

Formulation of the Regulation of the Function and Role of the Notary in Electronic General Meetings of Shareholders

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ABSTRACT

Legal politics in the era of technological development, makes the legal profession, especially notaries, have to keep up with the times. A notary in carrying out his position as a Notary utilizes technology to facilitate the implementation of that position. Notaries as public/state officials have the authority to make authentic deeds. Notaries in carrying out their profession are required to adapt and keep up with the times, the goal is to be able to face the challenges of global competition. As time goes by, of course Science and Technology (Science and Technology) continues to develop, so that there are facilities such as internet networks and electronic media that can be used for two-way communication and make it possible to see each other such as chat, teleconference and video-conference . GMS can also be held via teleconference, considering cost and time efficiency. Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies regulates things that can be done through teleconference media regulated in Article 77 Paragraph (1) of the PT Law so that it allows shareholders to hold GMS without having to meet in person and be in one place but can carried out by teleconference which allows shareholders to see each other and actively interact in meetings. The method used in this research is normative legal research which is carried out as an effort to obtain the necessary data related to the problem. The data used is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. In addition, primary data is also used to support secondary data legal materials. Data analysis was carried out using qualitative juridical analysis methods. From the results of the study can be obtained that the GMS held by teleconference is invalid because it violates the provisions in Article 16 paragraph (1) letter m UUJN which requires the physical presence of the parties in the process of preparing an authentic deed so that the power of proof of the deed under the hands as a result of an act committed not in accordance with Article 16 Paragraph (1) letter m. Notaries in this case have roles and functions related to cyber notaries. The deed of the GMS was made with a cyber notary and the signing is permissible and legal to do because in Article 77 of the PT Law it is very clear that it is regulated, especially the signature gets legal protection provided by the ITE Law but the Cyber notary has not been fully supported by legislation in Indonesia, although there is a possibility, it cannot be carried out because it is limited by other laws, so cyber notaries cannot be implemented legally in Indonesia. There is still a need for specific arrangements regarding cyber notaries in Indonesia.

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I. Introduction

The law on limited liability companies in Indonesia has undergone several changes. Every time a law is changed, we need to know how the change will affect the legal actions that have been carried out under the old law. Particularly in the field of limited liability companies, we need to

know how the new law affects limited liability companies that have been established based on the old law. Henceforth the term Limited Liability Company is referred to as "PT". The Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies or what is often referred to as the PT Law, is a legal reform regarding the economy, especially in the trade sector. So, before the UUPT No. 1 of 1995, in Indonesia, several provisions in the Criminal Code apply to limited liability companies, (Weetboek van Koophandel, S. 1847:23). Because the provisions in the Criminal Code as far as limited liability companies are considered to be no longer in accordance with economic developments and the business world, although there has been a slight change, it is deemed necessary to update the regulations on limited liability companies. The aim of reforming the regulation of the PT Law is to create laws that are conducive to national development.

Limited Liability Company is a company whose capital consists of shares and responsibilities of limited shareholder partners, which are in accordance with the number and percentage of shares owned. In a Limited Liability Company which is a form of company regulated and protected by the Criminal Code. Limited Liability Companies must be established by notarial deed, with the threat of being illegal if this is not the case. A Limited Liability Company must comply with the laws and regulations that govern it and the Articles of Association made at its establishment and their amendments. Therefore, the Notary has a very important role to serve the public in terms of drawing up deed of establishment and GMS which serve as evidence or as a legal requirement to carry out certain legal actions.

It is unavoidable that information technology and electronic transactions are the spearheads of the era of globalization which is now sweeping almost all over the world. Technological progress and development will ultimately change the organizational structure and social relations because the development of digital technology has resulted in integration or convergence in the development of information technology, media and telecommunications. GMS can also be held through teleconferences, video conferences, or other electronic media facilities that allow all GMS participants to see and hear each other directly and participate in the meeting. This has been regulated in Article 77 Paragraph (1) of the PT Law. The GMS itself is a company organ that has powers that are not granted to the Board of Directors or the Board of Commissioners within the limits specified in this law and/or the articles of association. Minutes of each holding of the GMS must be made. A GMS whose minutes are not made is invalid and is considered to have never existed so that as a result matters decided and stipulated at the GMS cannot be carried out. The minutes of the GMS are then set forth in the form of a notarial deed, which can also be done by means of a notary attending the GMS activities. So that in this case, the Notary witnessed and heard for himself the process of running the GMS, so that when he made the deed, the deed was included as an authentic deed.

Notaries in carrying out their positions are also obliged to act in a trustworthy, honest, thorough, independent, impartial manner, and protect the interests of parties involved in legal actions in accordance with laws and regulations and the Notary Code of Ethics. The essence of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Office of a Notary and its amendments to the Law of the Republic of Indonesia Number 2 of 2014 (hereinafter referred to as UUJN), is to state that a notary deed is an authentic deed made by or before a notary according to the form and procedures stipulated by this law. Furthermore, in carrying out his position, the Notary is obliged to read the deed before the appearer attended by at least 2 (two) witnesses and signed at the same time by the appearer, witness and notary. Thus, it is possible for the notary to experience bad faith and unwanted consequences. Provisions regarding the reading of the deed are regulated in Article 16 Paragraph (1) letter m UUJN.

Judging from the background that has been presented above, there is an imbalance between the law in the form of the UUJN and the PT Law that applies (*das sein*) and in practice, especially when it is associated with the expected law (*das sollen*) which upholds legal protection, legal certainty and justice. for Notaries.

II. Method

This study uses a normative juridical method supported by empirical juridical namely research based on regulations, norms, principles, rules and other relevant legislation, with the function and

role of a notary in an electronic GMS in this study the object of research is legal norms, both in statutory regulations with related problems. To support this research by processing data from books and literature and also using literature to make this research a normative based research.

Referring to the legal issues of this research, two approaches are used, namely, the statutory approach and the analytical approach. The purpose of using these two approaches is to find out and analyze definitions or meanings of law, principles, rules, legal systems and various juridical concepts. This analytical approach is carried out in order to have a deeper understanding of definitions and matters related to law and also to be able to analyze from a legal point of view more accurately. The nature of the research conducted by researchers and writers is analytical descriptive, namely describing the provisions contained in legal theory and regulations based on legislation, namely describing the functions and roles of notaries in electronic GMS.

Data collection was carried out through library research and field research. The data analysis technique used is qualitative data analysis. In qualitative research which aims to find cultural patterns that make life meaningful for people or society, the research technique used is literature such as laws and regulations, books, journals, scientific research, and court decisions.

III. Result and Discussion

A. *The validity of Electronic GMS*

Significant developments in trade through business and business activities have made business or business actors cooperate by forming a company. The company is a form of business entity. In general, the division of business entities in carrying out business activities in accordance with the provisions of the laws and regulations in force in Indonesia are grouped into 2 (two) major parts, namely business entities with legal entities and business entities that are not incorporated. Business entities with legal entities such as Limited Liability Companies (hereinafter referred to as PT), Cooperatives, Foundations, Associations, Public Companies, Public Companies, and State-Owned Enterprises. PT is a legal entity whose establishment requires a deed of establishment drawn up by a Notary, as an authorized public official. Then, the establishment must obtain approval from the Minister of Law and Human Rights of the Republic of Indonesia (hereinafter referred to as the Minister of Law and Human Rights of the Republic of Indonesia). PT management can become the company's shareholders, unless otherwise specified. PT management must be appointed and dismissed based on the General Meeting of Shareholders (hereinafter referred to as the GMS). Likewise regarding changes to the company's articles of association which must be based on the GMS. Then, any changes to the articles of association must obtain approval from the Minister of Law and Human Rights of the Republic of Indonesia. PT management must be appointed and dismissed based on the General Meeting of Shareholders (hereinafter referred to as the GMS). Likewise regarding changes to the company's articles of association which must be based on the GMS. Then, any changes to the articles of association must obtain approval from the Minister of Law and Human Rights of the Republic of Indonesia. PT management must be appointed and dismissed based on the General Meeting of Shareholders (hereinafter referred to as the GMS). Likewise regarding changes to the company's articles of association which must be based on the GMS. Then, any changes to the articles of association must obtain approval from the Minister of Law and Human Rights of the Republic of Indonesia.

GMS has a residual nature, which means that authority is not given to the Board of Directors or the Board of Commissioners, within certain limits set by the Company Law and the Articles of Association of PT. This is evident in Article 75 Paragraph (1) of the PT Law. GMS is a meeting held by the Directors of the PT every year or at any time based on the interests of the PT, or at the request of the shareholders in accordance with the provisions of the Articles of Association. Based on the provisions of Article 78 Paragraph (1) of the Company Law, there are 2 (two) types of GMS, namely the annual GMS and the extraordinary GMS. The implementation of the GMS, means the process of carrying out the GMS, both physical and administrative actions, from start to finish. The process of carrying out the GMS consists of the process of calling it up to preparing the minutes of the meeting and signing it.

The Notary's obligation in implementing the General Meeting of Shareholders is to formulate or formulate what was heard and witnessed by the Notary as a public official and then put it into an

authentic deed which is legally correct and valid, in accordance with the provisions of the applicable laws and regulations. Not only that, in the implementation of the GMS, the Notary is required to carry out his function and role as a public official who functions as a legal adviser in his field by providing explanations and advice to the parties so that the deed he makes becomes valid in accordance with the provisions of the applicable laws and regulations. In Article 77 Paragraph (1) of the PT Law, it states that GMS can be held by means of teleconferences, video conferencing,

The provisions in the Article above which allow holding a GMS by teleconference media are contrary to the regulations contained in the UUJN. Contradictions or conflicts of norms will occur if the Deed of Minutes of the GMS through the teleconference media will be poured into an authentic deed. Norm conflicts will occur between Article 77 Paragraph (1) of the UUPT and Article 16 Paragraph (1) letter m UUJN, the core of this article states that a Notary has obligations, among others, to read the deed in front of appearers attended by at least 2 (two) witnesses and at that time it was also signed by the Notary witnesses and appearers. The conflict resulted in the implementation of the GMS via teleconference and the Deed of Minutes could not be made considering the provisions of Article 16 Paragraph (1) letter m UUJN, The notary must be physically present and sign the deed before the appearers and witnesses. Also, the mechanism for making the Deed of Minutes of the GMS via teleconference by a Notary is carried out with the participation of the Notary via teleconference from the beginning to the end of the GMS which is based on an invitation from the Board of Directors and the Notary's Office area.

This is because Article 16 Paragraph (1) letter m UUJN states that the reading of the deed must be carried out in front of the appearers and attended by at least 2 (two) witnesses, and in the explanation it is stated that the Notary must be physically present and sign the Deed before appearers and witnesses. The word is physically present, if translated word for word, that is present and physically. Present means existing or coming. While the word physical means body / body, so that it means to be physically present, namely physically present, in other words tangible or physically visible.

B. Electronic GMS Authentic Deed

The power of law is very important, especially for the strength of proof of a piece of evidence. Regarding proof, in general it is related to civil matters, but this is related to the duties and functions of a Notary in his profession as a public official who with his deeds creates a means of written evidence and has an authentic nature. An authentic deed is an absolute means of evidence contained in Article 1870 of the Civil Code, which means that it has the strength of perfect evidence because it is considered attached to the deed itself so that it does not need to be proven again and for the judge as mandatory/obligatory evidence. Terms of authenticity that must be met in order for a deed to be classified as an authentic deed are:

1. The deed must be made by (door) or before (ten overstaan) a public official;
2. The deed must be made in the form determined by law;
3. The public official by or before whom the deed was made must have the authority to make the deed.

An authentic deed has 3 (three) types of evidentiary powers, including:

1. The Power of Formal Proof (Formele Bewijskracht)
2. The Power of Material Proof (Materiele Bewijskracht)
3. Outward Proof Strength or Outward Proof Power (Uitwendige Bewijskracht)

The development of digital technology is increasingly rapid, making it no longer appropriate to require face-to-face contact between the contracting parties, but it is sufficient to use the internet. The birth of the PT Law accommodated aspirations and accommodated the development of information technology by accepting electronic media such as teleconferences or video conferencing as a means to conduct GMS. The GMS using teleconference as regulated in Article 77 Paragraph (1) of the PT Law cannot be applied as a deed of relaas/official deed by a Notary due to physical absence. However, the deed of minutes of the GMS can be stated in a partij deed/deed of the parties drawn up before a notary. Where a PT has previously held a GMS via teleconference media at the place where the PT is located and the results of the GMS have made an official report signed by all meeting participants electronically.

Meanwhile, an authentic deed is declared valid if it has been prepared, read and signed by the relevant parties as stated in UUJN. As for violations committed if the reading of the deed is not carried out by a Notary, then the deed will have the power of proof as a deed under the hand or in other words the deed has lost its authenticity. This has been regulated in Article 16 Paragraph (9) UUJN which reads:

"If one of the conditions referred to in paragraph (1) letter m and paragraph (7) is not met, the deed concerned only has the power of proof as a private deed"

The existence of Article 16 paragraph (7) UUJN, can lead to different perceptions where there is no obligation for a notary to read the deed because the deed is read by the parties themselves at the will/desires of the parties themselves. However, this has been explained again in Article 16 Paragraph (8) UUJN that even though the parties want the deed to be read alone, the Notary still has the obligation to read the head of the Deed, make comparisons, explain the main Deed briefly and clearly, and close the Deed. Thus, these things are in contrast to the existence of rules in UUJN which require the physical presence of appearers before a Notary, if this is violated it will have the following consequences:

1. The status of an authentic deed will be a deed under the hand;
2. There will be a lawsuit against a notary by service users in the future;
3. The potential for sanctions that must be faced by a notary for not carrying out orders in accordance with the notary's office law.

Based on Article 77 Paragraph (4) of the Company Law, it can be seen that when holding a GMS by teleconference, minutes of meetings must be prepared and must be agreed upon and signed by all participating members of the GMS based on that provision. It should be noted that there are differences in the preparation and signing of the Deed of Minutes of GMS by teleconference with conventional GMS and in the elucidation of Article 77 Paragraph (4) of the Company Law it is explained that the intent of being approved and signed is to be approved and signed physically or electronically. Referring to that article, the GMS by teleconference can be signed by:

1. Physically signed for all GMS participation;
2. Electronically signed for all GMS participation; and/or
3. Partially signed by the participation of the GMS physically and electronically.

GMS by teleconference can only be applied in the form of a deed of the parties by a Notary because it is contrary to the provisions of Article 16 Paragraph (1) letter m UUJN which requires physical presence and signing the deed before appearers and witnesses.

C. Functions and Roles of Notaries in Electronic GMS

Notaries are appointed as public officials by the authorities/state to carry out public duties in the sense of providing services to the general public in the field of civil law. Article 1 UUJN is a statutory regulation which contains the notion of a notary which states that a notary is a general position that acts in making authentic deeds and has other duties as stated in the relevant regulations. Notary is a public official authorized to make authentic deeds and other authorities as referred to in Article 15 UUJN. The position of a Notary as a public official means that the authority that exists with a Notary has never been given to other officials as long or as long as this authority is not given or does not become the authority of other officials in making authentic deeds and other authorities, then this authority becomes the authority of the Notary.

The development of computer technology and communication technology, where various computers can be connected by forming a computer network that leads to the development of the internet. Based on the development of information technology, a new legal regime was born, known as cyber law or telematics law. Based on these phenomena, the concept of cyber notary emerged. Where the concept of cyber notary relates to the implementation of information technology-based notary authority. In another statement it was stated that the essence of cyber notary is about how to take advantage of technological advances for notaries in carrying out their daily tasks, such as:

- a. document digitization;
- b. signing the deed electronically;

- c. implementation of the General Meeting of Shareholders by teleconference; and
- d. other similar things.

In UUJN, there is still no normative definition of cyber notary. So in this case, the concept of cyber notary can refer to the understanding of experts. In a legal vacuum, of course, it will have an impact on cyber notary institutions, giving rise to difficulties in carrying out one of the notary's powers. The concept of cyber notary itself has no meaning limits, so in this case the provisions contained in UUJN on cyber notary result in it not being implemented.

With the possibility of GMS by teleconference, but there are still things that are not allowed to hold GMS by teleconference, namely if to sell/transfer company assets because all of this requires written permission from the Directors of a PT and the approval is clearly and clearly carried out before a Notary, namely by proof of signing the agreement on the agenda of the meeting in front of a Notary, that the signature must be ensured on the document to be signed and not a pasted/falsified signature, and a deed called a deed partij is drawn up. The GMS that uses teleconference is the GMS which is generally attended by a Notary, so that in its implementation it is the Notary who makes the Deed of Minutes of the GMS, so that the signatures of the parties are not required to be included.

IV. Conclusion

From the research that has been done above, it is concluded that:

1. The validity of the electronic General Meeting of Shareholders (hereinafter referred to as GMS) according to Article 77 Paragraph (1) of the Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the PT Law) is valid according to these provisions. This is in line with the fact that in this provision that the electronic GMS is a renewal of the method for obtaining decisions that follows today's technological developments. However, according to Article 16 Paragraph (1) letter m of the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN), the validity of electronic GMS is invalid. This is because under these provisions, The notary must read the deed before the appearer attended by at least 2 (two) people and signed by the appearer, witness and notary. The words "in front of" and "attended", here mean that it must be done face to face or physically.
2. In the minutes of the GMS, it takes the form of an authentic deed, namely the Deed of Minutes of the GMS made by a Notary in his position. Thus, in this case the Deed of Minutes of the GMS is referred to as the Official Deed. An authentic deed has legal force or perfect proof power. With the existence of an electronic GMS through teleconference media, stating that the minutes of the GMS can only be made by private deed which is then legalized or confirmed by an authentic deed. Thus, this deed is called the deed of the parties, because it is in accordance with the information or will of the parties.
3. The functions and roles of a notary prior to the existence of an electronic GMS were carried out as evident in the provisions of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Office of a Notary and its amendment, namely the Law of the Republic of Indonesia Number 2 of 2014 (hereinafter referred to as the Law on the Position of a Notary). However, with the newest GMS, namely an electronic GMS, the function and role of a Notary is no longer appropriate as stipulated in the Notary Position Law. However, the Notary in these circumstances keeps abreast of technological developments with the latest laws and regulations. After the electronic GMS, the Notary does not need to come to the GMS place, only through electronic media, the Notary can see, hear and witness the circumstances and/or decisions that occurred at the GMS.

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