



## Juridical Analysis of GMS Electronic Policy (E-GMS) on the Morality of Notary Responsibilities

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### **Abstract**

This research emphasizes the development of an increasingly modern era and affects various sectors that have an impact on various professions, for example; Notary Public. The electronic rules for the General Meeting of Shareholders (e-GMS) trigger doubt when a Notary wants to carry out his duties and authorities in terms of making a *relaas deed*. The problem of this research is how are the rules of e-GMS according to Law No. 2 of 2014 concerning the Position of a Notary against a Notary and what are the legal consequences for the morality of a Notary who violates the regulation? The research method used is normative and literature study based on primary materials (laws), secondary materials (scientific works, journals, books, documents, and other literature), and tertiary legal materials (legal dictionaries). The results of this study indicate that the e-GMS rules are contrary to the law of notary, in particular Article 18 which states the domicile and area of the office, and that Notaries who commit violations must be legally and morally responsible.

**Keywords:** *Electronic General Meeting of Shareholders; Notary; Legal Liability; Cyber Notary*

### **Introduction**

In the study of philosophy, especially moral philosophy, ethics has been the intellectual discourse of philosophers and the center of attention since the days of Ancient Greece, even today it is considered an interesting and actual study. Ethics is considered important, not only discussed in the academic sphere but also practiced in daily life interactions by every civilized human being (Hakim, 2010). Ethics is a concept of the good or bad behavior of a person, while morals are a person's good or bad behavior. Ethics are ideas, and ideals about the desire for good human behavior and provide good examples, while morals assess the implementation of ethics (Rahman & Qamar, 2014).

The growing era affects various sectors, namely; political, social, economic, and cultural. Technological advances also affect future conditions, such as; medical services, education, government administration, and other aspects of life (Badruzaman, 2001:6). All needs can be met in one activity through a device with an internet connection, apart from getting information, people can also do other activities, for example, shopping. Seller and buyer transactions are carried out virtually, with no need to

meet on the spot, and delivery of goods is carried out through shipping expeditions. This makes it easy for those who do not have time to shop outside, with the same price comparison or even cheaper, this activity is called electronic transactions (e-commerce).

According to Kolalota and Whiston, e-commerce is a modern business methodology that meets the needs of organizations, traders, and consumers to reduce costs, improve the quality of goods and services and increase the speed of delivery services. E-commerce also applies to the use of computer networks to find and store information to support the decision-making of a person or business entity (Turban, et.al, 2000:4). Law Number 11 of 2008 concerning Information and Electronic Transactions which was amended to Law Number 19 of 2016 (hereinafter referred to as UU ITE), in Article 1 paragraph (2) explains: "Electronic transactions are legal acts carried out using computers, computer network, and/or other electronic media."

The rise of cyber activity is not only about buying and selling transactions, one of which covers the implementation of services in the field of work. The internet makes it easier for tasks to be completed so that they can be completed in a faster time and at lower costs, for example; in the medical profession. Currently, there is an application to consult a doctor via chat or video call. In addition, many professions have started operating through the internet or in certain circumstances are required to work from home using various platforms, such as; zoom or google meet. However, amid this modernization, there are still professions that have not fully entered the virtual world and seem slow in responding to the digitalization era. He is a Notary.

Article 1 number (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN), states; "Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this law or based on other laws." Every profession must have a code of ethics that applies, to maintain the attitudes and behavior of professional bearers to be in line with the rules of law, ethics, and morals. The ethics of the legal profession is an attitude of life in the form of a willingness to provide professional services in the field of law to the community with full involvement and expertise in carrying out duties in the form of obligations to the community who need legal services accompanied by careful reflection (Nuh, 2011).

Notaries in carrying out their positions contain moral ideals which are reflected in the Code of Ethics and UUJN. According to Ismail Saleh as quoted by Nomensen Sinamo, there are 4 (four) things related to the attitude and behavior of a Notary; (1) Have strong moral integrity; (2) Be honest with clients and yourself; (3) Be aware of the limits of their authority; and (4) Not working just because of money (Sinamo, 2014:126). Article 16 of the UUJN describes several obligations of a Notary so that all of his actions must be in line with these regulations. In addition, Notaries also carry out their duties and positions according to several other laws and regulations, such as; Regulation of the Notary Code of Ethics and the making of a Certificate of Imposing Mortgage which is regulated in Article 15 of Law Number 4 of 1996 concerning Mortgage Rights (hereinafter referred to as UUHT). Notaries are also guided by Law no. 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT) in terms of making a *relaas* deed.

There is an article in the Company Law that was formed to anticipate changes in increasingly developing social conditions, namely Article 77 paragraph (1) which explains that; "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." Furthermore, Article 77 paragraph (4) UUPT explains; "Every GMS convening as referred to in paragraph (1) must have minutes of meeting approved and signed by all GMS participants."

Notaries are asked by the GMS participants to write down all things heard, seen, and witnessed and then poured into the minutes or deed of GMS *relaas*, then approved and signed by all meeting

participants. If the GMS is held by teleconference, then for participants who are not present in person, the signing will be done electronically. However, the electronic implementation of the GMS is still a polemic, because Article 18 of the UUJN regulates the domicile in the district or city area, as well as the area of office covering the entire province from the place of domicile of the Notary. Thus, if asked to attend the e-GMS, indirectly, the Notary is considered to have violated Article 18 of the UUJN, because it does not physically deal with the client, and the whereabouts of the parties are not known; whether within the area of the office or not.

Based on the explanation above, the author wants to study further in the research entitled "Juridical Analysis of GMS Electronic Policy (E-GMS) on the Morality of Notary Responsibilities." The formulation of the problems discussed are; (1) What are the rules for e-GMS according to the Law on Notary Positions, and (2) What are the legal consequences for the morality of a Notary who violates the regulation?

### ***Research Methods***

The method used in this research is the normative method and literature study; the study of research objects based on sources of legal materials that are still relevant, both primary such as related laws and regulations, secondary such as literature and other reading materials, as well as tertiary namely legal dictionaries. Furthermore, all of these materials are inventoried and researched using positive law that applies in Indonesia (Waluyo, 1991:14). This research is based on the statute approach and descriptive qualitative approach. The qualitative approach creates descriptive data such as written or spoken from the informants and attitudes that are considered and are not stated in the form of variables or hypotheses (Moleong, 2000: 2).

### ***Discussion***

#### **A. The Rules Of E-GMS in the Perspective of UUJN Against Notaries**

Although cyber notary has been advocated for a long time, in practice, notaries still use the conventional system, namely being present on the spot and dealing directly with interested parties to conduct transactions and sign the deed with wet ink. This is intended so that the authenticity of the notarial deed is maintained, but when compared to other professions that have begun to penetrate the virtual world, the notary can be said to be a bit old-fashioned and afraid to follow technological developments. This problem has been considered several times by practitioners and academics, but there is still no bright spot in building the world of the notary in the era of digitalization, shifting its duties and authorities from conventional systems to electronic systems or Cyber Notary.

The main principle of the cyber notary is to limit the understanding that the notary carries out the duties and authorities in making the deed; either the deed of the parties (*partij acte*) or the deed of *relaas* (*ambtelijk acte*), must be carried out face-to-face in the same place. However, information technology that is increasingly developing makes it no longer necessary (Nurita, 2012: XII). Many countries with Common Law or Civil Law patterns have empowered the function and role of Notaries using electronic transactions in carrying out their duties and authorities, for example; The United States, Britain, France, and Belgium, while the Asian countries that have implemented the cyber notary concept are Hong Kong and Japan. Seeing that, Indonesia must also participate in initiating the concept of providing notary services in electronic transactions. (Makarim, 2013:133). If a cyber notary is applied, the Notary has the authority to carry out electronic certification, while according to the Concise Oxford English Dictionary certification is called "certify", which means to formally confirm or ratify, so that certification is the same as the authority to legalize an underhand letter and be registered in a special book (Fadli, 2017).

Electronic documents produced by cyber notaries are considered valid evidence, according to Article 5 of the ITE Law:

- (1) Electronic information and/or electronic documents and/or their printed results are legal evidence.
- (2) Electronic information and/or electronic documents and/or their printed results as referred to in paragraph (1) is an extension of legal evidence following the applicable procedural law in Indonesia.
- (3) Electronic information and/or electronic documents are declared valid if they use an electronic system following the provisions stipulated in this law.
- (4) Provisions regarding electronic information and/or electronic documents as referred to in paragraph (1) do not apply to;
  - a. Letters which according to the law must be made in written form; and
  - b. The letter and its documents which according to the law must be made in the form of a notarial deed or a deed made by the official making the deed.

Article 6 of the ITE Law states; "If there are other provisions after being regulated in Article 5 paragraph (4) which requires that a piece of information must be in written or original form, electronic information and/or electronic documents are considered valid as long as the information contained therein can be accessed, displayed, guaranteed its integrity, and can be accounted for to explain a situation.

Article 78 paragraph (1) of the Company Law states that; "The GMS consists of the annual GMS and other GMS." What is meant by another GMS is an extraordinary GMS that does not completely set the timetable for implementation and the material for the meeting agenda to be discussed and decided at the GMS. Other GMS may be held at any time based on the need for the interests of the company. However, back again to Article 77 paragraph (1) of the Company Law which allows the GMS to be held electronically via teleconference or other electronic media to make it easier for shareholders to attend without being hindered by distance.

The e-GMS rules are further regulated in the Financial Services Authority Regulation of the Republic of Indonesia Number 16/POJK.04/2020 concerning the Electronic General Meeting of Shareholders of Public Companies (hereinafter referred to as POJK e-GMS). The GMS electronically is conducted using the e-GMS provided by the e-GMS Provider (a depository and settlement institution appointed by the OJK or other parties approved by the OJK) or the system provided by the Public Company. The place where the e-GMS is held is the place where the GMS is physically held, namely the domicile of the e-GMS provider or the Public Company that implements the e-GMS.

In the GMS, the board of directors provides the minutes to the Notary to be included in the notarial deed, but if the GMS is attended by the Notary, the Notary shall make the minutes and the notarial deed. If the e-GMS provider and the Public Company hold an e-GMS, it is obligatory to submit a printed copy to the Notary, which contains;

- a. Register of shareholders present electronically;
- b. List of shareholders who have given power of attorney electronically;
- c. Recapitulation of attendance quorum and decision quorum;
- d. Electronic transcript of all interactions in the GMS to be attached to the minutes of the GMS.

The minutes of the e-GMS must be made in the form of a notarial deed by a Notary registered with the OJK without requiring the signatures of the participants. The GMS which is conducted electronically via teleconference is contrary to Article 18 UUJN, because during the e-GMS, the Notary may remain in the domicile or area of the office, but the parties who do not appear physically may be outside the domicile or area of the office Notary Public. Although the e-GMS still confuses, also in

certain circumstances where the Notary finally faces the parties virtually and doubts the authenticity of the notarial deed, then Article 11 paragraph (1) of the ITE Law provides answers to these doubts, namely; "Electronic signatures have legal force and legal consequences as long as they meet the following requirements:

- a. Electronic signature creation data relates only to the signer;
- b. The electronic signature creation data at the time of the electronic signing process is only in the power of the signer;
- c. Any changes to the electronic signature that occur after the time of signing can be noticed;
- d. Any changes to the electronic information related to the electronic signature after the time of signing can be noticed;
- e. There are certain methods used to identify who the signer is; and
- f. There are certain ways to show that the signer has given his/her consent to the associated electronic information.

Based on the explanation above, electronic signatures are considered to have legal force and legal consequences, the same as manual signatures on paper documents made by or in the presence of an authorized public official. However, Article 11 paragraph (1) of the ITE Law is considered contradictory if it is associated with Article 1 paragraph (7) of the UUJN which contains; "A notarial deed, hereinafter referred to as a deed, is an authentic deed made by or before a notary according to the forms and procedures stipulated in this law." If it is contradicted with Article 18 of the UUJN, then the making of the deed is done electronically, the Notary cannot know the whereabouts of the parties, whether inside or outside of their domicile so that the process of making and signing the deed can be doubted by the UUJN and opens the opportunity for the notarial deed to be degraded into deed under hand.

## **B. Consequences on the Morality of Notaries Who Violate the Law of Notary**

The terms ethics, ethics, and morals are often used in everyday life because ethical and moral issues are in direct contact with human life. Ethics is part of philosophy, while philosophy is an interpretation of human life which has the task of researching and determining concrete facts to the deepest basis (Muchsin, 2004:66). Ethics is also defined as "the science of decency or morals", while decency or morals is the whole rule, rule or law that takes the form of warnings and prohibitions (De Vos, 1987:1-3) so that ethics is different from morals.

Likewise, opinions about law must be separated from morals, although positivists admit that the focus on legal norms is closely related to moral, theological, sociological, and political disciplines that can influence the development of the legal system (Kelsen, 2001:5). Moral existence can only be accepted in the legal system if it is recognized and legalized by the ruling authority by enacting it as law. H.L.A. Hart revealed that there is a separation between law and morality, but the separation is not extreme, because morality must be a condition of law. This is due to two factors (Tanya, 2015); a) humans have limitations in doing good to others; and, b) the law has limitations in regulating the development of society.

Hart's relationship between law and morality; a) law embodies moral ideals, b) morality and law have an independent relationship, c) moral values influence law, d) law by definition embodies morals, and, e) from facts about human nature and the world in which they live. , the rules of morality have the same minimum side (Dimiyati, Et.Al, 2018: 8). The responsibility according to Valerina J.L. Kriekhoff is to gain trust, which is an honor and trust (Kriekhoff, 2007: 2). Furthermore, there are three kinds of responsibilities, namely; moral, technical, professional and legal responsibilities. Moral responsibility is a responsibility according to the norms prevailing in the environment of the profession concerned (professional code of ethics), which is personal or institutional (for an institution that is a bond/engagement of the apparatus/profession concerned). The form of personal moral responsibility is an

awareness of conscience, while institutionally it is an organizational sanction from the institution concerned (Soenaryo:12).

Morality as a "legal minimum" according to Hart, seeks to overcome the rigidity in Austin's classical legal positivism, namely when the law is placed as a morally impermeable institution. On several occasions, however, Hart and Austin have agreed on the separation of law and morality, and reject absolute closure to morals (Bello, 3-5). The relationship between law and morals is very close, there are at least five points of connection between the two;

- (1) The law requires morals. *Quid leges sine moribus?* This means; what is the meaning of legislation without morality? The quality of the law is also measured by the quality of morals, on the other hand, morals also require the law to be "realized more definitely in concrete behavior."
- (2) Codified law is considered to be more definite and objective than unwritten morality, therefore it can be argued about what is considered ethical and unethical.
- (3) Law regulates outward actions (legality), while morals are more concerned with the inner attitude of humans. For example; sanctions for moral violations are expected not only to touch the inner aspect but also to touch the outer aspect.
- (4) Morality is "the minimum content of the law". Law and morality are only distinguished in terms of formality, but the substance is the same. Legal or moral norms both regulate human behavior.
- (5) Immanuel Kant argues that law is included in the outward normative order of society, outside of inner motivation. Morality is only concerned with the human conscience. The law is morally binding if it is believed in the heart (because of the autonomy of the human person).

Based on the explanation above, every legal profession is expected to behave according to its domain, so as not to violate the applicable legal and moral rules. Accountability is not only based on morals, but also on law, so everything that is done by someone must be held accountable (Nico, 2003:84). Violations can be qualified for violations of the Professional Code of Ethics and other laws and regulations, as well as forms of responsibility in the civil aspect, namely compensation, criminal aspects, namely confinement/jail and/or fines, and administrative aspects, namely dismissal from office, both respectfully and with respect. disrespectful.

According to R. Wirjono Prodjodikoro; Accountability for someone's actions is considered to exist if it is stated that they have committed acts that are prohibited by law, and most of them are acts regulated in the Civil Code (hereinafter referred to as the Civil Code), called acts against the law (*onrechtmatige daads*) (Prodjodikoro, 1983:80) . This is stated in Article 1365 of the Civil Code, which contains elements of PMH; a.) Acts against the law; b.) There must be an error; c.) There must be a loss caused; d.) There is a causal relationship between actions and losses (Setiawan, 1999:76).

M.A. Moegni Djodirdjo stated that Article 1365 of the Civil Code regulates that someone who has suffered losses due to the actions of others can file a claim for compensation to the District Court. This is when it is associated with a Notary who conducts PMH and the making of the deed is detrimental to the parties or one of the parties, then a lawsuit can be filed with the Court so that the Notary will compensate for the losses incurred (Toar, 1987:17). It should be remembered that the deed made by or before a Notary can be the legal basis for the status of the property as well as the rights and obligations of a person. Therefore, if there is an error in the deed, it can cause a person's rights to be revoked or someone's burden to an obligation, so the Notary must comply with the various provisions stated in the Notary Position Act, as well as other laws and regulations (Anshori, 2009).

It is interesting to discuss the e-GMS, that the regulations regarding it place Notaries in a difficult position, on the one hand, Notaries must obey the UUJN, but on the other hand, some rules deviate and allow them to attend the e-GMS. This kind of thing creates confusion in practice, and if the shareholders ask a Notary to attend the e-GMS, it will be a dilemma. This is where the morality of Notaries is tested,

between sticking to the basic rules, namely UUJN, or putting them aside. However, once again it is necessary to remember the principle of *lex specialist derogat lex generalis*, meaning that a more specific regulation overrides more general rules so that under any circumstances, a Notary should remain obedient in carrying out his duties and obligations following UUJN, especially Article 18. , the Notary will be protected from circumstances that could place him as a PMH perpetrator or a criminal act.

### ***Closing***

### **Conclusion**

- 1.The rules regarding the e-GMS that present a Notary as an official in charge of recording what is seen, heard, and witnessed, then stated in the minutes or deed of the GMS *relaas*, is a rule that overlaps with what is in the UUJN, because in carrying out duties and positions, a Notary is limited by his domicile or area of the office.
- 2.Ethics and morals are different things, and so are law and morals. However, in everyday life, the two cannot be separated, because in carrying out their duties and positions they must be guided by the applicable laws and regulations so that the formal rules in the law must be enforced, also upholding the morality inherent in themselves, especially for a Notary.

### ***Suggestion***

- 1.It is hoped that the Government will immediately take action regarding the legal issue of e-GMS against Notaries, by making changes to the contents of the UUJN and UUPT so that they are synchronized and their implementation does not conflict with each other, to provide certainty and security for Notaries.
- 2.Notary positions are required to comply with legal rules; both written and unwritten, both outwardly and inwardly, do not only prioritize material so that they do not violate the law and morals in carrying out their duties and positions.

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