

## Legal Certainty of Deeds Made by Notaries Using Teleconference Documents Based on the Notary Office Law



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**ABSTRACT:** The development of information and communication has a significant impact on the development of law in the State of Indonesia and the development of advances in terms of technology that greatly affect the work environment for Notaries, namely the possibility of making Notary deeds with virtual and cyberNotary implementation in making deeds. The author in this case uses research in a normative legal manner. Matters to be discussed include how the procedures for general meeting of shareholders via Teleconference based on the Limited Liability Company Law and what are the legal consequences of the deed made by a Notary based on Teleconference documents. The preparation of minutes of Meeting in the eGMS which is formed based on a notarial deed, among others: Notaries who attend the eGMS event who make minutes of the meeting and notulis who will submit a statement of Meeting Resolution to the notary which will then be made an authentic deed. Legal consequences of the existence of a GMS that.

**KEYWORDS:** Notary, Deed, Teleconference.

### I. INTRODUCTION

The adoption of technology that has developed very rapidly that will affect the development of communication is increasingly advanced. Regarding the problem of communication between one individual and another is carried out directly, but now it can be carried out through technology or long-distance communication. Terminology related to telecommunications comes from the word communis which means the same. The development of communication is also one of them has an influence on video conferencing which is a method of communication in one or more places using the help of the internet network. (Rachmadi,2004:48)

The role of information technology is very important now and in the future. Information technology is very beneficial and a great interest for many countries in the world. Some things that are extensions of technology include being able to apply a planned, organized and operational thing in an industry or a company (commercially) for all activities, contributing to the planning, organization and operation of an industrial activity consisting of scientific knowledge, in the form of having an impact on the complexity of a virtual reality in solving a dead end Allows people to be at exactly as well as different times.

The existence of video conferencing that is supported from various devices to carry out such as using computers or adequate devices to support the activity.(Febryka,2011:2)

The development of information and communication has a significant impact on the development of law in the State of Indonesia and the development of advances in terms of technology that greatly affect the work environment for Notaries, namely the possibility of making Notary deeds with virtual and cyber Notary implementation in making deeds.

The concept of using cyber notary is a concept that provides benefits to advance technology for Notaries related to making authentic deeds virtually in their roles as general officials such as deeds signed electronically and holding GMS by the Company which is carried out by video conference.

This has a very important purpose in facilitating parties who do not meet each other face-to-face, so with the existence of cyber notary it is no longer a problem for notaries in completing responsibilities with authority as general officials to make this deed as a Limited Liability Company Law which opens opportunities in conducting the Company's GMS by teleconference. The requirements based on Article 77 of the Limited Liability Company Law electronically, among others, meeting participants must see directly, must hear each other directly and participate during the Company's GMS.

At the GMS, the realization of acceptance by one of the oiha on an agreement and the offer that has been given by the other party makes an agreement not yet issued. The birth of an engagement occurred a new agreement at the time of the formation of a minutes of Meeting from the results of the GMS.

(Supasti,2015:3)

The existence of evidence in writing, functions and authentic deeds by the will of the parties in the Meeting as well as the provisions in the Law, authentic deeds can be divided into 2, including: First, the Deed of relaas which is a deed contains a description

## **Legal Certainty of Deeds Made by Notaries Using Teleconference Documents Based on the Notary Office Law**

of an authentic deed that has been based on a situation seen by a Notary, has been witnessed from the request of the Parties and the Action by the Parties which is then contained in a deed. Second, Deed of Partij which is defined as a deed that has been compiled before a Notary Public where it contains a will that has explained the Parties that have complied with the Decision. (Sari,2007:720)

A deed that before changing to an authentic deed that is determined and signed directly before a Notary has the effect of resulting in a signature carried out via electronic on a deed of statement Meeting resolution (GMS) has been declared to have valid legal force as long as the deed has been deed under hand and has not been said to be a deed that has perfect nature. (Sofia,2020:148)

The provisions of Article 77 of the Limited Liability Company Law that have been reviewed as well as the concept of cyber notary that have been possible for parties who do not face directly in front of a Notary Public through video teleconference. This gives legitimacy to the Deed made authentically related to the GMS, on the other hand there are conflicting norms between the Notary Position Law in the guidelines for Notaries in carrying out the profession with the provisions of the Limited Liability Company Law Article which conducts GMS through teleconference media. With the Minutes of GMS with the implementation of video conference which is poured in the form of an authentic deed while the Article in the Notary Office Law that Notaries must read the deed by the face of at least 2 witnesses or 4 witnesses to be signed by a Notary.

## **II. RESEARCH METHODS**

The author uses a type of normative legal research, namely by collecting or obtaining a truth in providing an answer to the problem under study. In its preparation, this research uses primary legal materials, secondary legal materials and tertiary legal materials. The technique of writing techniques to collect legal material is to inventory or trace relevant legal material and use qualitative methods, then processed and reviewed by analysis and use of legal logic.

## **III. DISCUSSION**

### **3.1 The Validity of the General Meeting of Shareholders via Teleconference in the Limited Liability Company Law**

Procedures for GMS through teleconference, where GMS is one of the important organs in the Company as the highest authority and as the holder of all authority with residual properties, among others, as an organ in holding authority that is not allocated to an organ of the Company such as directors and commissioners. The existence of GMS consists of, among others: annual GMS and other GMS. The definition of annual GMS is an obligation that must be carried out within 6 months before the end of the financial year, which is submitted from a request by 1 or more shareholders or the Board of Commissioners.

In the meeting, it is required to contain financial statements, the Company's activities, details of the Company's problems that can affect the activities carried out by the Company. While other GMS are often also referred to as Extraordinary GMS which can be carried out according to the needs of the Company. The things that must be done in fulfillment in the implementation of the GMS include the summoning of the GMS through invitation, the presence of parties attending the GMS, the provision of the quorum of the GMS in the implementation and decision making. (Munir,2003:142)

The holding of the GMS in accordance with the provisions of Article 79 paragraph (2) of the Limited Liability Company Law requires the preparation of minutes of the Meeting on anything that has been carried out and occurred in the Decisions that have been taken in the GMS. Preparation of minutes of Meeting that have been made under the hands or minutes of Meeting in the form of a Notarial Deed made under hand signed by the chairman of the meeting and at least 1 shareholder who has been appointed by other shareholders present at the Meeting.

The provisions as per Article 15 paragraph (1) of the Notary Position Law state the authority of Notaries related to GMS, among others: First, the GMS Minutes made are Imperative in nature, meaning that every GMS held by making a GMS is a mandatory thing. Meanwhile, the holding of GMS that is not made by the Minutes of Meeting is considered invalid and the GMS is considered never held and then related to matters in the Meeting Resolution cannot be carried out.

Second, the signing of the minutes of the GMS is mandatory, for parties with the burden in signing is by the chairman of the meeting or at least 1 shareholder for the appointment of GMS participants with the aim of being the truth of certainty and the truth of the contents in a GMS.

Third, the implementation of the GMS that is carried out and has been made in the form of a Deed at a Notary Public is not conditional regarding the signature of the Meeting participants, without being signed by the participants of the GMS, the deed made before the Notary Public has been valid and recognized as correct, as provided Where the Notary Deed which becomes an authentic deed is an authentic deed of the provisions of Article 1870 of the Civil Code Which has a perfect evidentiary power regarding what is contained in the Deed.

Provisions in POJK 16/2020 in the implementation of the GMS where the POJK is about the plan and holding of open meetings related to the implementation of the GMS electronically. The provisions of Article 4 POJK 16/2020 state that the implementation of the eGMS is available by the eGMS regional or has a system available by the Company openly. The obligations in organizing the eGMS include: the implementation of the electronic system from the authorized agency as stipulated in the Per-Law, the availability of access rights to the use of the eGMS in order to access the eGMS, have and establish standard operating procedures for the implementation of GMS conducted electronically, carry out definitively GMS by electronic means, health and

## **Legal Certainty of Deeds Made by Notaries Using Teleconference Documents Based on the Notary Office Law**

reliability of eGMS, provide information for eGMS users in a matter that has a change or development of the system which also includes additional services and eGMS features, provide audit track records for all activities in the data process in the eGMS in the supervisory function, law enforcement, dispute resolution, verification and testing, owning and placing a data center replacement facility and disaster recovery related to the implementation of the eGMS in the territory of Indonesia and its safe and separate place in the main place, compliance with minimum system standards related to information technology, information technology security, system disruption and failure, and transfer of technology and information systems, storage of all data in carrying out eGMS and has responsibility for losses that cause wrongdoing and negligence in providing and managing eGMS.

Some things that must be carried out in providing the provision of systems in the Company according to Article 10 paragraph (1) POJK 16/2020 include: the existence of rules, materials in the Meeting, and the existence of GMS agendas that are necessary for shareholders in making decisions in each agenda of the Meeting, things that allow all participants present at the GMScopy to participate and have interaction during the Meeting, Voting related to quorum, counting attendance related to quorum, recording all interactions during the implementation in the meeting both in the form of audio, visual audio visual and electronic recording nonaudio visual and the granting of power of attorney carried out electronically.

The relationship by Notaries in the regulation of the Notary Position Law, but there is a special arrangement, there are rules for holding eGMS and minutes of meetings, including POJK 16/2020. The preparation of minutes of Meeting in the eGMS which is formed based on a notarial deed includes: Notaries who attend the GMS event who make minutes of the meeting and notulis who will submit a statement of Meeting Resolution to the notary which will then be made an authentic deed. (Widiyanti, 2020:50)

The preparation of the Minutes of the eGMS as stipulated in POJK 16/2020 Article 12 paragraph (1) states that the Minutes of the meeting are required to be made into a notarial deed by a Notary Public by being registered with the POJK without the need for signatures of participants in the GMS. The provider of the eGMS in paragraph (2) is required to provide a copy of the meeting with the following conditions: the attendance list of the shareholders electronically, the power of attorney given by the shareholders electronically, the recap related to the quorum of attendance and decisions and the transcript of recordings of all interactions at the GMS conducted by electronic means which will be attached to the Minutes of GMS.

Related to the Company's documents consisting of documents related to finance and other documents such as documents that are not directly related to financial documents such as data or each writing contains good information for the Company. (Nindy, 2006:107)

The stages carried out by the Notary in the request of Meeting participants in making PKR deeds are required for Notaries to pour into authentic deeds as the provisions for all these documents through GMS documents in teleconference in the original document form. There is an alternative to signing the minutes of the GMS. There are several things that need to be considered, among others: First, in the signing stage, it is carried out when the shareholders are in the Company's premises, so that the otaris is required to ask for minutes of the meeting and the original attendance list to a meeting leader and his proxy. There is attention from the notary regarding the content of the GMS Decision and correctly the GMS participants approve and sign the minutes of the GMS and the attendance list.

Second, there is a process in signing conventionally, namely the way the minutes of the Meeting and the original attendance list must be sent via post or others, so that the notary will be required to ask for the minutes of the GMS which will then know about the correctness of the approval and signing of all Participants present.

Third, the marking process is carried out via fax, so the Notary is required to request the minutes of the Meeting and the original GMS attendance list to the meeting leaders who pay attention to the contents of the GMS resolutions and the correct meeting participants who have given approval and signature in the GMS Minutes. Where is the leader of the meeting. The proxy recipient by providing 3 documents as follows: minutes of meeting and attendance list that have been signed directly / originally at the Company's place, original signing at the meeting of shareholders and the results of faxing delivery.

Fourth, there is a signing carried out through electronic media (email) and electronic signing cannot be applied because a Certificate of Authority (CA) has not been applied.

### **3.2 Legal Consequences of Notarial Deeds Made with Teleconference Documents**

In the provisions as in Article 1868 of the Civil Code and the Notary Office Law regarding the classification of authentic deeds by fulfilling the following conditions: determination of the form in accordance with Article 38 of the Notary Position Law, making it by maupu before a Notary / General Officer as Article 1 number 1 jo Article 15 paragraph (1) of the Notary Position Law, the authority of general officials.

There is authority given by the Notary related to making deeds authentically so that the Notary is obliged to fulfill all the conditions that are in accordance with the provisions of the Law so that the making of the deed is fulfilled with the conditions that are fulfilled as an authentic deed. The authority of the Notary includes: There is general authority that must be possessed by the Notary in this case the general official in making the authentic deed. The provisions of Article 15 paragraph (1) of the Notary Office Law state that the authority of Notaries is one of them in making akata in general with limitations insofar as, among others, not except for other officials in accordance with the provisions of the Law, relating to deeds required to be made in authentic deeds about all deeds, agreements and provisions that must be based on applicable regulations to be made or the will concerned and the

## Legal Certainty of Deeds Made by Notaries Using Teleconference Documents Based on the Notary Office Law

importance of a clear legal subject related to its importance deed. As specifically in accordance with the provisions of Article 15 paragraph (2) of the Notary Office Law which regulates the special authority for Notaries in the implementation of certain legal actions, including: ratification of signatures and provisions for the certainty of dates in letters under hands that have been registered in special books, letters that are booked, making original copies of letters made under the hands in the form of copies in which there is a written description and the description of the letter, the legal implementation of the match between the original document and the photocopy, providing legal counseling related to the deed made, making the deed on land and making the minutes on auction. (Habib Adjie,2010:82)

Related to the notary position, in essence a model and pattern were used with Notrative services at the beginning of the 19th century as stipulated from the Notary era were required to be reporters in the field of legal services for the community in the era of globalization. (Helien,2010:219)

The provisions in the Limited Liability Company Law with the principle of force based on evidence in the Minutes of GMS as made by a Notary or a deed originating from the minutes of Meeting made before a Notary in accordance with the Deed of Meeting Resolution Statement from shareholders correctly by conducting the GMS by means of teleconference that shareholders actually participate in the holding of the Meeting by filling out the attendance list and have obtained approval and agreed on GMS decisions are witnessed directly or indirectly by a Notary.

In the signing process present at the GMS in providing proof if it is true that the shareholders present are carried out conventionally or directly. If the shareholder returns to the Company's premises with a time not exceeding 30 (thirty) days. Direct signing at the shareholders' place by means of a Circular Meeting if the signing is carried out by all shareholders, it has provided evidence of the implementation of the GMS by teleconference and can be sent by facsimile which will be evidence if shareholders have attended the GMS teleconference because of the signing on paper.

If judged from the evidentiary power of the minutes of the meeting after being presented to a Notary, it will be an authentic deed because it affirms the provisions of the Law as an authentic deed even though the content of the deed is the result of the minutes of meeting that have been made under hand, so that the deed of statement has the power of proof in a binding and perfect manner.

The extraordinary GMS that can be held every day is based on the needs of the Company. Where the importance of the implementation of GMS is useful to provide protection for the interests of shareholders. (M.Yahya,2016:306)

The implementation of the eGMS as carried out through the internet which will continue to provide legal certainty through the minutes of the eGMS as carried out in a Notary Public and the absence of conflict in accordance with the Notary Position Law is a Notary who has rhymed a copy of the eGMS. In the Minutes of GMS as contained in the notarial form by the Notary, it becomes a legal act that will be born from the existence of a legal effect. The minutes are valid and there is a guarantee of legal certainty because the minutes of the Meeting have been made in a Notary Public in accordance with the Notary Office Law.

## IV. CONCLUSIONS

From the explanation above, the author provides the following conclusions The relationship by Notaries in the regulation of the Notary Position Law, but there is a special arrangement, there are rules for holding eGMS and minutes of meetings, including POJK 16/2020. The preparation of minutes of Meeting in the eGMS which is formed based on a notarial deed, among others: Notaries who attend the eGMS event who make minutes of the meeting and notulis who will submit a statement of Meeting Resolution to the notary which will then be made an authentic deed. The preparation of the Minutes of the eGMS as stipulated in POJK 16/2020 Article 12 paragraph (1) states that the Minutes of the meeting are required to be made into a notarial deed by a Notary Public by being registered with the POJK without the need for signatures of participants in the GMS. The provider of the eGMS in paragraph (2) is required to provide a copy of the meeting..

The legal consequences of the GMS held by teleconference and notarized by a Notary Public have valid legal force based on teleconference documents that do not violate the provisions in the Notary Position Law and the Limited Liability Company Law.

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## Legal Certainty of Deeds Made by Notaries Using Teleconference Documents Based on the Notary Office Law

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