



The Validity of the Shareholders General Meeting by Using Electronic Media

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Abstract

Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) has opened up opportunities for the realization of making a deed using technology by means of video conferencing. The formulation of the research problem is how the validity of the GMS through video conference based on Law number 40 of 2007 concerning Limited Liability Companies and how the binding power of the Notary Deed in the GMS through video conference based on Law Number 2 of 2014 concerning Notary Positions. This research uses normative legal research that uses secondary data. Making a deed using technology by means of video conferencing is still difficult to implement. It happens because if it is related to the Law on Notary Positions, there are still many legal provisions that contradict this. Regarding the authority of the notary in making the deed in the video conference, it cannot be said that it can be implemented, because in the deed there is a clause regarding the presence of the parties, and the signing of the deed. With the exception of the minutes of events conducted with the GMS using technology with video conferencing facilities in Article 77 paragraph (1) of the Company Law and the implementation process is supported by the UUIE. The method used in this study is a normative juridical approach, namely by examining library materials or secondary data which includes books and legal norms contained in the laws and regulations relating to the title in this study. The legality of the presence of the parties in the process of making a notarial deed through video conference is judicially reviewed, it is possible to see Article 5 of the UUIE which has received and acknowledged electronic information and/or electronic documents and/or their printed results as legal electronic evidence and regulates what deeds can be made using technology by means of video conferencing. The strength of proof from the presence of the parties in making the deed carried out through video conference which in this case is in the form of an electronic recording, in civil procedural law is a valid legal evidence because it has met the material and formal requirements.

Keywords: *Notary; Technology; Video Conferencing*

Background of the Research

The development and progress of information technology that is happening in the world right now is also felt by the Indonesian people. This development develops rapidly and causes changes in the activities of human life in various fields which directly lead to the legalization of new forms of legal

action related to information technology. This places Indonesia as part of the world's information society which requires the holding of regulations regarding the management of information and electronic transactions as outlined in the form of laws and regulations. Carl I Hovland argued that communication is a process in which an individual (communicator) sends stimuli (usually verbal symbols) to change the behaviour of other individuals (communicating).¹

Information technology plays a very important role, both for now and in the future. Information technology is believed to bring great benefits and interests to countries in the world.² There are many things that make information technology so important and it is because information technology spurs the growth of the world economy. Information and communication technology affect various aspects of people's lives, economic, social and cultural aspects. This development brings important consequences and affects legal traffic, as well as what happened at a General Meeting of Shareholders (GMS) of a Limited Liability Company (PT), which allows the use and utilization of the internet network to conduct a meeting or meeting.³

Article 1 Paragraph (1) Law Number 40 of 2007 concerning about Limited Liability Companies, hereinafter referred to as the Limited Liability Company Law which states that a Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital entirely divided into shares and fulfil the requirements stipulated in this Law and its implementing regulations.

Limited liability companies are then regulated in Law Number 40 of 2007 concerning Limited Liability Companies. The Company Law regulates in detail the form and activities of a Limited Liability Company, as well as the rights and obligations of a Limited Liability Company⁴. The organs of the limited liability company as stated in Article 1 paragraph (2) of the Company Law, that the organs of the company are the General Meeting of Shareholders (GMS), the Board of Directors and the Board of Commissioners. These organs have their respective functions and duties in accordance with the provisions of the Limited Liability Company Law and the company's articles of association.

The General Meeting of Shareholders cannot be separated from the company. The shareholders as owners of the Company exercise control over the management carried out by the directors as well as over the assets and management policies carried out by the management of the company through the GMS.⁵ In general, according to Article 1 Paragraph (4) of the Company Law Number 40 of 2007 explains that the GMS as an organ of the company has the authority that is not given to the directors or the board of commissioners, but within the limits determined by the Limited Liability Company Law and or the articles of association of the relevant Limited Liability Company.

The development of digital technology that is increasing rapidly, makes it possible for everyone no longer to have a face-to-face meeting to sign a contract, but simply to use the internet.⁶ The birth of the Company Law, accommodates aspirations and accommodates the development of information technology with the acceptance of electronic media such as teleconference or video conference as a means to conduct the GMS. This is contained in Article 77 paragraph (1) of the Company Law as follows:

¹ Onong Uchjana Effend, *Mass Communication*, Remaja Rosda Karya, Bandung, 2003. p. 8.

² *Ibid.*, p. 1

³ Herlien Budiono, *Compilation of Notary Law*, Citra Aditya Bakti, Bandung, 2007, p. 211.

⁴ Pahlefi, *The Existence of the GMS as a Company Organ Related to Article 91 of the Limited Liability Company Law*, Jurnal Ilmu Hukum Universitas Jambi, vol 7 no 2, 2016, p. 127.

⁵ M. Yahya Harahap, *Limited liability Company Law*, Sinar Grafika, Jakarta, 2009, p. 306.

⁶ Munir Fuady, *Business Law in Theory and Practice*, Citra Aditya Bakti, Bandung, 2006, , p. 151.

"In addition to holding the GMS as referred to in Article 76, the GMS can also be held through teleconference media, video conferences, or other electronic media facilities that allow all GMS participants to see and hear each other directly and participate in meetings."

Utilizing this technological sophistication, the company's shareholders do not have to meet face-to-face or face to face when holding a GMS, but meet face-to-face via video conference as if the meeting is held face to face. This is a step forward that can facilitate the implementation of the GMS easily and in a more effective way.

The General Meeting of Shareholders (GMS) is always held face-to-face physically among the meeting participants. The party who is not present may be represented or authorized by another party appointed by the party concerned. This is simpler and more efficient because the parties participating in the GMS do not need to come to the meeting venue, because the parties can see each other as if they were actually attending the meeting that was physically attended.⁷

Video conference media as a means of supporting the implementation of the GMS has legal consequences starting from the implementation of the GMS through the video conference itself to the issue of the validity of the GMS and the GMS Minutes through video conference media, because if the GMS is conducted through video conference media, the results of the meeting decisions are also electronic where documents which is the minutes of the meeting is an electronic document.

The openness for holding a GMS through teleconferencing has been regulated in Financial Services Authority Regulation (POJK) Number 16 of 2020 concerning the Electronic Public Company GMS. video conferencing, or other electronic media means."

In the event that the GMS document is an electronic document, it is certain that the signatures of the shareholders as participants in the meeting are also electronic, namely by using digital signatures. Regarding this digital signature, it is not regulated in the Company Law but this is regulated in Law Number 11 of 2008 concerning Electronic Technology Information, hereinafter referred to as UUTE. Article 1 paragraph (12) of the UUTE states that: "Electronic Signature is a signature consisting of Electronic Information that is attached, associated or related to other Electronic Information used as a means of verification and authentication."

The obstacle that occurs in the process carried out by using this technology is that the data generated from a GMS using an electronic mechanism of course also produces electronic data, so that it does not meet the requirements stipulated by Law Number 30 of 2004 concerning the Position of Notary. Law Number 2 of 2014 concerning Amendments to Law 30 of 2004, hereinafter referred to as UUJN. Where UUJN requires the presence of the parties concerned at the place where the deed was made, while until now there is no legal rule that regulates the authority of a notary in the world of electronics or internet media.

The General Meeting of Shareholders held by a company is a very important organ in making various policies related to the company, so that in accordance with Article 77 paragraph (4) of the Company Law, every GMS must be made a minutes of meeting (statement of meeting resolutions) which is approved and signed by all GMS participants. In practice, the results of the GMS are stated in an authentic deed made before a notary. A notary is a public official who has the authority to make an authentic deed regarding all acts, agreements and stipulations ordered by general regulations or requested by the parties who made the deed.

⁷ *Ibid.*

The use of electronic media such as teleconferencing technology to carry out the GMS is indeed more efficient and effective. However, new problems arise in terms of ratifying the results of the GMS which must be made in the form of an authentic deed. This is related to the requirements of a notary deed that must meet the following requirements:

1. The presence of the presenters.
2. At a certain place.
3. On a certain date.
4. It is true that the appearers have provided information as stated in the deed, or it is true that there have been circumstances as stated in the deed.
5. Correctly signed by the appearers for the party deed (partij deed).

Every notarial deed made by a notary and an appearer wants to meet face-to-face, based on Article 16 of the UJUN which regulates the obligation to "face" between the party making the deed and the notary. The "appearing" is carried out in the context of reading the deed in front of an audience in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a private will, and signed at the same time by the appearer, the witness and a notary. Based on Article 16, the obligation to appear before a Notary to make a deed is one of the requirements for the authenticity of a notary deed.

According to the Big Indonesian Dictionary (KBBI), the word appear comes from the word facing which means "side or front side". The meaning of the word facing is "put to", "come to meet" or "come to meet"⁸. Facing which is defined based on the KBBI is an activity carried out by a person to meet or meet with other people with a certain interest or need to convey certain goals and objectives.

In this case facing is not a must to meet each other face to face. As for facing by utilizing technology, namely through the internet which has been discussed previously. Entering the cyber notary era, it is possible to face those who want to make a certain deed using the internet or video teleconferencing and use a digital signature to approve a deed made by a notary, so that it becomes a legal electronic document.

Electronic documents will later be affixed with an electronic signature. Digital Signature is a tool to identify a given message. Digital Signature is required for:⁹

- a. Specifies the sender's identity.
- b. Ensure that there is no change in message content during transmission.
- c. Provide certainty to the sender so that there is no denial in the future.

All of these conditions are so that the appearers with the signature and statement (deed) from the notary cannot deny the facts contained in the deed. Based on these provisions, it can be seen that the obstacles faced in the implementation of the notary deed through video conference is that the notary deed is a written form that can be read but until now there is no rule regarding the authority of a notary in terms of electronic media.

Electronic documents signed with a digital signature can be categorized as written evidence but there is a legal principle that makes it difficult to develop the use of electronic documents, namely the requirement that the document must be viewable, sent and stored in paper form. So far, what can be called perfect evidence is an authentic deed.¹⁰

⁸ <https://kbbi.web.id/>, accessed in 29 Mei 2021.

⁹ I Nyoman Agus Trisnadiasa, *Legal Protection of the Parties in Making the Deed of the GMS through Teleconferencesi*, Jurnal Magister Hukum Udayana, Vol 05 no 1, 2016, p 63.

¹⁰ Waringin Seto, *The validity of the GMS of the Limited Liability Company with evidence of the online presence of the shareholders*. Universitas Negeri Surakarta, Surakarta, 2016, p. 3.

The obstacle to making the minutes of the GMS through the video conference as an authentic deed is still giving rise to new views among legal experts. Laws are indeed made to avoid doubting the existing legal facts. On the one hand, this is an advantage of the Company Law, but when the cyber world or cyberspace has penetrated the notary world, this law has not been able to accommodate developments regarding cyber notary. This is what motivated the author to write a thesis with the title: "**The Validity of the Deed of the General Meeting of Shareholders (GMS), Through Electronic Media**"

Research Method

In accordance with the characteristics of the formulation of the problem aimed at analyzing the GMS conducted through electronic media, this type of research uses a normative juridical approach, namely by examining library materials or secondary data which includes books and legal norms contained in laws and regulations. invitation related to the title in this study. Normative juridical research is a research method that refers to norms which is carried out by analyzing problems in research through an approach to legal principles and statutory regulations.¹¹

The legal material in this research is primary legal material which is authoritative, meaning it has authority. The laws and regulations that are linked in this writing are Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 11 of 2008 concerning Electronic Information Technology and Law Number 30 of 2004 concerning the Position of Notary Jo. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004.

Research Result

Legal certainty over the legality of holding shareholder meetings as regulated in Article 77 of Law Number 40 of 2007 concerning Limited Liability Companies is carried out through the use of telephone conference facilities, video conferences or other electronic media facilities, and can be carried out legally by adjusting the formal and material requirements. Data generated from the General Meeting of Shareholders through the use of electronic mechanisms will of course also produce electronic data. The form of the General Meeting of Shareholders is electronic, especially in the form of a signature whose behavior is protected by Law Number 11 of 2008 concerning Electronic Transaction Information and is suitable for transaction activities and the use of information using Internet media. If there is no denial, it can be proven that the signature is fake. However, the concept of E-GMS Ideally the GMS mechanism should use government regulations and not laws (Perppu) as the basis for regulation, because the electronic holding of the GMS in the Limited Liability Company Law Number 40 of 2007 in the concept of a network notary is not fully supported by Indonesian law, although some laws allow for certain possibilities, they cannot be implemented due to limitations in other laws so that network notaries cannot be legally implemented in Indonesia. There is still a need for special regulations regarding notary networks to be applied in the context of rapid technological developments without causing disputes in Indonesia.

By facing the development of science and electronics, it is very possible to make a deed via video conference, or not to attend face-to-face. However, this has not been regulated in UUJN and there has been no change. So, the legitimacy of making the deed of the GMS through this video conference can be carried out in accordance with the authority of a notary based on Article 15 of the UUJN, but according to the author, only the deed of the GMS Decision Statement can be made virtually. Where the making of the deed is only based on the Minutes of the GMS submitted by the Director of the PT or authorized before a notary.

¹¹ Soerjono Soekanto, Sri Mahmuji, *Normative Legal Research*, Bayumedia, Surabaya, 2006, p. 14

Minutes of the GMS, written documents and electronic documents, such as attendance lists and so on related to the making of the deed of the GMS Decision Statement (PKR) must be attached to the minutes of the deed, to become the basis for making the PKR deed. Thus, the notary must also explain the position of the deed in accordance with the equipment or based on the documents submitted by the company director. So, the authority and responsibility of a notary is only based on the documents submitted by the company in making the requested deed.

Making a deed using technology by means of video conferencing is still difficult to implement. Because if it is related to the Law on Notary Positions, there are still many conflicting legal provisions. Regarding the authority of the notary in making the deed in the video conference, it cannot be said that it can be implemented, because in the deed there is a clause regarding the presence of the parties, and the signing of the deed. With the exception of the minutes of events conducted by the GMS using technology with video conference facilities in Article 77 paragraph (1) of the Company Law and the implementation process is supported by the UUTE. Meanwhile, for the manufacture of other authentic deeds, there is no clear regulation regarding the issuance of a deed using technology that is of value to become an authentic deed. Thus, it is not possible to obtain legal certainty over legal events committed by the parties.

Reference

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