shareholders' agreement was finalized, several important decisions were made outside the GMS mechanism and without the knowledge of PT Investasi Internasional Indonesia, one of the shareholders. These decisions were outlined in various deeds, including changes to the composition of the Board of Directors and the Board of Commissioners, amendments to the articles of association, the sale of shares, increases in paid-up capital, and changes to the company's domicile. These actions clearly contradict the terms of the shareholders' agreement and are detrimental to one of the parties with voting rights in the company. (Harahap, 2009; Fuady, 2003)

The changes in question are outlined in various notarial deeds, including Deed Number 25 dated April 12, 2017, Deed Number 141 dated August 24, 2017, Deed Number 36 dated August 9, 2017, Deed Number 88 dated September 13, 2017, and Deed Number 167 dated November 13, 2017. Each deed contains strategic decisions regarding the composition of the board of directors, the sale of shares, changes to the articles of association, increases in paid-in capital, and the appointment of new shareholders. All of these decisions should only be made through the GMS mechanism and obtain shareholder approval in accordance with the agreed agreement. (Harahap, 2009; Fuady, 2003)

Based on the theory of default proposed by M. Yahya Harahap, an action can be categorized as a default if the implementation of obligations is not carried out on time, not in accordance with what was agreed, or is carried out contrary to the promised performance. In this case, the actions of Ninda Rahayu and Lilis Fitriyah who made corporate decisions without the approval of 100% of the shareholders as agreed in the shareholder agreement constitute a form of carrying out an act that according to the agreement should not be done. Therefore, this act fulfills the elements of default which can give rise to legal consequences in the form of cancellation of the agreement or the obligation to pay compensation. (Harahap, 2009; Fuady, 2003)

In this case, PT Investasi Internasional Indonesia, which owns 1,400 shares, claimed to have suffered material losses due to the addition of paid-in capital and changes to the shareholder structure, which were made without written notification to them. The losses were calculated based on a decrease in share value of approximately 6% of the total paid-in capital. The panel of judges then deemed Ninda Rahayu and Lilis Fitriyah's actions to be a breach of contract, thus declaring several deeds null and void as they contradicted the agreed agreement. (Harahap, 2009; Fuady, 2003)

However, the author's analysis indicates that the panel of judges failed to comprehensively consider the fact that PT Investasi Internasional Indonesia acted in a manner suspected of not

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acting in good faith in acquiring Ninda Rahayu's shares. The transfer of shares through a share pledge mechanism, carried out without notification to the Board of Directors of PT Indo Mineralita Prima, raises doubts about the validity of the share ownership. Furthermore, the transfer of shares was never registered in the shareholder register, making it legally ineffective in establishing the company's ownership structure. (Harahap, 2009; Fuady, 2003)

Thus, this issue demonstrates that the shareholder agreement governing the quorum for the GMS must be carefully positioned within the corporate legal hierarchy. If its contents conflict with the Company Law or the articles of association, the agreement is null and void. However, if it does not conflict, the agreement remains valid and binding on the parties. In this case, the discrepancy between the shareholder agreement and the articles of association is a factor contributing to legal uncertainty. Consequently, the panel of judges should have considered the corporate legal hierarchy more thoroughly so that its decision would reflect justice and legal certainty for the disputing parties. (Harahap, 2009; Fuady, 2003)

4. CONCLUSION

The legal position of the shareholder agreement that regulates the quorum of the GMS differently from the provisions of the Articles of Association of a Limited Liability Company is as a source of agreement between shareholders that is valid and binding for the shareholder parties as in the legal facts in the Supreme Court Decision No. 225 K / Pdt / 2023. The Panel of Judges considered the legal aspects of the agreement based on the principle of freedom of contract and the conditions for the validity of the shareholder agreement. Based on Article 86 paragraph (1) of the UUPT, it is stated that "the GMS can be held if in the GMS more than ½ (one half) of the total number of shares with voting rights are present or represented, unless the Law and / or the articles of association determine a larger quorum. So if the implementation of the GMS is in accordance with the UUPT and the Articles of Association, then with the existence of a shareholder agreement whose contents regarding the quorum of the GMS that are not in accordance with the Articles of Association, the shareholder agreement is only binding between the shareholders who made it, but does not bind the Company and the implementation of the GMS cannot override the provisions of the UUPT or the Articles of Association.

The legal consequences of the application of a shareholder agreement that regulates the quorum of a GMS differently from the Articles of Association of a Limited Liability Company regarding the decisions of the GMS are only civilly binding between the parties who signed it, the shareholder agreement does not bind third parties and the Company automatically, because it is not

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an agreement officially announced through the articles of association, giving rise to civil liability between shareholders. If the contents of the agreement are contrary to the Articles of Association and the UUPT, then the decisions of the GMS based on the shareholder agreement can be considered null and void by law. (Harahap, 2009; Fuady, 2003)

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