

A JURIDIC ANALYSIS ON THE LEGALITY OF ELECTRONIC GMS (GENERAL MEETING OF SHAREHOLDERS) DEED

Aprilia Ari Putri
Adi Sulistyono

ABSTRACT

This study examines the juridic analysis of the legality of creating electronic GMS (General Meeting of Shareholders) Deeds, where the Notary's role in performing his position in creating a "relaas" deed pertaining to the E-GMS must be carried out based on the good provisions stipulated in Law of Republic of Indonesia Number (No.) 2 of 2014 concerning Amendments to Law of Republic of Indonesia Number (No.) 30 of 2004 concerning the Position of Notary and the Regulations of related Financial Services Authority. This study tries to discuss the function of the notary in determining whether or not the GMS Deed can be created electronically and the potential legal repercussions of doing so. The analysis in this study's findings indicate that the Notary plays a part in creating the GMS's Deed, even if the creation of the deed can be done without a Notary's presence. In the event that a notary is present at the general meeting of shareholders in person, the deed may be made in the form of a party deed/partij deed in the form of a statement of the resolutions of the meeting, or it may be made in the form of an official deed or relaas in the form of meeting minutes. In accordance to Financial Services Authority (OJK) Regulation Number 16/POJK.04/2020, the GMS can now be performed electronically, and the Notary is needed to create an E-GMS deed in the form of a Deed of Minutes of the E-GMS Meeting. Additionally, the Deed of Relaas in the form of the Deed of Minutes of the E-GMS is valid and enforceable between given parties that now it complies with Article 1868 of the Indonesian Civil Code's requirements for an authentic deed. This is true even if the arrangement is not stated explicitly and plainly in the pertinent Regulation of Financial Services Authority (POJK.)

Keywords: Deed, Notary, Electronic GMS Deed

INTRODUCTION

Society's growth, particularly the advancement of science and technology, has an effect on the law, which is still evolving. This is connected to a number of new phenomena that have emerged as a result of advancements in information and technology. The advancement of technology and information, which is characterized by the information technology era that ushers in cyberspace, through the Internet (Interconnecting Networking), and uses paperless communication (Paperless Document) are developments that currently have a significant impact on the lives of people around the world (Fakhriah, 2017).

The General Meeting of Shareholders, which must be convened by the Company in accordance with Law of Republic of Indonesia Number (No.) 40 of 2007 concerning Limited Liability Companies (UUPT), is one of the things that is also impacted by advancements of science and technology. The availability of the Internet creates a new alternative for the company to host the annual general meeting of shareholders: through teleconference media, also known as electronic media.

As what have been stated in the provisions of Article 1 number 1 of UUPT Law, Limited Liability Company is a legal entity that is a capital partnership, established based on an agreement, conducting business activities with authorized capital that is entirely divided into shares, and fulfilling the requirements stipulated in this Law and its implementing regulations. If we take a look at these provisions, it can be seen that a Limited Liability Company in its establishment is carried out on the basis of an agreement, in which the agreement is made by a Notary as a General Officer. After the agreement is made in a deed of establishment, on the basis of the deed an application for legalization of a legal entity is made to the Minister of Law and Human Rights to later be ratified as a legal entity.

The legal subject includes legal entities. According to R. Soeroso, the subject of law is everything that, under the law, has the right or power to conduct legal acts or who has the right and the capacity to act in accordance with the law (Soeroso, 2011). A legal entity can act and pursue legal actions as a legal subject, but because it lacks a soul (Recht persoon), it must be represented by those who have the authority to do so, in this case, a limited liability company, it must then be represented to the board of directors, through the director.

The Board of Directors, the Commissioner, and the GMS are the three bodies that make up the Limited Liability Company as defined by the Limited Liability Company Law. The Board of Directors is the part of the corporation which is authorized and fully accountable for managing the corporation for the corporation's benefit, in accordance with the corporation's purposes and objectives, and it represents the corporation both inside and outside of the courtroom, in accordance with the provisions of the Articles of Association. The Board of Commissioners is the part of the company responsible for advising the Board of Directors and undertaking general and/or particular oversight in line with the articles of organization.

And within the parameters outlined in this legislation and/or the articles of organization, GMS is a Company body with jurisdiction which is not granted to the Board of Directors or the Board of Commissioners. Each of the three corporate bodies really have a balanced stance, if we evaluate them from their respective positions, both in terms of their authority and in terms of their rights

and duties. The Board of Directors and the Board of Commissioners do not have the authority to do various things, according to the definition of the GMS, and because of this, it is frequently believed that the GMS holds a higher status than the Board of Directors and the Board of Commissioners.

Limited Liability Company must be represented by the Company's institution, namely the Board of Directors, and be under the Commissioner's supervision when engaging in the aforementioned activities. Therefore, it goes without saying that accountability should be held responsible by the GMS through an Annual GMS for every action taken by the Board of Directors and Commissioners. There are two (two) types of GMS that can be held, the Annual GMS and other GMS, also known as extraordinary GMS, if we look at the regulations within the UUPT Law, which are mainly in Article 78 paragraph (1) of the UUPT Law, there is, of course, a particular meeting agenda for each form of GMS.

According to the provisions of Article 78 paragraph (2) of the UUPT Law, the Limited Liability Company must have the GMS itself once a year (Annual GMS), however the exceptional GMS may be convened whenever it is necessary for the Limited company in question. Given the significance of holding a GMS to safeguard the interests of its shareholders, the GMS must be controlled with regard to technical implementation in order to satisfy the requirements for formality and validity of the holding of the GMS.

According to the terms of Article 76 of the UUPT Law, the GMS may be conducted at the abode of the company or at the location where the company conducts business, but under Article 76 paragraph (2) of the UUPT Law, the GMS may also be held anywhere for a Public Limited Company, as long as:

1. "All" shareholders are present during the instance of GMS and/or are being represented,
2. All of the shareholders "approved" the initiation of the GMS,
3. The approved GMS agenda must be certain,
4. The location of the GMS must be within the territory of the Republic of Indonesia.

The items listed above are essentially the requirements of GMS that are held in person or in a conventional setting, however as the author said in the introduction, with the advancement of technology, GMS may now be held online using electronic media. This is made clear by the provisions of Article 77 of the UUPT Law, which offers a novel method for conducting the General Meeting of Shareholders (GMS), by accommodating the growth of a more advanced period that is based on technology advancements. The terms as listed within Article 77 of the UUPT Law itself are as follows:

1. The GMS may also be held through teleconference media, video conferences, or other electronic media facilities that allow all GMS participants to immediately see, hear, and participate in meetings, in addition to being held as specified in Article 76,
2. The conditions for quorum and decision-making are those set forth in this Law and/or the articles of association of the Company, respectively,
3. Based on the GMS participants' involvement as mentioned in paragraph (1), the requirements referred to in paragraph (2) are computed,
4. A Deed of Minutes of Meeting, agreed and signed by all GMS participants, should be created for each GMS as defined in paragraph (1).

Accordingly, it may be inferred from the provisions of Article 77 that in order for a GMS that is being conducted through electronic means to be justified, it must first satisfy the formal conditions that "enable" all GMS participants to (Harahap, 2016):

1. See and hear directly;
2. Participate within the discussion.

This signifies that; if one of the prerequisites is not satisfied, the media in question does not satisfy the requirements to be utilized as media during its execution. After meeting the formal criteria, can the GMS be implemented without using any technological means? As what have been mentioned beforehand, GMS is a corporate body where significant decisions and the duties of both directors and commissioners will be debated for the benefit of the associated parties, in this instance the shareholders.

In order to provide clarity on any things that have been discussed and resolved jointly in the meeting, a compact, systematic meeting is required for technical implementation, and it is presented in the form of a Deed of Minutes of the meeting. According to the rules of Article 21 paragraph (5) of the UUPT Law, the Minutes of Meeting must be written by hand and must be declared in a notarial deed not later than 30 (thirty) days from the date the GMS decision is issued in order to attain legal certainty, afterward a Declaration of Meeting Resolutions (PKR), often known as the Declaration of Parties is made into creation.

The notary may, however, essentially attend the GMS throughout implementation if the parties so request. In the case that a notary is present during the execution of the GMS, said Notary is responsible for creating the Deed of Minutes of the GMS as well as ensuring that the GMS has been carried out in compliance with the formalities mandated by the relevant laws and regulations. A Deed of Relas or Official Deed based on the Deed of Minutes of the Meeting about the GMS that has been completed and witnessed by the Notary may be made as soon as the GMS is finished. The assessors (Meeting Participants), witnesses, and notaries will then sign the Deed in response to it.

2020 is a challenging year, especially for the economic growth of the country. The Government is striving arduously to provide different facilities to address the Corona Virus Disease 2019 (Covid-19) Pandemic in order to maintain economic stability. The government pays particular attention to the public company, especially when it comes to issues that have a big impact on how smoothly commercial operations run and how stable the financial system is. Financial Services Authority Regulation Number 16/POJK.04/2020 concerning the Electronic Implementation of the General Meeting of Shareholders of Public Companies, which previously regulated the GMS to use Media Teleconference, Video Conference, or other electronic media facilities that allow all GMS participants to see and hear each other directly, is one of the policies issued by the government in this case.

According to article 12 paragraph (1) of Financial Services Authority Regulation Number 16/POJK.04/2020, which states that the Deed of Minutes of the GMS electronically must be made in the form of a Notary Deed by a Notary registered with the Financial Services Authority without requiring the signature of the GMS participants, the results of the Deed of Minutes of the GMS in the implementation of the E-GMS are the Notary Deed. Additionally, the E-GMS service must at the very least submit electronic papers to a notary who made it, and they are:

1. The list of shareholders who attended the GMS electronically;
2. The list of shareholders who are being electronically represented during the GMS;
3. Recapitulation of the quorums for decision-making and attendance; and
4. Recording transcript of all of the interactions done during the E-GMS, to be transcribed as an attachment within the Minutes of Deeds

In particular, the function of notaries in carrying out their positions in line with the Law concerning Notary Positions is hampered by the hosting of the E-GMS, which also leads to several legal issues. A notary will undoubtedly encounter many issues when performing their duties, including those relating to the legality of the deed, ethical issues, conflicts of interest, and many more. However, the existence of technology advancements will undoubtedly introduce a new stage of diverse issues. Therefore, on this occasion, this study will attempt to discuss in relation to the application of this technological development to the activities of the Limited Liability Company GMS that were conducted through electronic media, along with the outcomes of the E-GMS from the point of view of notarial practice. So you can see the problem in this article regarding analyzing the authenticity of the deed of minutes of the General Meeting of Shareholders made electronically and the validity of the notary's signature in the deed of the General Meeting of Shareholders made electronically, because the validity of a deed is very necessary for those concerned about the deed because it relates to legal certainty. (Dewi, 2016)

RESEARCH METHOD

This study is an example of descriptive legal normative research. Examining library resources or secondary data is how normative legal research is accomplished (Soekanto, 1986). The function of a notary in the legality of creating an electronic GMS deed and its legal ramifications are thus examined and analyzed in this paper. A normative juridical approach is employed as the research methodology, and literature writing is done by looking for secondary data utilizing primary, secondary, and tertiary legal materials. The information was evaluated using a qualitative normative approach, which involved describing and interpreting the information in light of the ideas and doctrines of legal science, particularly the E-GMS deed executed by a Notary. Regarding the technique of collecting legal materials that the authors use in this study, namely by studying the literature. The legal material obtained is related to the issues to be examined and then discussed through descriptive analysis techniques, by describing or describing the data that has been collected as it is. Problems that arise and have occurred are adjusted to existing regulations with the aim of finding legal validity which will result in legal certainty and legal protection for the parties concerned. (Sonata, 2014)

FINDINGS AND DISCUSSIONS

A. NOTARY'S ROLE IN THE CREATION OF ECELETRONIC GMS DEED

According to Article 1 Point 1 of the UUJN Law, a notary is a public official who is qualified to do legal acts and execute powers set out in this law or other statutory rules. This implies that, as long as the authority is legitimately granted to the Notary by the law, the Notary may exercise extra powers in the course of performing his duties as a public official in addition to those set forth in the UUJN Law.

The UUJN Law explains in Article 15 paragraph (1) that a notary is qualified to create an authentic deed, specifically:

- (1) Notaries are authorized to create Authentic Deeds for all actions, agreements, and clauses required by the laws and regulations and/or desired by the interested parties to be stated in the Authentic Deed, guarantee the certainty of the date of creation, keep the Deed, provide grosse (copy of Deed for acknowledging debt), copies, and quotations of the Deed, all of which are provided as long as the creation of the Deed is not also assigned or excluded to other parties.
- (2) In addition to the authorities as referred to in paragraph (1), a notary is also authorized to:
 - a. Register the deed in a specialized book to authenticate the signature and ascertain the letter's date;
 - b. Keep the deeds of Onderhand by recording them in a personalized book;
 - c. Create a duplicate of the original Onderhand deed that makes a description of how it is written and explained in the relevant letter;
 - d. confirming the correspondence between the copy and the original letter;
 - e. provide legal guidance in regards to the creation of the deed;

- f. Make a deed related to land; or
- g. Make a Minutes of Auction Deed.

There are authorities that are not only regulated by Article 15 of the UUJN Law but also by other laws and regulations (that are not part of the UUJN Law), considering that the relevant laws and regulations stipulate that such legal actions must be brought with a Notary Deed. The General Meeting of Shareholders (GMS) case essentially goes back to the fundamental principle of the Notary, which is that the Notary can only perform a deed in accordance with the request or will of the interested party. The Notary can only create a deed based on a request from a party, in this example a Limited Liability Company through the Board of Directors, because the involvement of a Notary in a GMS is not specifically specified as to whether or not it is required. The interest of the parties involved should essentially determine the Notary's position in a GMS. That a Notary can act in his capacity when judged according to his status:

- a. a notary who creates a deed in accordance with the testimony of the witnesses, or;
- b. a notary who creates a deed based on what he physically observed and witnessed.

The notary can only exercise their authority or position once the Deed of Minutes of the Meeting prepared at the GMS has been completed and submitted to the notary for the creation of resolutions in the form of a Deed of Statement of the Meeting that fall under the Deed of Parties or Partij category, if the notary was not invited or requested to the GMS at the time it was conducted. However, if a notary is invited or summoned to the general meeting of shareholders of a limited liability company, the notary acts as a notary who witnesses firsthand legal proceedings in the form of a meeting held by a limited liability company and can make a Deed of Minutes of the Meeting against the person in question. The Financial Services Authority issued Financial Services Authority Regulation Number 16/POJK.04/2020 concerning the Implementation of the General Meeting of Shareholders Electronically for Public Company in addition to the notary's role in holding the GMS as previously described, due to the rapid advancement of information technology. The holding of the GMS via teleconference media, video conferences, or other electronic media facilities that enable all GMS participants to see and hear one another in person has been governed by the law surrounding limited liability organizations. The Implementation of the Electronic GMS is governed by Financial Services Authority Regulation Number 16/POJK.04/2020.

The system given by the Company or the E-GMS provided by the E-GMS Provider is used to implement the E-GMS. The E-GMS Provider is the entity that controls the E-GMS and includes the following:

- a. A Depository and Settlement Institution chosen by Financial Services Authority; alternatively,
- b. Other parties given Financial Services Authority approval.

There are procedures for the electronic implementation of the GMS in the Financial Services Authority Regulation that, in person, the GMS must be attended by at least:

- a. The head of the GMS
- b. 1 (one) member of the Board of Directors and/or 1 (one) member of the Board of the Commissioner
- c. Capital market supporting profession that assists the implementation of the GMS.

The phrase "In Person" denotes that the GMS leadership, members of the Board of Directors/Board of Commissioners, and supporting professionals must be physically present in a same room rather than participating virtually (cyberspace). The rules in both the UUPT Law and the GMS implementation section at the Financial Services Authority show that, in general, if it involves a Notary, neither conventional nor electronic GMS require the Notary to attend physically or via electronic medium. The technical presence of a Notary is not addressed in the UUPT Law, nor is it in the Financial Services Authority Regulation, where it turns out that Article 8 Paragraph 2 Financial Services Authority Regulation Number 16/POJK.04/2020 does not make it apparent that a Notary must be present in person when the GMS is implemented.

Although the function of a notary in the implementation of the E-GMS as mentioned above is not specifically specified, if we look at the current laws, in Article 12 paragraph (1) of the Financial Services Authority Regulation Number 16/POJK.04/2020 it is required that an electronic GMS Minutes Deed be issued in the form of a notarial deed by a notary registered by the Financial Services Authority, without the need of signature from the GMS participants, therefore if we look at the existing provisions, a notary is required to attend the E-GMS if we consider the characteristics of an official deed or relaas deed and relate them to the criteria of this Article. Due to the fact that a Relaas Deed must essentially be made by a Notary instead of before a Notary and that it is not required to be signed by Appraisers in the case of the GMS, as is revealed by the provisions of Article 12 of the Financial Services Authority Regulation; "the GMS Participants do not need to sign the deed made by a Notary."

B. THE LEGAL EFFECT OF ELECTRONIC GMS DEED CREATION

A notary's notarization of a deed does not always make it an authentic deed. This is because the legitimate deed will be converted to an Onderhand deed for certain official purposes, according to legislative regulations. An authentic deed must have the ability to prove its authenticity before it can be considered evidence.

When the deed is created, 3 (three) factors connected to the evidential value must be taken into account. These factors are (Adjie, 2008):

1. Physical (*uitwendige bewijskracht*)
The notary deed's physical capability is its capacity to demonstrate its authenticity as a legal document (*acta publica probant seseipsa*). So long as no other party files a lawsuit that already has permanent legal force, the Notary deed continues to be a legitimate deed when evaluated from the point of manufacturing. The party that disputes it must be able to provide credible evidence at trial that the Notary deed has been flawed ever since it was created. The Notary deed must be regarded as a legitimate deed in its current form due to its physical strength; consequently, no additional proof is required to confirm the Notary deed's legality. Conflicting parties are required to show that the Notary deed was denied. The proof is completed at the time of the court case.
2. Formal (*formale bewijskracht*)
A Notary deed must legally show the certainty of the day, date, month, and year of the discussion, as well as the presence of the parties, witnesses, and notaries. It must also give certainty regarding an event or legal action that the parties carried out. Additionally, this is done to record assertions made by the parties or to establish what the notary saw, heard, or otherwise observed (in opposition to an official deed, deed of relaas, or minutes) (on the deed of parties). Denial of the formal elements of a Notary deed is subject to evidence in a court proceeding, with the burden of proof being solely with the person making the denial.
3. Material (*materiel bewijskracht*)
Until it can be demonstrated differently, the substantive element of a Notary deed, i.e., the validity of the material included in the contents of the Notary deed, must be assumed to be valid (*tegenbewijs*). A declaration and the parties' desire to create an authentic deed are the contents of the notarial deed. The party opposing the notary deed may provide evidence in court to support their rejection of the material parts of the document. The creation of GMS minutes in notarial form by a Notary is a legal act with legal ramifications. Making the GMS minutes in a notarial form by a Notary has the legal consequences of being lawful and having legal certainty.

The minutes of the GMS prepared in a notarial form by a Notary do not contravene the provisions of the UUJN Law or the principle of *Tabellionis Officium Fideliter Exercebo*, according to the author, who believes that they remain legitimate and are able to ensure legal certainty. Minutes of the GMS produced by a Notary in accordance with the *Tabellionis Officium Fideliter Exercebo* principle (a Notary must operate traditionally) must be carried out in the same manner as in the past or as is consistent with established customs. One of them is a Notary who physically attends the GMS in order for the Notary's deed to be counted as a type of Deed of Relaas, which the Notary is required to hear and directly see at the GMS. In accordance with Financial Services Authority Regulation No. 16 of 2020, shareholders not only have the option to participate in the GMS virtually through the E-GMS, but they may also designate a virtual legal representative to represent them in person at the GMS. Because the Notary and the shareholders who gave the power of attorney electronically met in person, the conventional values for the Notary in creating the GMS minutes still apply in this instance. Additionally, the GMS may electronically attach chat logs from meeting participants as proof of textual discussion. The legal position of the deed of minutes of GMS which is carried out through electronic media is an authentic deed and can be used as legal evidence in court because it uses the principle of *lex specialis derogate lex generali* and extensive interpretation.

CONCLUSIONS

The Financial Services Authority issued a regulation, Financial Services Authority Regulation Number 16/POJK.04/2020 concerning the Implementation of the Electronic General Meeting of Shareholders for Public Companies, in response to the existence of a new rule and an emergency that necessitates the continuation of GMS activities. With the help of this regulation, the GMS can now be conducted electronically. According to Article 12 of Financial Services Authority Regulation number 16/POJK.04/2020, Electronic and Notaries are authorized to include each E-GMS outcome in the minutes of the GMS Meeting prepared by a Notary authorized by the Financial Services Authority.

Making the GMS minutes in a notarial form by a Notary has the legal consequences of being lawful and having legal certainty. Because the minutes of the GMS prepared in a notarial form by a Notary do not contravene the provisions of the UUJN Law and the *Tabellionis Officium Fideliter Exercebo* principle, they continue to be legitimate and receive legal certainty. Even if the GMS is conducted electronically, the Notary continues to operate in the traditional manner by integrating theory and practice. The conventional idea, in the author's perspective, is not anything customary, but rather a tradition that exists in the notarial profession. In addition to the basic regulations above, according to the author, the GMS Deed made electronically is an authentic deed if it uses the principle of *lex specialis derogate legi generali* where the *lex generalis* is Article 16 paragraph (1) letter m of the Notary Office Law, while *lex specialis* it is Article 77 paragraph (1) in conjunction with Elucidation of Article 77 paragraph (4) of the Limited Liability Company Law. The deed of the General Meeting of Shareholders can be ratified by a notary after being signed by the parties, and with the fulfillment of the provisions in Article 11 of the Information and Electronic Transactions Law, and the conditions specified in the provisions of Article 77 of the PT Law, as well as ratification by a notary, the deed The function of the General Meeting of Shareholders is to become legal and perfect evidence in court if in the future a legal problem occurs so that the parties concerned do not feel disadvantaged over the deeds drawn up by a Notary. (Wibawa, 2021)

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Aprilia Ari Putri
Notary Study Program
Faculty of law, Universitas Sebelas Maret, Indonesia
Email: apriliaariputri96@gmail.com

Adi Sulistyono
Notary Study Program
Faculty of law, Universitas Sebelas Maret, Indonesia
Email: adi_sumo@yahoo.id