

## **A Legal Analysis of the Validity of a Notarial Deed Regarding Changes in the Management of a Limited Liability Company That Do Not Conform to the Intentions of the Parties (A Study of Judgment No. 46/Pdt.G/2023/PN.Cbi)**

**Wahyu Dwi Utami\*, Ali Abdullah, Utji Sri Wulan Wuryandari**

Universitas Pancasila, Indonesia

Email: [wahyudwiutami53@gmail.com](mailto:wahyudwiutami53@gmail.com)\*, [aliabdullah@univpancasila.ac.id](mailto:aliabdullah@univpancasila.ac.id),  
[utjisriwulan@gmail.com](mailto:utjisriwulan@gmail.com)

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### **Abstract**

<b>Keywords</b> notary deeds; changes in the management of limited liability companies; the will of the witness; the validity of the act; legal consequences.	This study aims to analyse the validity of the deed of change in the management of a Limited Liability Company that does not reflect the true will of the parties, and the legal consequences arising therefrom, based on Decision Number 46/Pdt.G/2023/PN.Cbi. The research method employed is normative legal research utilising legislative, conceptual, and case approaches. The data used comprised primary, secondary, and tertiary legal materials, which were analysed qualitatively through a descriptive-analytical method. The results of the study show that the validity of a notarial deed is determined not only by the fulfilment of formal requirements as an authentic deed, but also by the fulfilment of substantive requirements — namely, the conformity of the deed's contents with the true will of the parties. In the case under examination, a discrepancy was found between the will of the shareholders, who sought the dismissal of the directors with prejudice, and the substance of the deed, which recorded an honourable resignation. This discrepancy resulted in the non-fulfilment of the elements of a valid agreement as stipulated in Article 1320 of the Kitab Undang-Undang Hukum Perdata (KUHPerdata), rendering the deed legally defective. Furthermore, the notary was found to have failed to apply the principle of prudence and to have neglected their obligations of care as prescribed under the Law on Notarial Position. Therefore, the conformity between the will of the parties and the contents of the deed is an essential element in ensuring legal certainty and legal protection.
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### **INTRODUCTION**

The State of Indonesia designates itself as a state based on the rule of law, as mandated by Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, so that all provisions and decisions issued must create justice and legal certainty. According to Jimly Asshiddiqie, "The rule of law is a concept to achieve the national goals of the Republic of Indonesia, which are to protect the entire Indonesian nation, promote public welfare, educate the nation's life, and participate in realising world order based on independence, lasting peace, and social justice" (Asshiddiqie, 2015, 2023; Hendrianto, 2016).

This is reinforced by Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which stipulates that all citizens have equal status and position before the law and in government, and are obliged to respect and uphold the law and government without exception.

It can therefore be concluded that all Indonesian citizens obtain rights and obligations without distinction as to ethnicity, race, culture, or religion (Isra & Faiz, 2021; Laksito, 2023). Those who act against the laws and regulations that have been established shall be subject to sanctions accordingly (Ding et al., 2022; Kahan & Posner, 2019; Zedner, 2016).

A state based on the rule of law is characterised by a governing power that is regulatory and coercive in nature, and that produces positive outcomes. The laws applicable in Indonesia form a legal system whose components are interrelated, with the aim of realising values grounded in Pancasila and the 1945 Constitution of the Republic of Indonesia (Hangabei et al., 2021; Madung, 2021; Muhtamar & Bachmid, 2022; Putri et al., 2023). Indonesia is a country that adheres to a civil law system which prioritises written law — that is, legislation and regulations that provide legal certainty for legal acts and all legal events (Isra, 2021; Wardhani et al., 2022).

Notaries are public officials granted authority by the state to make authentic deeds, thereby providing certainty, order, and legal protection for the community. This position is affirmed in Article 1 number 1 of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notarial Position (Undang-Undang Jabatan Notaris, hereinafter UUJN), which states that a Notary is a public official authorised to make authentic deeds and vested with other authorities under laws and regulations (Janice & Rahayu, 2023). In carrying out their duties, Notaries are obliged to act in a trustworthy, honest, thorough, independent, and impartial manner, and to protect the interests of the parties, as stipulated in Article 16 paragraph (1) letter a of the UUJN. Therefore, integrity, professionalism, and compliance with the law and the Notarial Code of Ethics are essential elements in realising the function of the Notary as a provider of legal certainty in every civil law transaction (Chandra & Purwanto, 2024; Misty, 2024).

An authentic deed made by a Notary holds a critically important position as perfect written evidence across various areas of life, including banking, business, and land transactions. Based on Article 1868 of the Kitab Undang-Undang Hukum Perdata (KUHPperdata), an authentic deed is a deed made in the form prescribed by law, by or before an authorised public official. Furthermore, Article 1866 of the KUHPperdata places written evidence as one of the forms of evidence recognised by law. The evidentiary force of an authentic deed encompasses external evidentiary force (*uitwendige bewijskracht*), formal evidentiary force (*formele bewijskracht*), and material evidentiary force (*materiele bewijskracht*), so that the contents of the deed are considered true and binding upon the parties until proven otherwise (Ayurani & Cahyono, 2022; Hilmi afami & Dewi, 2024; Prastiwi et al., 2025). Therefore, prior to making a deed, the Notary is obliged to ensure the fulfilment of the conditions for a valid agreement as stipulated in Article 1320 of the KUHPperdata, namely: the existence of consent, the legal capacity of the parties, a determinate object, and a lawful cause.

In the process of making an authentic deed, the Notary is also obliged to read the deed aloud before the parties in the presence of at least two witnesses, as stipulated in Article 16 paragraph (1) letter m of the UUJN. This obligation aims to ensure that the parties understand the contents of the deed prior to signing, and to confirm that the signatures are affixed directly before the Notary (Nurhanafi et al., 2020; Utarid, 2023). If these requirements are not met, then pursuant to Article 16 paragraph (9) of the UUJN, the deed in question shall only carry the evidentiary force of a deed under private hand (*akta di bawah tangan*). Thus, the application of the principle of prudence by Notaries is of paramount importance in preventing legal defects in the deeds they prepare, and in protecting the interests of both the parties and the Notary from potential legal disputes in the future.

The issue of conformity between the contents of a deed and the will of the parties is reflected in Decision Number 46/Pdt.G/2023/PN.Cbi, which concerns a change in the management of PT Saudia Arab International. In the case, the Plaintiff as President Director sought the dismissal of a director with prejudice; however, the deed as prepared instead recorded the approval of the director's honourable resignation. Furthermore, the Notary was found not to have provided an adequate explanation of the procedure for changing the board of directors in accordance with Law Number 40 of 2007 concerning Limited Liability Companies, nor to have ensured that the contents of the deed genuinely reflected the wishes of the shareholders. This situation underscores the importance of the Notary's role in ensuring the conformity between the will of the parties and the substance of the deed, as any inconsistency may render the deed legally defective and cause loss to the parties involved.

Based on this description, it can be understood that the conformity between the will of the parties and the contents of the deed is an element that is fundamentally determinative of the validity of an authentic deed. A notarial deed is essentially a written manifestation of the will of the parties and must be prepared in accordance with the provisions of applicable law. If the contents of the deed do not reflect the true will of the parties, questions may arise as to the validity of the deed, its evidentiary force, and the legal consequences of the legal act upon which it is based. Therefore, this study focuses on analysing the validity of the deed of change in the management of a Limited Liability Company that does not conform to the will of the parties, and on examining the legal consequences arising therefrom, based on Decision Number 46/Pdt.G/2023/PN.Cbi.

## **METHOD**

This research is a normative legal research that focuses on the study of primary, secondary, and tertiary legal materials to analyze the validity of the deed of change in the management of a Limited Liability Company that is not in accordance with the will of the public and its legal consequences based on laws and regulations, legal doctrines, and Decision Number 46/Pdt.G/2023/PN. CBI. The research was conducted using a statute approach, a conceptual approach, and a case approach to examine legal norms, principles, doctrines, and relevant judges' considerations so as to obtain a comprehensive understanding of the application of the law in the case under study.

### **Data Collection Techniques**

This study uses secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations, the Notary Code of Ethics, and Decision Number 46/Pdt.G/2023/PN Cbi related to the object of research. Secondary legal materials are in the form of legal theories, doctrines, expert opinions, research results, books, documents, and journals that support research analysis. Meanwhile, tertiary legal materials include dictionaries, encyclopedias, magazines, websites, and other resources that are used to help understand terms and support research writing.

### **Legal Material Collection Techniques**

In this study, the technique of collecting legal materials is carried out through library research, namely by collecting, studying, and studying primary, secondary, and tertiary legal materials related to the object of research. In addition, the researcher also conducted a review of Decision Number 46/Pdt.G/2023/PN. CBI to gain an understanding of legal facts, judges' considerations, and the application of the law in the case under investigation.

## **Legal Materials Analysis Techniques**

One of the most important stages in the research process is the data analysis stage. The data analysis stage requires that the data be collected using various data collection techniques, then processed and presented to help answer the research problems being researched. This study uses qualitative analysis using the descriptive-analytical method of analysis is carried out by describing legal provisions, theories, doctrines, and legal facts in court decisions systematically to be interpreted to answer the formulation of research problems.

In this study, the analysis was carried out by linking the provisions of notary law, agreement law, and limited liability company law to problems regarding the validity of the deed of change of company management that is not in accordance with the will of the audience and the legal consequences arising based on Decision Number 46/Pdt.G/2023/PN. CBI.

## **RESULT AND DISCUSSION**

### **Position Case**

This case originated from a civil dispute between Khalid Dhawihi Al Alsalahi, as President Director of PT Saudi Arab International, as the Plaintiff, against Sugeng Purnawan, S.H., a Notary in Bogor Regency, as the Defendant, registered as case Number 46/Pdt.G/2023/PN.Cbi at the Cibinong District Court.

The Plaintiff is a citizen of Saudi Arabia who serves as President Director of PT Saudi Arab International based on Deed Number 1 dated 7 March 2017 concerning the Establishment of PT Saudi Arab International as a Limited Liability Company. The company is engaged in the purchasing, selling, leasing, and operating of real estate, both owned and leased, including residential buildings, non-residential buildings, as well as land sales and residential area development.

In the course of the company's operational development, the shareholders resolved to change the composition of the board of directors of PT Saudi Arab International. In substance, the will of the shareholders was to dismiss one of the company's directors with prejudice, for internal reasons. Given that the Plaintiff does not speak Indonesian and was not sufficiently familiar with the company's legal framework or the provisions of Indonesian law governing the procedure for changing the composition of the board of directors, the Plaintiff sought the assistance of his business partners in Indonesia to identify a Notary who could facilitate the change. On the recommendation of his associates, the Plaintiff engaged the services of the Defendant as Notary to prepare the necessary deed of change.

Subsequently, on 10 February 2022, the Defendant prepared Deed Number 344 concerning the Statement of Shareholders Outside the General Meeting of Shareholders of PT Saudi Arab International. The deed was made to give effect to the will of the shareholders regarding the change in the composition of the company's board of directors.

Legal issues arose when the deed was sent to the Plaintiff in Saudi Arabia through the intermediary of the Defendant's colleagues for signing. According to the Plaintiff, the Defendant did not provide a direct explanation of the contents of the deed, did not explain its legal consequences, and did not identify in detail the portions of the deed that the Plaintiff was required to sign.

After the deed was signed and given effect, the Plaintiff discovered that the substance of Deed Number 344 differed from the will he had actually conveyed. The deed contained a clause recording that the shareholders approved the honourable resignation of one of the company's directors, whereas the true will of the shareholders as communicated to the Defendant had been the dismissal of the director with prejudice. Beyond this substantive discrepancy, the Plaintiff

also questioned the legal procedure employed in making the deed. According to the Plaintiff, the change in the composition of the board of directors ought to have been effected through the mechanism of a General Meeting of Shareholders (Rapat Umum Pemegang Saham, RUPS), or at least through a circular resolution satisfying the requirements stipulated in the Company's Articles of Association.

Article 12 paragraph (7) letter e of the Articles of Association of PT Saudi Arab International expressly provides that the term of office of a member of the board of directors ends upon dismissal by resolution of the RUPS. This provision is consistent with the legal framework for limited liability companies as set out in Law Number 40 of 2007 concerning Limited Liability Companies (Undang-Undang Perseroan Terbatas), as well as the Regulation of the Minister of Law and Human Rights Number 21 of 2021 concerning the Requirements and Procedures for Registering Changes to the Legal Entity Status of a Limited Liability Company. The Plaintiff contends that the Defendant exceeded his authority as a Notary by recording a will that did not accord with the actual intention of the parties, while also failing to ensure compliance with the legal procedures for changing the company's data.

On this basis, the Plaintiff, through his legal representative, issued a Letter of Summons Number 201/S.Kel/AA/XI/2022 dated 14 November 2022 to the Defendant, asserting that the Defendant had violated Article 38 paragraph (3) letter c of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notarial Position (Undang-Undang Jabatan Notaris), which stipulates that the contents of a deed must reflect the will and wishes of the interested parties.

Because the summons did not result in a settlement, the Plaintiff filed a civil lawsuit with the Cibinong District Court on February 7, 2023, with the subject matter of the lawsuit that the Defendant had committed an Unlawful Act (PMH) based on Article 1365 of the Civil Code.

In his petition, the Plaintiff requested that the Panel of Judges:

1. Declaring the Minutes of Deed and Deed No. 344 null and void;
2. Declaring that State Gazette Number AHU-AH.01.03-0091609 does not have legal force;
3. Declare that the Defendant has committed an unlawful act;
4. Punish the Defendant to pay material damages of Rp. 100,000,000;
5. Sentence the Defendant to pay immaterial damages of Rp. 50,000,000;
6. Declaring the Decision can be executed first (uitvoerbaar bij voorraad)

In the trial process, the Defendant was never present even though he had been legally and properly summoned by the court. Therefore, the examination of the case is carried out *verstek* in accordance with the provisions of Article 125 of the HIR.

To prove the postulates of the lawsuit, the plaintiff submitted evidence in the form of:

- a. Deed of Establishment of PT Saudi Arabia International;
- b. Deed Number 344 dated February 10, 2022;
- c. Letter of Summons to the Defendant.

After examining the evidence submitted, the Panel of Judges considered that there was a fundamental difference between the Plaintiff's actual will and what was stated in Deed No. 344. The Panel of Judges considered that as a public official, Notaries are obliged to carry out the principle of prudence, including ensuring conformity between the will of the parties and the formulation of the deed made, especially when one of the parties is a foreign citizen who has limited language and understanding of the Indonesian legal system.

The Panel of Judges was of the opinion that the Defendant's action of pouring the substance of the deed that was different from the Plaintiff's will was a form of violation of the principle of Notary prudence and met the elements of unlawful acts.

Based on these considerations, the Cibinong District Court in its decision dated April 13, 2023 decided:

1. Granting the Plaintiff's claim in Part;
2. Declaring Deed Number 344 null and void;
3. Declaring that the State Gazette Number AHU-AH-01.03-0091609 has no legal force;
4. Declare that the Defendant has committed an unlawful act;
5. Punishing the Defendant to comply with the decision;
6. Reject claims for mechanical and mechanical damages because they are not clearly detailed;
7. Sentenced the Defendant to pay a case fee of Rp. 445,000.

### **The validity of the deed of change of management of a limited liability company made by a notary if it is not in accordance with the wishes of the audience**

The existence of notaries in the Indonesian legal system plays a fundamentally important role, particularly in ensuring legal certainty through the creation of authentic deeds. In the practice of business activities, one form of deed frequently made by a notary is a deed of change in company management, whether in the form of a Limited Liability Company (Perseroan Terbatas, PT), a Commanditaire Vennootschap (CV), or other business entities. This deed is an important legal instrument as it is directly related to the management structure, authority, and responsibilities of the company's organs. However, in practice, problems not infrequently arise when the deed prepared by the notary does not accord with the will of the parties appearing before the notary. Such a situation raises fundamental questions about the validity of the deed and its legal implications.

Normatively, the validity of a notarial deed must be comprehensively assessed against the provisions of the Notarial Position Law and the provisions of civil law in the Kitab Undang-Undang Hukum Perdata (KUHPerdata). These two legal instruments form the primary basis for determining whether a deed carries legal force as an authentic deed. Article 1 number 1 of the Undang-Undang Jabatan Notaris (UUJN) affirms that a notary is a public official authorised to make authentic deeds as well as to exercise other authorities granted by law. The position of the notary as a public official demonstrates that notaries are not merely practitioners of a free profession, but organs of the state exercising a public function in the field of civil law — particularly in providing guarantees of legal certainty through authentic written evidence. Furthermore, within the legal framework of evidence, authentic deeds occupy a very strong position, as stipulated in Article 1868 of the KUHPerdata, which provides that an authentic deed is a deed made in the form prescribed by law, by or before a public official authorised to do so at the place where the deed is made. This provision means that the validity of a deed is determined not only by who made it, but also by how it was made. Accordingly, there are both formal and material elements that must be cumulatively fulfilled for a deed to qualify as an authentic deed.

In legal doctrine, an authentic deed carries three principal evidentiary forces: external evidentiary force (*uitwendige bewijskracht*), formal evidentiary force (*formele bewijskracht*), and material evidentiary force (*materiële bewijskracht*). External evidentiary force concerns the physical appearance of the deed, which demonstrates that it was in fact made by an authorised official. Formal evidentiary force relates to the truth of the legal events recorded by the notary in the deed, such as the date, place, and identity of the parties. Material evidentiary force, meanwhile, relates to the truth of the content or substance of the deed as a reflection of the will of the parties. These three aspects are interrelated and collectively determine the quality and validity of a deed. Accordingly, a deed of change in company management may be considered valid if it satisfies three principal elements: first, that it is made by or before an authorised notary;

second, that it follows the form and procedures prescribed by law; and third, that it contains the true will of the parties. The first element concerns the notary's attributive authority as a public official. The second element concerns the formal procedures that must be observed, such as the presence of witnesses, the reading of the deed, the signing, and the recording in the deed minutes. The third element concerns the substance or content of the deed, which must reflect the freely given and uncoerced agreement of the parties.

This third element is of particular importance, as it is directly related to the principle of consensualism in contract law. This principle is one of the foundational principles of civil law, holding that an agreement is valid if there has been a meeting of minds between the parties. In other words, the essence of an agreement lies in the convergence of the parties' wills. Therefore, if the content of a deed does not reflect the true will of the parties, the essence of the agreement is defective, even if the deed was formally prepared in accordance with applicable procedures. Where a deed made by a notary does not accord with the will of the parties, this indicates a defect in the element of consent (*consensus*). From a civil law perspective, this situation must be analysed against Article 1320 of the KUHPerdata, which governs the conditions for the validity of an agreement. That article sets out four conditions for validity: the consent of the parties, the legal capacity of the parties, a determinate object, and a lawful cause. The first two conditions are subjective, while the latter two are objective. A discrepancy between the content of the deed and the will of the parties bears directly on the subjective conditions — in particular, the element of consent. Such consent must be given freely, without coercion (*dwang*), mistake (*dwaling*), or fraud (*bedrog*). If any of these vitiating elements are present, the consent given is invalid. In the context of a notarial deed, inconsistencies in the content of the deed may arise from various factors, such as drafting errors by the notary, inadequate communication between the notary and the parties, or even deliberate manipulation of the deed's contents by certain parties.

Where a defect in the element of consent exists, the deed may in principle be categorised as a voidable agreement (*vernietigbaar*). The consequence of voidability is that the deed remains valid, binding, and legally effective for as long as no court decision has declared its nullity. In other words, the deed's validity is legally recognised until an interested party files a claim for annulment and that claim is granted by the court. This demonstrates that civil law both protects the stability of legal relations and provides scope for correction where a defect in will has caused harm to one of the parties. In this context, a defect in consent may arise from the presence of coercion (*dwang*), mistake (*dwaling*), or fraud (*bedrog*) — factors classically recognised as undermining the free will of the parties. If any of these elements is proven, the agreement formed no longer reflects a genuine and free will, and its legitimacy is thereby impaired. In notarial practice, such a situation may arise, for example, where a party does not understand the contents of the deed, or where external pressure forces a party to accept certain terms they do not genuinely wish to agree to. Therefore, even where a deed has been formally signed, it may substantially contain a defect in will that renders it susceptible to annulment.

The position is different, however, where the defect in question concerns not only the subjective conditions but also the objective conditions under Article 1320 of the KUHPerdata — namely, the existence of a determinate object and a lawful cause. If these conditions are not met, the agreement is not merely defective but fails to come into existence as a valid agreement at all. In such circumstances, the deed may be declared null and void (*nietig*) — meaning that from the outset it is treated as never having existed and as having produced no legal consequences. The consequences of nullity are considerably more serious than those of voidability. In the case of a null and void agreement, no court decision is required to declare its invalidity, as the agreement is legally ineffective from the beginning (*ex tunc*). In practice, however, a court decision is still

required to affirm this status, particularly where a dispute has arisen between the parties. Furthermore, in a state of nullity, the parties must in principle be restored to their original position (*restitutio in integrum*), as if the agreement had never been made.

In relation to notarial deeds, the distinction between *vernietigbaar* and *nietig* carries significant implications for the evidentiary force of the deed. A voidable deed retains the force of an authentic deed for as long as it has not been annulled, whereas a deed that is null and void from the outset loses its authenticity entirely. This means that the deed can no longer serve as perfect evidence, and may indeed be treated as having no evidentiary force whatsoever if it is proven to contain serious violations of the law. Furthermore, in notarial practice, the notary's role is crucial in preventing the occurrence of such defects. Notaries function not only as recorders of the parties' will, but also as guardians of the legality and validity of legal acts. Accordingly, notaries bear a strict obligation to ensure that each deed made truly and fully reflects the will of the parties. This obligation is expressly regulated in the UUJN, particularly Article 16 paragraph (1), which requires notaries to act honestly, thoroughly, independently, and impartially, and to protect the interests of the parties involved in legal acts.

The obligation to act honestly requires that the notary convey accurate and non-misleading information to the parties. A notary may not deliberately include information that does not accord with the statements or wishes of the parties. The obligation to act with care requires notaries to work with precision and diligence at every stage — in examining documents, recording the statements of the parties, and in drafting the deed. Minor errors in writing or interpretation may have fatal consequences for the validity of the deed. The obligation to be independent and impartial requires the notary to maintain independence from the influence of any party. A notary may not favour one party to the detriment of another. In the context of a discrepancy between the content of the deed and the will of the parties, a violation of this principle may occur where the notary accommodates the interests of one party without regard for the will of the other.

The obligation to protect the interests of the parties also reflects the role of the notary as a safeguard of the parties' rights in legal acts. The notary must ensure that no party suffers harm as a result of ignorance of the contents of the deed. Accordingly, the notary is obliged to provide adequate explanations to the parties regarding the content, purpose, and legal consequences of the deed made. These principles collectively constitute a manifestation of the prudential principle that every notary must uphold. This principle requires notaries to exercise care at every stage of the deed-making process, from the initial collection of data and verification of identity through to the final signing of the deed. The notary must ensure that every piece of information included in the deed has been verified for accuracy and accords with the wishes of the parties.

In practice, the application of this prudential principle may be carried out through several concrete steps, such as re-clarifying the will of the parties, reading the deed in full before the parties, and affording the parties the opportunity to read and understand the contents of the deed before signing. In addition, the notary must ensure that the parties have legal capacity and are not subject to any pressure or circumstances that could affect the freedom of their will. If the notary disregards this prudential principle, the risk of defects in the deed becomes significant. This not only affects the validity of the deed, but may also give rise to legal liability for the notary — civil, administrative, and criminal — each carrying its own distinct legal consequences. Therefore, compliance with the provisions of the UUJN and adherence to the prudential principle are the primary means of ensuring the quality and validity of notarial deeds.

The notary is also obliged to read the deed before the parties and provide a sufficient explanation of its contents. The reading of the deed is not a mere formality, but a mechanism to ensure that the parties understand and consciously agree to its contents. After the deed has been

read, the parties are given the opportunity to raise questions or request amendments where anything does not accord with their wishes. This process is therefore essential in ensuring the conformity between the content of the deed and the will of the parties. If the notary is negligent in fulfilling this obligation — for example, by failing to read the deed, failing to provide an adequate explanation, or failing to ensure the parties' consent — the deed may be declared defective, whether formally or materially. A formal defect arises where the procedure for making the deed does not comply with applicable provisions, while a material defect arises where the content of the deed does not reflect the true will of the parties.

From the standpoint of validity, a notarial deed that does not accord with the will of the parties may be analysed through two dimensions: formal validity and material validity. Formal validity concerns the procedural aspects of making the deed, such as the presence of the parties, the reading of the deed, the signing, and the inclusion of the date and place of execution. If all such procedures have been observed, the deed remains formally valid. Material validity, by contrast, concerns the content of the deed as a reflection of the parties' will. A discrepancy between the content of the deed and the will of the parties constitutes a material defect that may diminish the deed's evidentiary force. In legal doctrine, a materially defective notarial deed may lose its evidentiary force as an authentic deed and carry only the force of a deed under private hand (*akta di bawah tangan*). This means that the deed no longer carries perfect evidentiary force and must be proven through other evidence in court. Under certain conditions, the deed may be declared entirely without legal force if it is proven that its contents were forged or fabricated.

The situation becomes more complex where the discrepancy between the content of the deed and the will of the parties is attributable to the notary's error or negligence. In such cases, the notary's position is no longer that of a neutral public official, but may shift to that of a legal subject required to account for their actions. This is because notaries bear a legal obligation to ensure that each deed truly reflects the will of the parties, both formally and materially. Failure to fulfil this obligation may expose the notary to liability under multiple legal regimes — civil, administrative, and criminal — each with its own distinct characteristics and consequences.

From a civil law perspective, notarial liability is rooted in the concept of unlawful acts (*onrechtmatige daad*) as regulated in Article 1365 of the KUHPerdata, which provides that every unlawful act causing harm to another person requires the party responsible for that harm, by reason of their fault, to pay compensation. To establish notarial liability under this provision, several elements must be satisfied: the existence of an unlawful act, the presence of fault, the existence of loss, and a causal relationship between the act and the loss. In the context of a deed of change in company management, an unlawful act may take the form of a notarial act that does not reflect the will of the parties in the deed made, whether arising from negligence, inaccuracy, or intention. The element of fault in such cases may take the form of *culpa* (negligence) or *dolus* (intentional wrongdoing). For example, a notary may negligently record the outcome of a general meeting of shareholders, resulting in an error in the name of a director, or may deliberately include the name of a party who was never agreed upon. The losses that result may be material or immaterial, such as financial loss caused by an unauthorised company decision, or damage to the company's reputation in the eyes of third parties. The causal relationship between the notary's act and the losses suffered must also be proven, and this is often a critical point in the evidentiary process before the court. The aggrieved parties must demonstrate that their losses were a direct result of the deed that did not accord with their will. If all of these elements are established, the notary may be ordered to pay compensation in the form of costs, damages, or interest.

In addition to civil liability, notaries may also be subject to administrative sanctions if proven to have violated the provisions of the UUJN and the professional code of ethics. Supervision of notaries is carried out by the Notarial Supervisory Council (Majelis Pengawas Notaris), which has the authority to examine and impose sanctions on notaries who violate applicable provisions. Administrative sanctions may be imposed in graduated stages, ranging from verbal reprimands and written reprimands through to temporary suspension and dismissal with prejudice. These administrative sanctions serve both preventive and repressive functions. Preventively, they aim to deter notaries from committing similar violations in the future. Repressively, they constitute a form of disciplinary enforcement against notaries who have contravened applicable provisions. In the context of a discrepancy in the deed's content, the notary may be found to have violated the obligation to act honestly, thoroughly, and impartially as stipulated in Article 16 of the UUJN, as well as the obligation to read the deed and ensure that the parties understand and consent to its contents.

Furthermore, in certain cases, notaries may also be held criminally liable if proven to have committed a criminal act. One relevant criminal offence in this context is the falsification of deeds as regulated in Article 264 of the Kitab Undang-Undang Hukum Pidana (KUHP), which provides that the falsification of authentic deeds is a criminal offence punishable by imprisonment. Falsification may take the form of making a deed that does not correspond to reality, forging signatures, or including false information in the deed. However, for criminal liability to attach to a notary, it must be proven that there was an element of intention (*mens rea*) in their conduct. Not every mistake or act of negligence by a notary can therefore be immediately characterised as a criminal act. Only conduct carried out with malicious intent or with the aim of producing certain legal consequences is criminally punishable. In practice, establishing criminal liability against a notary requires more thorough analysis and cannot be done summarily. In the context of a deed of change in company management, a discrepancy between the deed's content and the will of the parties may have very wide-ranging consequences — not only for the parties directly involved, but also for third parties. This is due to the nature of the authentic deed, which carries perfect evidentiary force and may be relied upon by third parties. If the contents of the deed do not correspond to reality, third parties who rely on the deed may also suffer loss.

For example, if a deed of change in company management records a person as a director who was never agreed upon at a general meeting of shareholders, that person formally has the authority to act on behalf of the company. This creates scope for abuse of authority, such as signing contracts that are detrimental to the company, transferring assets without approval, or taking other unauthorised actions. As a result, the company may suffer significant financial losses and face a range of legal disputes. Furthermore, such discrepancies may also trigger internal disputes within the company, particularly among shareholders, directors, and commissioners. Such disputes may disrupt the stability and performance of the company and have the potential to undermine the confidence of investors and business partners. In the long term, this may adversely affect the company's business continuity. A deed of change in company management is also a document that must be registered and announced through the legal entity administration system managed by the Ministry of Law and Human Rights of the Republic of Indonesia. This registration aims to provide legal certainty and transparency to the public regarding the structure and management of the company. Where the registered deed contains defects or does not correspond to reality, however, the information recorded in the system becomes inaccurate.

Such data inaccuracies may mislead third parties who rely on that information — such as creditors wishing to extend loans, investors wishing to contribute capital, or business partners wishing to collaborate. In such circumstances, third parties may suffer loss as a result of relying

on information that proves to be incorrect. The validity and accuracy of notarial deeds are therefore of great importance in maintaining public confidence in the legal system and the business environment. From the perspective of authority theory, notaries as public officials derive their authority through direct attribution from the law. This attributive authority is limited, in the sense that it may only be exercised within the bounds prescribed by laws and regulations. Notaries do not have unfettered discretion in exercising their authority, but are subject to applicable legal norms.

Where a notary deviates from the will of the parties, it may be said that the notary has exceeded or abused their authority — what is known in administrative law doctrine as *détournement de pouvoir*. Such abuse of authority occurs when an official exercises their authority for purposes other than those for which the authority was granted. In the context of a notary, the authority to make an authentic deed ought to be used to record the will of the parties accurately and faithfully. If that authority is exercised for other purposes — for example, to benefit certain parties or as a result of serious negligence — this constitutes an irregularity that may give rise to the nullity of the deed made.

Accordingly, a notary's deviation from the will of the parties carries consequences not only for the civil validity of the deed, but may also give rise to administrative and criminal liability, as well as wide-ranging consequences for third parties and the legal system as a whole. Strict and consistent law enforcement against notaries who violate applicable provisions is therefore necessary, in order to maintain the integrity of the notarial profession and public confidence in authentic deeds as instruments of high legal evidentiary force. By way of affirmation, the notary's responsibility in this regard is multi-dimensional and cannot be viewed in isolation. Notaries are accountable not only to the parties involved, but also to the state and society at large. Therefore, every notarial act must be grounded in the principles of prudence, professionalism, and integrity. In this context, strengthening supervisory mechanisms and improving the quality of notarial education and training are essential in preventing violations that may cause harm to multiple parties.

From the perspective of legal protection, parties who feel aggrieved by a deed that does not accord with their will have several legal remedies available. First, they may file a claim for annulment of the deed before the district court, in which the claimant must establish both the discrepancy between the deed's content and their actual will, and the loss caused thereby. Second, they may lodge a report with the Notarial Supervisory Council to obtain administrative sanctions. Third, where a criminal element is present, they may report the matter to law enforcement authorities. In judicial practice, the judge will assess the validity of the deed based on the evidence submitted, including the testimony of the parties, witnesses, and other supporting documents, and will consider whether the notary fulfilled their obligations in accordance with applicable provisions. If it is proven that the deed does not reflect the will of the parties, the judge may declare the deed voidable, null and void, or without legal force.

It is important to emphasise that the prudential principle must serve as the primary guide for notaries in the discharge of their duties. Notaries function not only as recorders of the parties' will, but as guardians of legal certainty and justice. Accordingly, the notary must ensure that every deed made truly reflects the will of the parties, is free from legal defects, and does not cause harm to any party. The parties themselves must also be active in ensuring that the deed's contents accord with their wishes — reading and understanding the deed before signing it, and not hesitating to seek clarification from the notary on any matters that are unclear. In this way, the potential for disputes may be minimised.

In the development of modern law, the digitalisation of deed-making and company administration presents its own challenges. Notaries are required to exercise greater care in verifying the identity and will of the parties, particularly in electronically executed transactions. This calls for updated regulations and improved notarial competence, so that notaries may keep pace with technological developments without compromising fundamental legal principles. Overall, the validity of a deed of change in company management made by a notary is heavily dependent on the conformity between the content of the deed and the will of the parties. Discrepancies may render the deed legally defective — both formally and materially — and give rise to a range of legal consequences. Synergy between the notary and the parties is therefore necessary to ensure that every deed made is lawful, valid, and provides legal certainty. In closing, it may be emphasised that a notarial deed is not merely a formal document, but a manifestation of the legal will of the parties whose integrity must be preserved. Where a deed does not accord with the will of the parties, the essence of the authentic deed itself is lost, rendering its validity questionable. In this context, the role of the notary as a guardian of public trust is of the utmost importance, and every deviation must be addressed firmly in order to uphold the authority of law and legal certainty in Indonesia.

Regarding the validity of the notarial deed from the perspective of notarial law, the researcher submits that the will of the parties is a fundamental element in the making of an authentic deed. A notarial deed is essentially a written manifestation of the agreement of the parties, given authentic form by the state through the authority of the Notary. Therefore, where the content of the deed does not accord with the will of the parties, the substance of the deed has lost its legal legitimacy — even if it was formally made in compliance with the provisions of the UUJN.

In notarial practice, the assessment of a deed's validity has too often been oriented primarily towards its formal aspects. So long as a deed is made by a Notary, signed by the parties, and satisfies the formal requirements stipulated in the UUJN, it tends to be regarded as valid. Such an approach, however, does not fully capture the essence of an authentic deed as an instrument that must simultaneously embody both formal and material truth. Notaries ought not to passively accept information from the parties without ensuring that the contents of the deed are truly understood and desired by them. This obligation is particularly acute where the party is a foreign national or does not understand the language of the law; in such cases, the Notary carries a moral and juridical obligation to ensure that the party fully understands the legal consequences of the deed they are signing.

In Decision Number 46/Pdt.G/2023/PN.Cbi, the central problem lies in the discrepancy between the will of the party and the content of the deed of change in company management made by the Notary. The Plaintiff essentially sought the dismissal of the company's Director with prejudice, yet the substance of the deed as prepared recorded the approval of the Director's honourable resignation. This substantive difference demonstrates a clear divergence between the will of the party and the content of the deed that was signed.

Based on the legal facts and the judge's considerations in Decision Number 46/Pdt.G/2023/PN.Cbi, the researcher proceeds to analyse the validity of the deed of change in the management of the Limited Liability Company whose substance does not accord with the will of the parties, against the provisions of notarial law and contract law.

In the researcher's view, the deed of change in company management in the case a quo contains a legal defect because the substance of the deed as prepared by the Notary does not reflect the actual will of the party. The parties essentially sought the dismissal of the company's Board of Directors with prejudice, yet the content of the deed records the resignation of the Board

of Directors. The discrepancy between the will of the party and the content of the deed demonstrates that the deed does not accurately reflect the parties' will, as it should in an authentic deed.

When assessed against contract law, the conformity of the parties' will is an essential element in the formation of a valid agreement under Article 1320 of the KUHPerdata — in particular, the element of consent. An agreement must arise from a free and genuine expression of will in accordance with what the parties actually desire. Where the substance of the deed does not accord with the will of the parties, the element of consent is defective, with direct implications for the validity of the deed.

Furthermore, a change in the management of a Limited Liability Company is inherently a corporate legal act that must be carried out in accordance with the Undang-Undang Perseroan Terbatas and the Company's Articles of Association. In the case a quo, the change in management was effected through a resolution outside the General Meeting of Shareholders (Rapat Umum Pemegang Saham, RUPS), which under Article 91 of Law Number 40 of 2007 concerning Limited Liability Companies is permissible only where approved by all shareholders.

This is also consistent with the judge's consideration that the dismissal of a Board of Directors may be effected by resolution of the RUPS or by a resolution outside the RUPS, provided that it is approved by all shareholders with voting rights. The conformity of the shareholders' will is therefore a critically important aspect in determining the validity of the change in management of the Limited Liability Company.

In the researcher's view, the deed of change in company management in Decision Number 46/Pdt.G/2023/PN.Cbi cannot straightforwardly be characterised as null and void, as the principal problem in the case lies in the non-fulfilment of the element of consent arising from the discrepancy between the will of the party and the substance of the deed as made by the Notary. This is consistent with the judge's consideration in the decision a quo, which in substance found that the Notary's error and negligence in recording the will of the parties gave rise to loss for the party and rendered the deed's validity questionable.

The discrepancy relates to the subjective conditions for the validity of an agreement under Article 1320 of the KUHPerdata, such that the deed is more appropriately characterised, in theory, as voidable (*vernietigbaar*). However, in the process of making the deed there was also a violation of the Notary's obligations under Article 16 paragraph (1) letter m of the UUJN — namely, the obligation to read the deed before the parties in the presence of at least two witnesses, or four special witnesses in the case of a privately made testament, and for the deed to be signed at that time by the witnesses and the Notary. In the case a quo, the party did not understand the Indonesian language, and accordingly the reading of the deed ought to have been carried out clearly, with the Notary ensuring that the party fully comprehended the contents of the deed being read. The non-fulfilment of this obligation causes the deed to lose its authentic character, with its evidentiary force reduced to that of a deed under private hand (*akta di bawah tangan*).

In addition, the Notary in this case also contravened the provisions of the UUJN, particularly Article 16 paragraph (1) letter a, which requires the Notary to act in a trustworthy, honest, thorough, independent, and impartial manner, and to protect the interests of the parties involved in legal acts. The obligation to act with care is a manifestation of the prudential principle that the Notary must apply throughout the deed-making process. This principle requires the Notary to carefully examine the identity of the parties, understand their intentions and objectives, ensure the conformity between the parties' will and the substance of the deed, and provide a complete explanation of the content and legal consequences of the deed made. The application of the

prudential principle also encompasses the obligation to ensure that no errors, misinterpretations, or abuse of circumstances arise that may be prejudicial to the parties.

In the case a quo, the prudential principle was not applied optimally by the Notary. The Notary failed to ensure that the substance of the deed genuinely reflected the will of the parties, despite the fact that there is a fundamental difference between a dismissal with prejudice and an honourable resignation — two outcomes that carry entirely different legal consequences. The Notary was also obliged to ensure that the party understood the contents of the deed they were making and signing, particularly given that in this case the party did not understand the Indonesian language. In such circumstances, the application of the prudential principle required the provision of an interpreter or an adequate explanation to ensure that the party fully understood the entire contents of the deed to be signed. Furthermore, Article 38 paragraph (3) letter c of the UUJN provides that the contents of a deed must reflect the will and wishes of the interested parties.

According to the theory of legal certainty advanced by Gustav Radbruch, the law must be capable of providing certainty, clarity, and protection of the rights of the parties. In the context of notarial practice, legal certainty is realised through the authentic deed made by the Notary as an instrument of perfect evidentiary force. However, legal certainty does not reside solely in the fulfilment of the deed's formal requirements, but also in the conformity of the deed's substance with the actual will of the parties. Where the content of the deed does not reflect the will of the parties, the deed no longer provides legal certainty — whether for the parties themselves or for any third parties with an interest in the legal act. A deed whose substance does not accord with the will of the parties is thus contrary to the very purpose of law, particularly in the creation of legal certainty in civil law.

Furthermore, when assessed against the theory of legal responsibility, notaries as public officials bear responsibility for the deeds they make, given that their authority derives from the law. This responsibility arises where the notary, in the exercise of their office, commits errors, acts negligently, or violates their positional obligations in a manner that causes loss to the parties. In this case, the Notary failed to discharge their duties faithfully in ensuring that the substance of the deed accorded with the wishes of the parties. This negligence demonstrates a failure to apply the prudential principle in the exercise of the notarial function, thereby causing loss to the party and rendering the deed legally defective. The Notary may therefore be held civilly liable under Article 1365 of the KUHPerdata for committing an unlawful act, and may be subject to administrative sanctions under the provisions of the UUJN.

In the researcher's view, the judge's considerations in Decision Number 46/Pdt.G/2023/PN.Cbi were fundamentally correct in finding negligence and an unlawful act on the part of the Notary. The judge found that the discrepancy between the Plaintiff's will and the substance of the deed made by the Defendant constituted a violation of the prudential principle by the Notary as a public official in the discharge of their duties.

Accordingly, the researcher concludes that the deed of change in company management in the case a quo contains both material defects, arising from the non-fulfilment of the element of consent, and formal defects, arising from the non-fulfilment of the Notary's obligations under the UUJN. The deed may therefore be annulled as found by the judge in Decision Number 46/Pdt.G/2023/PN.Cbi, and from the date of that decision, the deed no longer produces legal consequences.

Thus, the validity of an authentic deed is determined not only by the fulfilment of formal conditions in the deed-making process, but must also reflect the actual will of the parties as a material condition of an authentic deed. The discrepancy between the will of the parties and the

substance of the deed renders the deed legally defective, with consequences for its binding force and the legal effects it produces. Notaries, as public officials, are therefore obliged to apply the prudential principle to the fullest extent, so that every deed made truly provides legal certainty and legal protection, and faithfully reflects the will of the parties.

## CONCLUSION

Based on Decision Number 46/Pdt.G/2023/PN. Cbi, the validity of the deed of change in the management of a Limited Liability Company is not only determined by the fulfillment of formal requirements as an authentic deed, but must also be in accordance with the wishes of the parties. In this case, Deed Number 344 contains a substance that is different from the will of the witnesses so that it does not meet the elements of agreement as stipulated in Article 1320 of the Civil Code and is contrary to the provisions of the Notary Position Law. As a result, the deed was declared to be cancelable and lost legal force as the basis for changes in the company's management. This decision emphasizes the importance of the principle of prudence of Notaries in pouring out the will of the parties appropriately, because negligence in the performance of office can give rise to legal liability and disrupt the certainty and legal protection for the parties and third parties.

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