

RESEARCH ARTICLE

The Validity of The Notary Deed Based at The Online General Meeting of Stakeholders



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Abstract

The execution of the General Meeting of Stakeholders (GMS) can also be done by teleconference, which saves money and time. the purpose of this study was to analyze the validity of the notarial deed based on the online general meeting of shareholders. The type of research used is normative legal research or doctrinal legal research. The research approach used is library research. This research is explanatory and the approach method in data analysis is a qualitative method. Because of the rapid advancement of digital technology, requiring a face-to-face meeting between contracting parties is no longer necessary, the emergence of the Company Law accommodates expectations and accommodates the expansion of information technology. The GMS teleconference is still legitimate with electronic data, and the Notary signs the Minutes as a release deed, but it must still meet the legal requirements of a GMS. the results of the study show that: 1. Notary deed as referred to in Article 1 paragraph (7) of Law Number 2 Year 2014, namely the Notary Deed, hereinafter referred to as the Deed is an authentic deed made by or in the presence of a Notary in accordance with the form and procedures stipulated in this

Law, 2. If the certification listed in the explanation of Article 15 paragraph (3) of Law Number 2 of 2014 is equated with a letter under hand certified by a notary (legalization), so the certification in question is not an authentic deed.

Keywords: *Notary Deed, GMS, Legalization*

1. INTRODUCTION

Changes leave tangible indications and traces in people's lives. Developments in human life phases are marked by a variety of factors, one of which is changes in the industrial period. The Industrial Revolution 4.0 is ushering in a new age for the industrial world. This is inextricably linked to Indonesian arguments that are still ongoing. The Fourth Industrial Revolution has significantly altered how people think, live, and interact. This epoch will disturb a wide range of human activities, not just in the realm of technology, but also in other areas such as economics, social relations, and politics (Sima, et.al., 2020).

Industry 4.0 has introduced flexible mass production technology, with machines that can work alone or in tandem with humans. Industry 4.0 is a method of controlling the manufacturing process by synchronizing time, integrating production, and altering it. Industry 4.0 is also known as the digital technology revolution. Because of the widespread use of computers and record-keeping automation across all professions, this period is known as the digital revolution. Industry 4.0 is the fourth industrial revolution. Furthermore, because automation and connectivity in a field will make the industrial world and employment competitiveness non-linear, industry 4.0 is also known as the era of technological disruption. The use of artificial intelligence is one of Industry 4.0's distinguishing features. One such application is the use of robots to replace human labor so that it is cheaper, more effective and efficient (Tjandrawinata, 2016).

Because of the rapid advancement of digital technology, requiring a face-to-face meeting between contracting parties is no longer necessary; instead, using the internet suffices (Dwivedi, et.al., 2021). With the introduction of electronic media such as teleconference or video conference as a method of conducting the GMS the emergence of the Company Law accommodates expectations and accommodates the expansion of information technology. Thus, the GMS can be held using technological advancements, such as teleconferencing, video teleconferencing, or other electronic media facilities, and the GMS can be conducted by shareholders through electronic media such as teleconferencing, video teleconferencing, or other electronic media facilities. Utilizing this technological sophistication, the company's shareholders do not have to meet face-to-face or face to face when holding a GMS, but meet face-to-face via video conference as if meeting face to face. This is a step forward that can facilitate the implementation of the GMS.

2. METHOD

The type of research used is normative legal research or doctrinal legal research. This is because this research was conducted or aimed at written regulations or positive laws and other legal materials related to the problem. The research approach used is library research. This is because, in this research, data collection is done by literature study/document study which is mostly done on secondary data contained in the library. This research is explanatory which is research that is explaining, reinforcing, or testing and aims to find the existing relationships between the various variables studied or to test whether there is a relationship. Data collection tools used to obtain the necessary data are document studies, which include primary legal materials, secondary legal materials, and tertiary legal entities. The primary legal materials referred to are legally binding; secondary legal materials, namely legal

materials that explain primary legal materials; and tertiary legal materials, namely legal materials that provide instructions and explanations of primary legal materials and secondary legal materials. While the approach method in data analysis is qualitative, namely by presenting in the form of descriptions and concepts (Setiono, 2005).

3. RESULT AND DISCUSSION

A. Notary Deed as Authentic Deed

An authentic deed is a valid document and can be perfect evidence. Perfect here means that the judge considers everything stated in the deed to be true unless there is other evidence that can prove that the contents of the first deed are not true. Several reasons support the legal force of an authentic deed. An authentic deed is made before a public official so that its legality can be ensured, plus that public officials do not take sides in making the deed. This is different from a deed made by yourself, even though it is witnessed by a third party, but it cannot be used as a guarantee. The parties involved in making the deed may deny their involvement. This can happen because they have their interests, in contrast to Notaries who are public officials who do not have sides in making a deed.

The substance of the notary deed is the formulation or crystallization of information or statements of the wishes of the appearing before the notary can not force the wishes or opinions of the notary to be followed by the appearers, but the notary is obliged to explain from a legal perspective, even if the notary's suggestion is approved by the appearers then it is poured in the deed, this is the wish of the Appraisers themselves and not the wish or statement of the Notary. Another thing that makes an authentic deed has legal force is because an authentic deed has a minute of a deed which is a state archive stored by a notary so it is very unlikely that the authentic deed will be lost. Not only that, if someone denies the contents or existence of an authentic deed, it will be easy to check the truth (Mulyoto, 2016;

Azhari, 2020; Tan, 2019; Achmad & Indradewi, 2022; Aditya, Wulandari & Loso, 2022).

B. GMS online (teleconference)

Teleconferencing can take the form of audio conferencing or video conferencing. Audio conferencing is one type of teleconferencing where someone can have interactive conversations in it. With this audio-conferencing, one can talk to more than one person through the speakers. In video conferencing, participants can see each other's pictures (video) and hear each other, through their respective cameras, monitors, or loudspeakers. From this definition, it can be said that teleconferencing is a meeting conducted by two or more people via telephone or network connection. The meeting can only use voice (audio conference) or video (video conference) which allows conference participants to see each other. At the conference, it is also possible to use the same whiteboard and each participant has control over it, as well as sharing applications. The first product that supports teleconference over the internet is NetMeeting, which is released by Microsoft.

The specific feature of a teleconference that has a legal nuance is that the meeting in question must have a legal impact or consequence, for example, the meeting is a meeting to decide something, or a teleconference is held to provide a statement or testimony (e.g., in a criminal case). It is this impact that distinguishes between an ordinary teleconference and a teleconference having a legal impact. Law number 40 of 2007 concerning Limited Liability Companies (UU PT) provides 2 kinds of ways to conduct GMS, namely: Conventional GMS and Modern GMS (teleconference) in Article 76 and Article 77 of the Law on PT. In an ordinary GMS, the minutes of the GMS are signed by the presenters. If the GMS is conducted by teleconference, an electronic signature is possible (Rosalina, et.al, 2014).

C. The Legality of the General Meeting of Shareholders by Teleconferencing and Electronic Signature

The development of information technology and telecommunications via the internet lately has caused many transactions to be carried out electronically using digital data instead of paper. Similar to transactions in general that use paper, documents used for transactions are signed by and or for and on behalf of the party conducting the transaction with the aim that the document comes from and has been approved by the person who put the signature. Electronic documents will also be signed electronically. A digital signature is a tool to identify a given message.

A deed made by a notary can be a deed that authentically describes an action taken or a situation that is seen or witnessed by the notary himself, in carrying out his position, the deed made that way is called a deed made by a notary. An example is the deed of minutes of the meeting of a limited liability company, including meeting agendas by teleconference. 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 Minute's Deed, so the signatures of the parties are not required to be included. Apart from having fulfilled the elements of the authenticity of a Notary deed as described in the previous sub-chapter, about the Relas Deed, the person responsible for the issuance of the deed is the Notary who made the deed, so the main requirement is that the Notary concerned must attend the GMS with the teleconference. witness the proceedings of the meeting and pour the proceedings of the meeting in a deed known as the Minutes of the GMS.

Every advance in science and technology is always a double-edged sword. On the one hand, it can offer various conveniences and improve human welfare, but on the other hand, it always creates new problems. The same applies to advances in the field of information technology that make electronic deeds possible. Viewed from the efficiency aspect, electronic commerce transactions using electronic deeds will

be able to reduce costs substantially for the parties. However, this development can cause problems for the notary because it is considered very potential to reduce the notary's income if the parties no longer use the services of a notary. Regarding this matter, notaries need to worry, considering that one thing that is irreplaceable from the function of a notary is its capacity as a public official, especially in making authentic deeds. The Certification Authority as an institution that facilitates parties in electronic commerce transactions (e-commerce) still cannot replace the function of a notary in making authentic deeds, even though electronically. This means that the development of electronic certificates brings new opportunities for notaries to be more efficient in serving the interests of the community. It's just a matter of how the presence of a notary in the making of an "electronic authentic deed" can be technologically possible and the legal consequences formulated.

With the possibility of a GMS by teleconference, there are still things that are not allowed to conduct a GMS by teleconference, namely if to sell/transfer company assets because all of this requires written permission from the Board of Directors of a PT and the approval is actually and carried out before a Notary, namely by proof of the signing of the agreement on the agenda of the meeting before a Notary, that the signature must be confirmed on the document to be signed and not an affixed/false signature, and a deed is made called a *partij deed*.

In addition, the reading of the deed is not only beneficial for the notary but also beneficial for the audience. Here are some benefits of reading a deed done by a notary: the notary still has the opportunity to correct errors that were not previously seen. The reading of the deed is the last possibility for a notary to examine the deed that has been made, but this benefit is not the only one. at the last second, before the deed is completed with the signatures of the parties, witnesses, and notaries to reconsider in other words

the revision of the contents of the agreement so that no problems occur later.

Based on the theory of authority and the theory of validity in the aspect of authority, the notary has attribution authority, where the notary is given direct authority by law to make the deed including in it read the deed and as long as the object of the agreement is still within the notary's work area, then the notary still has authority to make the deed even if it is read and signed by using a cyber-notary and the deed remains valid as long as the form of the deed is following the provisions of Article 38 of Law Number 2 of 2014 and Article 1868 of the Civil Code.

About Article 15 paragraph (3) of Law Number 2 of 2014 and its explanation that notaries have other authorities, one of which is to certify transactions using electronic devices (cyber notary), where the certification itself is not explained to create an ambiguous meaning. However, Emma Nurita defines certification as a procedure where a third party provides a written assurance that a product or process for services has met certain standards, based on audits conducted with agreed procedures.

The latest provisions of the UUPT contain discourses and thoughts to combine advances in information technology with the process of making authentic deeds (Ginting, 2007). The Electronic Information and Transaction Law in Article 5 states that: Electronic Information and/or Electronic Documents and/or their printed results are legal evidence; Electronic Information and/or Electronic Documents and/or their printed results as referred to in Paragraph (1) is an extension of valid evidence by the applicable procedural law in Indonesia; Electronic Information and/or Electronic Documents are declared valid if they use the Electronic System per the provisions stipulated in the Law. If there are other provisions other than those stipulated in Article 5 Paragraph (4) which requires that a piece of information must be in written or original form, Electronic Information and/or Electronic

Documents are considered valid as long as the information contained therein can be accessed, displayed, its integrity is guaranteed, and can be accounted for to explain a situation. Article 6 states that so far written form is identical with information and/or documents contained on paper only, whereas in essence information and/or documents can be poured into any media, including electronic media.

Any form of writing or deed that is not an authentic deed is called a private deed or in other words any type of deed that is not made by or before a public official. But in terms of the law of proof, writing has value as a deed under the hand. The power of proof of the deed under the hand is not as wide and as high as the degree of the authentic deed. Authentic deeds have the power of outward, formal, and material proof. Not so with a private deed, which does not have the power of external proof, but is only limited to formal and material evidence with a much lower weight than an authentic deed (Rido, 2001).

The party submitting the electronic information must be able to prove that appropriate efforts have been made to ensure that an electronic system has been able to protect the availability, integrity, authenticity, confidentiality, and accessibility of the electronic information (Sembiring, 2006). The relation with the deed of minutes of the GMS which was carried out via video conference is that this deed of minutes of the GMS can be said to be an authentic deed that has the power of formal, material and outward proof, and through the procedures determined by law, it can be said that the deed of minutes of the GMS is via video conference. as an authentic deed that has perfect proving power.

The ITE Law stipulates that electronic information /electronic documents and/or their printouts are valid legal evidence and are an extension of legal evidence by procedural law in force in Indonesia. However, not just any electronic information/electronic document can be used as legal evidence. In general, the use of electronic documents has also been recognized by law with the issuance of Law

Number 8 of 1997 concerning Company Documents (UUDP). According to Article 1 number 2 of the UUDP, what is meant by company documents are data, records, and or information made and/or received by the company in the context of carrying out its activities, either written on paper or other means or recordings in any form that can be seen, read and heard. Company documents consist of financial documents and other documents. These other documents are other matters that are not directly related to financial documents consisting of data or any writing containing information that has use value for the company, and in the explanation of these provisions are the Minutes of the General Meeting of Shareholders, deed of establishment, and other authentic deeds containing certain legal interests and NPWP (Machsum, 2012).

Article 5 paragraphs 1 and 2 of the ITE Law only states that electronic documents and/or their printed results are valid legal evidence and are an extension of legal evidence following the procedural law applicable in Indonesia; so the problem is whether the electronic document can be likened to an underhand deed (minutes of meeting made under the hand) or even equivalent to an authentic deed made by a notary in position, value, degree, and strength of proof in the Indonesian Civil Procedure Code. To answer the question, can electronic documents, especially the minutes of the modern GMS meeting, be equated with an authentic deed as discoursed by telematics legal experts, it is necessary to first examine the provisions of the Company Law as its "lex specialist". According to the Limited Liability Company Law, every amendment to the articles of association, whether it requires approval or which only needs to be notified to the Minister, must be contained or stated in a notarial deed in Indonesian. If it is not included in the minutes of the meeting made by a notary, it must be stated in the notarial deed no later than 30 (thirty) days from the date of the GM's decision. It is further determined that if the time limit has been determined above, then the minutes of

the meeting to amend the articles of association cannot be stated in a notarial deed.

The provisions of article 1868 of the Civil Code which regulates authentic deeds including notarial deeds, must be made in the form prescribed by law, and the deed is made by or made in the presence of an authorized public official in the place where the deed is made so that if the act made has been under the form prescribed by law and the public official who made the act following his authority then the act can be classified as an authentic act. But it will be a problem if in the process of reading and signing the deed using a cyber notary or in other words using electronic devices such as teleconference or video call. This is because Article 16 paragraph (1) letter m of Law Number 2 of 2014 states that the reading of the deed must be done in front of witnesses and at least attended by 2 (two) witnesses, and in the explanation, it is stated that the Notary must be physically present and sign the Act in the presence of witnesses. The word Present physically is translated word for word that is present and physically. Present means present or coming. 6 while the word physical has the meaning of body/physical, so that the meaning is physically present that is physically present with other words material or visible physically. The explanation of being physically present raises a conflict of norms in Law No. 2 of 2014 because cyber notaries as part of technological advances can bring together two or more parties in different places with real sound and image facilities, so that the shape of the face, sound and state real can be seen (Sjaifurrachman, 2011).

4. CONCLUSION

The conference call because the minutes must still be completed by a Notary, GMS is a meeting process that employs video instead of the electronic data it keeps (written data). The GM's teleconference is still legitimate with electronic data, and the Notary signs the Minutes as a release deed, but it must still meet the legal requirements of a GMS.

Because the UUJN has not accommodated this, a Notary can't carry out his activities in making a deed via video call media; it is solely confined to meetings (new UUPT). Because the Notary saw the GMS and is permitted in his position to make a deed of release where the meeting participants are, the GMS is legal through teleconference.

5. DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no potential conflict of interest in the research, authorship, and/or publication of this article.

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