

GENERAL MEETING OF SHAREHOLDERS (GMS) IMPLEMENTATION VIA VIDEO CONFERENCE REVIEWED FROM THE LAW OF NOTARY POSITION

Grace Intan Permatasari
Albertus Sentot Sudarwanto

ABSTRACT

This study aims to explain the conflict of norms in holding a General Meeting of Shareholders (GMS) via video conference in terms of the Notary Office Law and the authenticity of the deed of the minutes of the GMS held via video conference made by a Notary. The research method is normative juridical. Source of data used is secondary data. The approach used is a statutory approach and a conceptual approach. The results of this study are that there is a norm conflict between Article 77 of the PT Law and Article 16 paragraph (1) letter m of the Notary Office Law, where Article 77 states that GMS can be held via electronic media, one of which is video conferencing, but in Article 16 paragraph (1) letter m of the Notary Office Law states that the Notary is required to be physically present, but with the ITE Law stipulating that electronic signatures have legal force and legal consequences, as well as exceptions in Article 6 of the ITE Law, and when analyzed using the lex specialist derogate legal generally principle, it can be concluded that the provisions in Article 16 paragraph (1) letter m only apply to deeds other than the GMS deed as stipulated in Article 77 paragraph (1) jo. elucidation of Article 77 (4) of the PT Law. Meanwhile, the Minutes of the GMS via video conference have the power of authenticity because they are a release deed, which requires only the notary to sign the signature and does not require the parties to sign the deed, while the Deed of Statement of GMS Resolutions via video conference can only be held if the material The GMS regarding amendments to the Articles of Association, and has authentic power if the GMS process via video conferencing complies with Article 77 of the PT Law and other related regulations, has fulfilled the requirements stipulated in Article 11 of the ITE Law, regarding matters such as electronic signing, the place of signing, as well as the reading of the deed, this must be stated explicitly at the end of the deed.

Keywords: Deed Authenticity, Notary, General Meeting of Shareholders, Video Conference.

INTRODUCTION

Science in the field of digital technology in Indonesia is currently experiencing very rapid development. This can be seen from the ease and efficiency in work and daily activities with the sophistication of technology and communication. The digital technology revolution is another term for industry 4.0, referred to as the "digital revolution" because of the proliferation of computers and automation of records in all fields (Wibawa & Yogantara, 2021). The rapid development of digital technology has also had an impact on legal developments in Indonesia, where, in carrying out legal relations, the interested parties do not have to meet face to face, but simply use electronic and internet media as a means. One of the opportunities in the field of law with the development of digital technology is the acceptance of electronic media such as teleconferences or video conferences as a means for holding General Meetings of Shareholders (GMS), as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies (Law PT) Article 77 paragraph (1), which states that apart from holding a GMS face-to-face or conventionally as stipulated in Article 76, a GMS can also be held via teleconference media, video conferences, or other electronic media facilities that allow all GMS participants to communicate with each other. see and hear directly and participate in meetings.

For every GMS held through electronic media, Article 77 paragraph (4) of the PT Law mandates that the minutes of the meeting must be made out of the GMS, which is approved and signed by all GMS participants. Then in Article 21 paragraph (4) of the PT Law, it is stipulated that the minutes of the GMS regarding changes to the Articles of Association must be contained or stated in a notarial deed and in the Indonesian language. This means that the Notary has an obligation not only to make deeds of minutes of GMS which is done conventionally, but also to make deeds of minutes of GMS which is done via electronic media. A notary is a state official or public official who is appointed by the state to carry out state duties in providing legal services to the community in order to achieve legal certainty as an official who makes authentic deeds in civil matters (Fasya, 2022). Notary deed is an authentic deed made before a Notary according to the procedure or form that has been stipulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (Notary Office Law), and the Notary in carrying out One of the duties and authorities of his position is that the procedure and form in making a deed must be based on the Notary Office Law.

The consequence of the GMS being held through electronic media, one of which is video conferencing, is that all meeting participants are not present in person and are not in the same place, even though Article 16 paragraph (1) letter m of the Notary Office Law stipulates that a Notary has an obligation to read the deed before the appearer, attended by at least 2 (two) witnesses, or 4 (four) witnesses for the making of a private will, and signed at the same time by the appearer, witness, and Notary. Arrangements regarding GMS which can not only be held conventionally but also through electronic media, do accommodate developments in digital technology that are developing at this time, but due to the Law on Notary Position as a legal norm governing the duties and powers of a Notary as an official authorized to make a deed out of the minutes of GMS has not yet regulated cyber notaries (Merlyani, 2020), and the making of GMS minutes via video conference as an authentic deed still raises new views among legal experts (Tuasika, 2021), so holding GMS through electronic media, one of which is video conference, can potentially cause problems in the future because of a legal vacuum. Based on the description of the problem, the authority are interested in studying the holding of GMS via video conferencing in terms of the Notary Office Law.

RESEARCH PROBLEMS

1. How is the conflict of norms in holding a General Meeting of Shareholders (GMS) via video conference in terms of the Notary Office Law ?
2. Does the deed of the minutes of the General Meeting of Shareholders (GMS) held via video conference made by a Notary have authentic strength ?

RESEARCH METHOD

The type of research used in this study is a normative juridical approach. The approach used is a statutory and conceptual approach. The data used is secondary data. The data analysis method used is qualitative, and the results of the analysis are presented descriptively, which will then obtain answers to the problems and draw conclusions on the answers to these problems.

DISCUSSION

Conflict of Norms in Organizing General Meetings of Shareholders (GMS) via Video Conference In terms of the Law on Notary Positions

The law on PT stipulates that the holding of a General Meeting of Shareholders (GMS) can be carried out in 2 (two) ways, namely, an ordinary or conventional GMS as regulated in Article 76 and a GMS through electronic media such as teleconferences, video conferences, or other electronic media regulated in Article 77. The electronic medium that will be discussed in this paper is video conferencing. Video conferencing is a method of communication between two or more places with voice, vision, and signal support to convey electronic media for interaction (Putra, 2019). In Article 78 paragraph (1) of the PT Law, it is stated that the GMS consists of the annual GMS and other GMS. Other GMS can be held at any time based on the need for the benefit of the PT as stipulated in Article 78 of the PT Law. Each time holding a GMS by Article 77 paragraph (4) of the PT Law is required to make minutes of the meeting results. Article 21 paragraph (4) of the PT Law stipulates that those who have the authority to make GMS minutes regarding amendments to the Articles of Association are Notaries, so if the material for a GMS meeting is about changes to the Articles of Association and the meeting is held via video conference, a Notary deed must also be made, and the Notary's duties and authorities must be based on the Law on Notary Office, which is the main legal umbrella for Notaries.

Holding GMS via video conference requires the signatures of all meeting participants as stipulated in Article 77 paragraph (4) of the PT Law. Since not all meeting participants are in one place, an electronic signature is needed as a sign of approval from the meeting participants. The procedure for making a deed of GMS minutes through video conferencing, which does not physically bring together parties, witnesses, and notaries, is contrary to the Law on Notary Office Article 16 paragraph (1) letter m which states that in carrying out his position, a Notary is obliged to read the deed before the appearer in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a will under the hand, and sign it at the same time by the appearers, witnesses, and a Notary. In Article 16 paragraph (9) of the Notary Office Law, it also stipulates that if the conditions in Article 16 paragraph (1) letter m are not met, then the deed only has the power of proof under the hand. In addition, in Article 1 Number 7 of the Notary Office Law it is regulated that a Notary deed is an authentic deed drawn up by or before a Notary in the form and procedure stipulated in the Notary Office Law. So it can be seen that there is a norm conflict between the PT Law and the Law on Notary Positions, because in the process of making deed of GMS minutes through video conferencing is done electronically, starting from the presence of the parties, exchanging information through electronic transactions, and using digital signatures, while what is meant in Article 1 point 7 of the Notary Office Law, the use of the words facing, facing, opposite, and before in the Notary Office Law is a translation of the word *verschijnen* which means coming to face what is meant in a juridical sense is a real presence (Wijanarko, Mulyoto, & Supanto, 2015).

Based on the foregoing, it is clear that there is a norm conflict between the Law on Notary Office and the Law on Limited Liability Companies regarding the Notary deed in the GMS which is held via video conferencing. Actually, electronic signatures already have regulations, namely in Law Number 19 of 2016, concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law), where in Article 11 paragraph (1) the ITE Law provides online recognition. It is clear that even though it is only a code, electronic signatures have the same status as manual signatures in general, which have legal force and legal consequences. However, there are restrictions regarding electronic signatures regulated in Article 5 paragraph (4) of the ITE Law, which states that the provisions regarding electronic information and/or electronic documents as referred to in paragraph (1) do not apply to: 1) Legal letters; 2) written; 3) legal letters and documents; 4) must be drawn up in the form of a notarial deed or a deed drawn up by a deed official, for example, all deed products issued by a notary or land deed official. Based on this article, the restrictions given by the UU ITE Law who do not allow electronically made, if documents/documents must require to be made in written form or in a notarial deed in line with those stipulated in Article 16 paragraph (1) letter m of the Notary Law. The notary regulates, the notary must be physically present when reading or signing the deed. Actually there is an exception in Article 6 of the ITE Law that states that if there are provisions other than those stipulated in Article 5 paragraph 4 of the ITE Law that require information to be in written or original form, then electronic information and/or electronic documents are considered valid as long as the information contained therein can be accessed, displayed, guaranteed for integrity, and accounted for in order to explain a situation. The regulation of Article 6 of the ITE Law, when combined with the provisions in Article 77 paragraph (1) and Article 21 paragraph (4) of the PT Law, which stipulates that GMS can be held via electronic media, one of which is video conferencing and that those who have the authority to make deed of minutes of GMS regarding Amendments to the Articles of Association is a Notary, with no requirement that the Notary deed must be in written form, the Notary has the authority to make the deed of minutes of the GMS via video conference, and the deed of GMS via video conference made by the Notary is deemed valid as long as the information contained therein can be accessed, displayed, guaranteed for integrity, and can be accounted for so that it explains a situation.

Moreover, the authority of a Notary under the Notary Office Law does not only make deeds, but also has other powers. In order to adapt to the needs of technology and information development, through the interpretation of Article 15 paragraph (3) of the Notary Office Law, it can be ensured that a Notary has the right to authenticate transactions made electronically, or transactions called "Cyber Notaries." Article 15 paragraph(3) of the Notary Office Law determines that in addition to the powers mentioned in paragraphs (1) and (2), Notaries have other powers, and these powers are regulated in laws and regulations. Article 15 paragraph (3) of the Notary Office Law explains other powers mentioned in this article, namely what is meant by other authorities regulated in laws and regulations, including the authority to verify transactions electronically (Cyber Notary), according to the explanation in this article, the notary has the right to authenticate transactions conducted electronically. As a result, the Notary Office Law still allows for the concept of a cyber notary. However, this provision is only limited to certifying electronic transactions, and there is no regulation that explicitly authorizes a Notary to legalize electronic signatures in making the deed.

The conflict of norms governing the holding of GMS through electronic media and the making of deed of minutes of GMS via electronic media in the PT Law and the Law on Notary Positions can also be analyzed using the principle of preference in legislation *lex specialist derogate legal general*. Principle is used the *lex specialist derogate legal generally* for the conflict between the two laws, then the *lex generalist* is Article 16 paragraph (1) letter m of the Notary Office Law, while the *lex specialist* is Article 77 paragraph (1) jo. Explanation of Article 77 paragraph (4) of the PT Law. With a legal construction like this, the provisions on sanctions contained in article 16 paragraph (9) of the Notary Office Law do not apply, and the provisions in article 16 paragraph (1) letter m only apply to deeds other than the deed of the GMS as stipulated in Article 77 paragraph (1) jo. explanation of article 77 (4) of the PT Law (Dewi, 2016).

Authenticity of the Deed of Minutes of the General Meeting of Shareholders (GMS) Held Through Video Conference Made by a Notary

An authentic deed, according to Article 1868 of the Indonesian Civil Code, is a deed drawn up in a form determined by law by/or in the presence of a public official who is authorized for that purpose, at the place where the deed was drawn up. Regarding the results of the GMS that must be made in the form of a deed, a deed can be called an authentic deed if it fulfills the following conditions (Dewi, 2016):

- a. The form of the deed is in accordance with what is determined by law. In this case, the law that determines the form of the deed is the Law on Notary Office, so the form of an authentic deed must follow Article 38 of the Law on Notary Office.
- b. An authentic deed is made in the presence of a public official appointed by the Minister. In this case, the Notary is a public official who has the authority to make authentic deeds (in accordance with Article 1868 of the Civil Code) and Article 21 paragraph (4) of the PT Law regarding GMS regarding changes to the Articles of Association.
- c. An authentic act is performed by an authorized public official. A notary who is on leave or is being temporarily dismissed is not authorized to make an authentic deed. Likewise, a Notary who has not been sworn in cannot make an authentic deed (the deed becomes an underhanded deed).

The process of making the minutes of the GMS into a Notary deed is possible in 2 (two) ways, namely: First, with an Authentic Deed drawn up directly by the Notary in the form of Minutes of the GMS; second, the minutes of the meeting without presenting a notary are included in the Authentic Deed, namely by making a Statement of Meeting Resolutions (PKR). Based on the provisions of Article 21 paragraph (5) of the PT Law, PKR is made no later than 30 (thirty) days from the date of the GMS decision (Lubis, 2021). In making a deed, it is mandatory for a notary to comply with the provisions in the Notary Office Law, one of which is Article 16 paragraph (1) letter m, which stipulates that a notary has the obligation to read the deed and that a notary must also be physically present and sign the deed in the presence of witnesses. Without the presence of the notary when the deed is read in the presence of the parties and witnesses and is not signed at that time by the appearer, witness, and notary, the deed will lose its authenticity (Merlyani, 2020).

Minutes of GMS (including video conferencing GMS) are the *Relaas Deed* (made by a notary). In the deed, the Notary explains/ provides in his position as a public official the testimony of all what he saw, witnessed, and experienced, which was done by other parties. Minutes of the GMS, including the GMS video conference do not require the signatures of the parties but must be signed by the Notary as the maker of the deed. In the case of making the Deed of Minutes of the GMS, the results of the meeting conducted by teleconference must be attended directly by the Notary from the beginning to the end of the GMS to record all legal actions that occurred during the implementation of the GMS. The GMS is attended by directors, shareholders, and Notaries, and the GMS is held face to face, but for a video conferencing GMS the face-to-face element is fulfilled not face to face physically but by using a monitor screen. The presence of the parties at a GMS via video conference media can be interpreted by the presence of directors, shareholders, and a Notary in a room where the video conference is taking place, in other words, all parties meet face-to-face in front of the Notary and the meeting participants are present at the meeting before a Notary. The notary must explain that the implementation of the GMS is held via video conference, explaining the time of the GMS, the place where the GMS is held, the participants of the GMS meeting, and the resolutions of the GMS meeting held via video conference. If there are meeting participants who leave the GMS room via video conferencing, the Notary is obliged to explain in the Deed of Minutes he made that there are participants who leave the GMS meeting by explaining various reasons. So in the GMS Minutes, including the GMS via video conference, signatures from all shareholders are not required as required in Article 77 paragraph (4) of the PT Law, but it is enough to be signed by a Notary because this Deed is a *Relaas Deed*, which is the responsibility of a full Notary (Adjie, 2009).

According to the elucidation of PT Law Article 77, paragraph 4, what is meant by "approved and signed" when holding GMS via videoconferencing is whether it is approved and signed physically or electronically. Based on the form of an authentic deed stipulated in Article 38 of the Law on Notary Office, at the end of the deed a description of the reading of the deed related to Article 16 paragraph (1) letter m of the Law on Notary Office and a description of the signing and place of signing must be stated, and then related to the minutes of the GMS held via video conference must be stated explicitly at the end of the deed regarding electronic signing and the place of signing. This is intended so that the deed made can be authenticated by fulfilling the provisions regarding the form of the deed in Article 38 of the Notary Office Law. So at the GMS via video conferencing, because the place for the GMS participants is different from the other participants, this must be explicitly stated so

as not to result in the deed becoming an underhanded deed. Electronic signatures also have legal force and legal consequences as stipulated in Article 11 of the ITE Law, if these provisions are linked to the deed of minutes of the GMS, and the electronic signature meets the requirements as stipulated in Article 11 affixed to the deed of minutes of the GMS, the legal consequence is that the deed of minutes of the GMS becomes valid and has legal force because it has been verified and tested for authentication through a valid electronic signature (Fasya, 2022).

Based on the explanation above, there is no problem with the GMS Minutes via video conference because the GMS Minutes are a voluntary deed which does not require the parties to sign the deed, but only the Notary is required to sign the deed. As for the deed of transmitting the Statement of Resolutions of the General Meeting of Shareholders via video conference, as explained in the elucidation of Article 77 paragraph (4), affixing signatures can be done physically or electronically, and electronic signatures, by Article 11 of the ITE Law are declared to have legal force, and legal consequences as long as they meet the requirements stipulated in Article 11 of the ITE Law, even though the Law on Notary Office has not been specifically regulated regarding electronic signing, which creates a legal vacuum, and in Article 16 paragraph (1) letter m of the Law The Notary's position also requires that the signing of the appearers be carried out physically in the presence of a Notary and witnesses, but if it adheres to the principle *lex specialis derogate legi generali*, Where the PT Law is *lex specialis* from the Law on Notary Position, then if the GMS regarding changes to the Articles of Association through video conferencing has been implemented in accordance with the procedures stipulated in the Limited Liability PT Law and other related regulations, and the form of the deed is in accordance with Article 38 of the Notary Office Law and electronic signing, where the signing and reading of the deed are expressly stated at the end of the deed, and the signing and reading of the deed are expressly stated at the end of the deed, then the deed of minutes of the GMS via video conference is an authentic deed, as long as the parties express their agreement and it is included in the deed. Arrangements for making notarial deeds via video conferencing in the future must begin to be able to keep abreast of developments in Indonesia, especially in the notary world, so that the notary's function can run efficiently, practically, and legal certainty for the parties can be maintained. In the future, it is hoped that not only the deed of the GMS regarding amendments to the Articles of Association can be made electronically, but other notarized deeds can be done electronically.

CONCLUSION

There is a conflict of norms governing the holding of GMS via video conferencing, namely in the PT Law Article 77 paragraph (1) which stipulates that GMS can be held through electronic media, one of which is video conferencing, and the Notary Office Law which stipulates that a Notary in exercising its authority to make a deed must fulfill one of the obligations stipulated in Article 16 paragraph (1) letter m regarding a Notary who must be physically present and the signing must be carried out at that time in the presence of appearers, Notaries, and witnesses. With the arrangements regarding electronic signatures regulated in the ITE Law, and exceptions in Article 6 of the ITE Law, and when using the *lex specialis derogate legi generali* principle, it can be concluded that the provisions in Article 16 paragraph (1) letter m only apply to deeds other than the GMS deed as stipulated in Article 77 paragraph (1) jo. elucidation of Article 77 (4) of the PT Law.

There is no problem with the authenticity of the Minutes of the GMS via video conference because the Minutes of the GMS are a voluntary deed, which does not require the parties to sign the deed, but only the Notary is required to sign the deed. Whereas the authenticity of the deed of GMS Decision Statement via video conference can only be carried out if the material of the GMS is about changes to the Articles of Association and has authentic strength if the GMS process via video conference is in accordance with Article 77 of the PT Law and other relevant regulations and meets the requirements set forth in Article 11 of the ITE Law, and regarding matters of electronic signing and the place of signing, as well as the reading of the deed, must be stated explicitly at the end of the deed.

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Grace Intan Permatasari
Notary Study Program
Faculty of Law, Sebelas Maret University, Indonesia
Email : graceintan95@gmail.com

Albertus Sentot Sudarwanto
Faculty of Law, Sebelas Maret University, Indonesia
Email : alsentotsudarwanto@yahoo.com