

The Use Of Cyber Notary In The Gms Is Reviewed From Legal Benefit

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Abstrak: *The use of cyber notary technology in the General Meeting of Shareholders (GMS) is an important highlight in the context of legal expediency. With the provisions of Article 77 of the Company Law, the GMS conducted by electronic media can be carried out by GMS participants without being limited to space and time, of course, with the application of the cyber notary concept. Cyber notary acts to facilitate the process of validation and validity of documents and decisions made at the GMS. This research examines the use of cyber notary technology in the General Meeting of Shareholders (GMS) from a legal perspective, focusing on expediency and efficiency. Using the normative juridical legal research method, this research analyzes the laws and regulations relating to the application of cyber notary in GMS, and examines the efficiency of the application of cyber notary in GMS electronically. The results of this study show that the use of cyber notary in GMS can accelerate the decision-making process, with notaries playing an important role in ensuring the validity of the deeds produced. However, there is a conflict with the Law on Notary Position that requires the deed to be made by physically confronting the notary. Thus, the application of cyber notary in GMS can provide significant benefits for companies in simplifying the decision-making process, in accordance with the principle of legal expediency, but it is necessary to review the rules so that the application of cyber notary in GMS electronically can be applied.*

Keywords : *Cyber Notary, General Meeting of Shareholders (GMS), Legal Expediency*

INTRODUCTION

The Company is a legal entity which means it is also a legal subject, so the company also has rights and obligations just like humans who are also subjects of law.¹ The company has its own wealth which is separate from the wealth of its management. The decision on how the company's wealth is separated from individual wealth will be discussed at the General Meeting of Shareholders (GMS).

According to Article 1 paragraph 4 of Law No. 40/2007 on Limited Liability Companies (UU PT), the GMS is an organ of the Company that has authority 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. According to Article 76 paragraph (1) of UU PT states that "GMS is held at the domicile of the company or at the place where the company conducts its main business activities as specified in the articles of association". GMS must be conducted by Limited Liability Companies (PT) every year with a maximum period of six months from the last financial year

¹Istishar Linur Ridwan, Ina Heliyany, "Tinjauan Yuridis Terhadap Keabsahan Rapat Umum Pemegang Saham yang Dilakukan Secara Daring (Online) dalam Masa Pandemi Covid-19" *Delegasi Legal Student Scientific Journal*, Vol 1 No 1 (2021), h. 29

which aims to evaluate the performance in the previous year such as reporting to shareholders. However, the GMS is not limited to being conducted face-to-face, Article 77 of the Company Law states that "the GMS may also be conducted through teleconference, video conference, or other electronic media facilities that allow all participants of the GMS to see and hear each other directly and participate in the meeting". This allows for the implementation of the GMS through electronic media.

In the era of technological and information development, it allows the exchange of information without being hampered by the limits of space and time, which is supported by Dryden & Voss's statement which states that "In the information age, the sophistication of information and communication technology has enabled the rapid exchange of information without being hampered by the limits of space and time".² With the provisions of Article 77 of the Company Law, the GMS conducted by electronic media can be conducted by GMS participants without being limited by time and space. The GMS conducted electronically must make a meeting presentation that will be agreed upon and ratified by all GMS participants present online. GMS conducted by Limited Liability Companies can hold GMS effectively and efficiently by utilizing technology and information which is often referred to as e-RUPS.

The rules related to the e-RUPS are stated in Article 1 point 5 of the Financial Services Authority Regulation (PJOK) No. 15/PJOK.04/2020 concerning the Plan and Implementation of the General Meeting of Shareholders of Public Companies which states that the e-RUPS is an electronic system or facility used to support the provision of information, implementation, and reporting of the GMS of Public Companies. The background of the issuance of this OJK Regulation is to prevent the spread of Covid-19. This is done so as not to conduct face-to-face meetings and communicate remotely by using the sophistication of technology, namely e-RUPS.³ This GMS is conducted by teleconference and will produce electronic data in the form of a notarial deed. The UUPT states that the GMS conducted through teleconference, video conference or electronic media facilities if there are changes related to the articles of association (AD) then minutes of the meeting must be made which are included in an authentic deed. Based on Article 1 number 7 of Law Number 30 of 2004 concerning Notary Position defines notarial deed as an authentic deed made by or before a notary according to the form and procedure stipulated by this Law. With this e-RUPS, the notarial deed is also in electronic form, better known as cyber notary. Conceptually, cyber notary is a form of technological sophistication used by notaries in carrying out their profession.⁴

² Zainuddin, "Pemanfaatan Media Internet dalam Belajar dan Implikasinya dalam Pendidikan", *Jurnal Cakrawala Kependidikan*, Vol 9 No 1 (2011) 61-69

³ Rachmadi Usman, 2004, *Dimensi Hukum Perseroan Terbatas*, Bandung: Alumni, h.156

⁴ R.A. Emma Nurita dalam Habib Adjie, "Konsep Notaris Mayantara Menghadapi

In the GMS, the notary acts to create minutes of the meeting held electronically which must be signed by all GMS participants. Electronic GMS is one example of the application of cyber notary in practice. Cyber notary acts to facilitate the process of validation and validity of documents and decisions made at the meeting. Cyber notary, which is run by a notary, is tasked with preparing, compiling and making the GMS deed based on the results of the GMS and the decisions approved by the shareholders.⁵ The notary in cyber notary has a crucial role in verifying the identity of the GMS participants who are present through teleconference.⁶ In addition, based on Article 12 of PJOK No. 15/PJOK.04/2020 concerning Planning and Organizing General Meetings of Shareholders of Public Companies, it states that the results of the GMS through electronic media made by a notary into the minutes of the meeting must be registered with the Financial Services Authority.

Provisions related to GMS conducted conventionally are listed in Article 90 paragraph of the Company Law which states that "(1) in every GMS, the minutes of the GMS must be made and signed by the chairman of the meeting and at least 1 (one) shareholder appointed from

and by the GMS participants. (2) The signature as referred to in paragraph (1) shall not be required if the minutes of the GMS are made by notarial deed." In relation to the GMS which is conducted electronically, as long as a notary is present at the GMS and a notarial deed is made through a cyber notary, its validity has authentic evidentiary power. Making a deed through a cyber notary in an electronic GMS is effective which can save time, costs and facilitate the work of notaries in this 5.0 era. Electronic GMS has also been regulated in Law Number 40 of 2007 concerning Limited Liability Companies and PJOK No. 15 / PJOK.04 / 2020 concerning Planning and Organizing General Meetings of Shareholders of Public Companies, as well as related to cyber notaries who make notarial deeds in the form of GMS minutes regulated in Law Number 2 of 2014 concerning Notary Offices, this proves that in the application of GMS through electronics as outlined in the minutes of the meeting in the form of cyber notary has been comprehensively regulated to implement it.

Overall, the integration of cyber notary in electronic GMS provides great benefits in improving the efficiency, security and legitimacy of corporate decision-making processes. This allows companies to operate effectively in a digital environment, while still complying with applicable regulations and legal standards. This is in accordance with the principle of legal expediency, which is the principle that accompanies the principles

Tantangan Persaingan Global", *Jurnal Hukum Respublica*, Vol. 16 No.2, 2017, h. 201-218

⁵ M. Jordan Pradana, Fauzi Syam, Syamsir, "Pembuatan Akta Relas pada Rapat Umum Pemegang Saham Perusahaan Non TBK Melalui Telekonferensi", *Jurnal Selodang Mayang*, Vol 8 No 2 (2022), 166-176

⁶ Zainatun Rossalina, 2016, *Keabsahan Akta Notarus Yang Menggunakan Cyber Notary Sebagai Akta Otentik*, Universitas Brawijaya, Doctoral Dissertation.

of justice and legal certainty.⁷ This principle emphasizes that the law must provide real benefits to society. In the context of cyber notary in electronic GMS with the use of technology, it is necessary to conduct research to ensure that the application of technology is in accordance with the principles of legal expediency, namely providing real benefits to society. This is important to do to ensure that the application of technology in the legal system not only results in administrative efficiency, but also strengthens justice, transparency, and usefulness for all participants in the electronic General Meeting of Shareholders.

METHODOLOGY

This research will use normative juridical research. This type of research will examine the rules of legislation both from the hierarchy of legislation (vertical) and the harmony of legislation (horizontal). The normative juridical method with a statutory and analytical approach, also known as doctrinal legal research, refers to an approach that refers to the analysis of applicable regulations.⁸ This research examines legal materials related to the use of cyber notary in the GMS in terms of legal expediency. This research uses secondary data sources which include primary, secondary and tertiary legal materials. The most important source used is primary legal

material that examines applicable laws and regulations.⁹ This research uses a statute approach and comparative approach which is then studied and analyzed qualitatively. This research uses data collection techniques, namely descriptive analysis by examining the problem in depth based on related legal theories.

RESULTS AND DISCUSSION

1. Concept of Cyber Notary Implementation in Electronic Rups

The use of cyber notary in the General Meeting of Shareholders (GMS) has brought a positive impact in simplifying the overall corporate decision-making process. In an electronic GMS, the notary has an important role in ensuring the validity of the deed resulting from the GMS. The validity of this notarial deed refers to the current laws and regulations.¹⁰ The basic rules on the General Meeting of Shareholders (GMS) are contained in Law Number 40 Year 2007 on Limited Liability Companies. These rules serve as a reference for notaries in ensuring that the GMS is conducted in compliance with applicable laws and regulations. The notary must ensure whether the GMS is properly announced, whether the notification to the shareholders has been carried out in accordance with the procedure and whether the voting procedure has followed the applicable rules. In addition, the notary must also ensure that the results and decisions taken

⁷ Cahya Palsari, "Kajian Pengantar Ilmu Hukum: Tinjauan Dan Fungsi Ilmu Hukum Sebagai Dasar Fundamental Dalam Penjatuhan Putusan Pengadilan", *E-Journal Komunitas Yustitia Universitas Pendidikan Ganesha*, Vol 4 No 3 (2021), h. 946

⁸ Suratman, Philip Dillah, 2014, *Metode Penelitian Hukum*, Bandung: Alfa Beta, h.51

⁹ Peter Mahmud Marzuki, 2019, *Penelitian Hukum*, Jakarta: Prenadamedia Group, h, 54

¹⁰ Jeva Fitri Fadilla, Daly Erni, "Kepastian Hukum Terkait Kewenangan Notaris Dalam Mengesahkan Akta Risalah Rups Yang Diselenggarakan Secara Elektronik" *Jurnal Ilmu Sosial dan Pendidikan (JISIP)*, Vol 7 No 1 (2023)

by the shareholders are in accordance with the applicable rules. This also includes whether a quorum is achieved, how a majority vote is obtained for certain decisions.

The application of electronic GMS is contained in Article 77 paragraph (1) of the Company Law which stipulates that the GMS can also be held in the media of teleconference, video conference or other electronic media facilities. The law regulates the holding of GMS using technology. This is a form of legal innovation, namely utilizing technological sophistication in its application. The preparation of the deed of GMS through teleconference is a procedure in which the deed of the GMS is prepared by a notary and then read out through teleconference so that all participants present at the GMS can understand the contents of the deed.¹¹ If all GMS participants including witnesses and notaries agree with the contents of the deed, the next step is to sign the deed electronically with a digital signature. The process is done through electronic and digitalization. After being signed by all GMS participants, the GMS deed has validity that is bound by laws and regulations. The process is one form of application of cyber notary, where notaries act and carry out their profession electronically.

The signing of the notarial deed of the GMS conducted electronically is one of the benchmarks for the validity or invalidity of the notarial deed of the

minutes of the GMS meeting.¹² This is in line with Article 90 paragraph (1) of the Company Law which states that "Every GMS, the minutes of the GMS must be made and signed by the chairman of the meeting and at least 1 (one) shareholder appointed from and by the participants of the GMS". The GMS which is conducted electronically will be signed with an electronic digital signature with the application of the cyber notary concept. This Digital Signature has been regulated in Article 1 paragraph (12) of Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE Law) which states that "Electronic signature is a signature consisting of electronic information attached, associated or related to other Electronic Information which is used as a verification and authentication tool". Therefore, this electronic signature has legal force and can be accounted for.

The ITE Law was issued to regulate all forms of electronic transactions, one of which is non-government public services run by notaries in making authentic deeds electronically.¹³ Article 15 of the UUJN regulates cyber notary, namely that notaries have other authorities regulated by law. Other authorities are explained in the Explanation of Article 15, namely certifying electronic transactions (cyber notary). This makes it clearer in the legal certainty of using cyber notary in the GMS electronically, but there are still some

¹¹ Komang Utista Cahya Otiana, I Gede Pasek Eka Wisanjaya, "Keabsahan Akta Autentik Dalam Pembacaan Akta RUPS Apabila Para Pihak Tidak Mengaktifkan Kamera/Tidak Saling Melihat", *Acta Comitatus*, Vol 8 No 1 (2023), 1-12

¹² Pande Gde Satria Wibawa, Pande Yogantara, "Keautentikan Akta Risaalah Rapat Umum Pemegang Saham (RUPS) Secara Elektronik Dalam Persepektif *Cyber Notary*", *Acta Comitatus Jurnal Hukum Kenotariatan*, Vol 6 No 3 (2021), h.643

¹³ Cheung Joan Karmel Toryanto, Yunanto, "Urgensi Pengaturan Pelaksanaan *Cyber Notary* Terkait Dengan Pandemi Covid-19", *Notarius*, Vol 15 No 1 (2022), h.23

contradictions with other rules. Article 16 paragraph 1 letter m of the UUN states that notaries must be physically present, while in the implementation of e-RUPS all notary actions, namely recording all legal actions that occur in the GMS, are carried out by teleconference. However, if examined further when carrying out the GMS electronically, the GMS participants also meet each other face to face and this is a legitimate thing so that the GMS can still be held.

The form of attendance of the GMS participants, namely directors, shareholders and notaries, is by being present in cyberspace or known as cyberspace which is also done face-to-face using electronic media.¹⁴ The requirement that the notary must face the parties has been fulfilled, in addition to the requirement to be present at the same place and time has been fulfilled, namely being present in the teleconference media at the same time so that the minutes of the GMS can be made. According to Article 16 paragraph 1 letter (m) jo Article 40 UUN, the Minutes of the General Meeting of Shareholders (GMS) is a "Relaas Deed" that must be prepared by a notary. In the preparation process, the notary has the obligation to read out the deed in front of the meeting participants with at least two witnesses present. The reading of the deed by the notary is part of a process called "verlijden" or the reading and signing of the deed. After being read out, the GMS Minutes are only signed by the notary directly if the notary is physically present at the meeting and directly witnesses and listens to the GMS resolutions. Therefore,

¹⁴ Nurul Amaliah, "Kepastian Hukum Dalam Penyelenggaraan Rapat Umum Pemegang Saham Secara Elektronik", *Officium Notarium*, Vol 2 No 2 (2022), 257-267

the meeting participants do not need to sign the Minutes of the GMS. In the Minutes of the GMS prepared through teleconference media using the concept of cyber notary, there are differences in the initial wording of the deed which is usually used as the initial standard for the deed of making minutes, because it must be explained at the beginning of the deed that the preparation is done through teleconference.

In principle, the implementation of cyber notary in the General Meeting of Shareholders (GMS) is actually in accordance with Articles 76 jo 77 of the PT Law, because the GMS is held online and all documents are electronic-based. However, the implementation of the cyber notary concept is constrained by the provisions of Article 16 Paragraph m of the Notary Public Office Law, which requires notaries to be physically present and requires physical signatures on all documents made by notaries, without allowing the use of digital signatures, the word "physical" makes it clear that the making and signing must be done face-to-face physically or offline.¹⁵ Although digital signatures have been regulated in Article 11 paragraph (1) of the ITE Law, Article 15 paragraph (3) of the Notary Position Law emphasizes that notaries only have the authority to record electronic transactions, which is in line with the concept of cyber notary. Minutes of GMS held through teleconference media are considered as deeds of relaas that cannot be made by a notary, even though the notary is present and witnesses the general

¹⁵ Alex Ramalus, "Kepastian Hukum Cyber Notary dalam Kaedah Pembuatan Akta Notaris dan PPAT Terkait Berhadapan Oleh Para Pihak", *Jurnal Hukum dan Keadilan*, Vol 1 No 1 (2023), h.17

meeting of shareholders.¹⁶ However, a notary can advise that the GMS results be made under hand.

Article 77 of the Company Law clearly states that the GMS can be conducted through teleconference media as long as the participants listen to and actively participate in the GMS. This should clearly legalize the implementation of the GMS using electronic media because there are already formal rules governing it. However, because the provisions for the deed of minutes of meeting made by a notary are not in the same place and physical meeting with the concept of cyber notary, it is feared that the resulting deed may be defective and its validity questioned, because the deed of minutes of the GMS is useful for evidence in court when a dispute occurs. So there are conflicting and contradictory rules so that the application of cyber notary in GMS with electronic media still needs to be reviewed.

As long as the duties and authority of the notary can run properly in the GMS with electronic media, namely ensuring the correctness of the digital signature, the identity of the parties and the status in the electronic certificate which is supported by the rules in Article 6 of the ITE Law which states that "as long as the information included in the electronic document can be displayed, accessed, guaranteed integrity and can be accounted for, then the electronic document is valid". Thus, there is a conflict in the application of technology in the GMS process and the legal requirements that require the physical

presence of a notary. On the one hand, the application of cyber notary technology aims to ensure the validity and correctness of documents produced in electronic GMS. This is in line with the function of a notary to legalize documents and ensure the validity of legal transactions. However, on the other hand, requirements that require the physical presence of a notary pose an obstacle as the GMS process is often conducted online, where shareholders can participate from virtually different locations.

The need for adjustment of legal rules to accommodate the use of cyber notary technology in electronic General Meeting of Shareholders (GMS) not only brings great benefits in accordance with the principle of legal expediency, which emphasizes the importance of law to provide maximum benefits to society, but also increases efficiency in the use of cyber notary in electronic GMS. By allowing the notary to be virtually present at the meeting and recognizing digital signatures as a valid form, the process of creating the GMS deed can be done faster without compromising security or legal validity. This reduces unnecessary bureaucracy and speeds up the company's decision-making process, creating a conducive legal environment for the application of cyber notary technology in the electronic GMS deed creation process, in line with the broader legal objectives of supporting technological development and ensuring that legal processes provide maximum benefit to society as a whole.

2. Efficiency and Benefit of Cyber Notary Implementation in Electronic GMS

¹⁶ Doni Aripandi Saputra Harahap, "Tanggung Jawab Notaris Terhadap Akta Berita Acara Rapat Umum Pemegang Saham Yang Dibuat Melalui Media Elektronik", *Jurnal Notarius*, Vol 2 No 1 (2023), h.111

The use of cyber notary technology in the electronic General Meeting of Shareholders (GMS) has a significant impact in increasing the efficiency and responsiveness of the company. The use of cyber notary benefits many notaries because making deeds becomes faster, easier and more efficient. There are important aspects that need to be considered in making authentic deeds, namely legal certainty. Legal certainty is useful for legal protection of the authentic deed, if there is no legal certainty it will be a problem if one of the parties suffers a loss which results in the notary being caught in a legal case due to the absence of legal certainty, namely the existence of a legal vacuum.

Electronically created deeds were initially proposed at the XXIV International Congress of Latin Notaries in 2004, the congress discussed that it was a possibility to create deeds electronically following the flow of technological development.¹⁷ Since 2004, the development of notarization has been prepared to face all digital transformations such as electronic deed making. Conventional deed making is time-consuming and often human resources, in this case notaries, cannot balance the workload. Moreover, physical documents such as certificates and even deeds are vulnerable to damage, loss and forgery. The authority of a notary, namely cyber notary, is carried out based on the

principles of prudence, legal benefits, legal certainty, and good faith.¹⁸

Facilities and infrastructure in the application of cyber notary are sufficient with the development of technology at this time. The legality related to the deed produced by the notary has the same legal force as the digital signature, digital document, and GMS through teleconference media in making the deed between the notary and the confronter. The digital signature contained in the GMS minutes deed has obtained the legality contained in the ITE Law and has been encrypted and cannot be manipulated.¹⁹ And also, electronic GMS has also been clearly regulated in the PT Law and has legal certainty. In addition, the legality related to cyber notary has been regulated in UUJN which means that it supports the application of cyber notary in Indonesia. With the sophistication of existing technology, there are encryption features and document keys so that unauthorized parties will not be able to manipulate documents or electronic signatures.²⁰ This proves that the application of cyber notary in the GMS electronically has guaranteed

¹⁷ Edmon Makarim, "Modernisasi Hukum Notaris Masa Depan: Kajian Hukum Terhadap Kemungkinan Cyber Notary di Indonesia", *Jurnal Hukum dan Pembangunan*, Vol 41 No 3 (2011), h.493

¹⁸ Qisthi Fauziyyah Sugianto, "Peluang dan Tantangan Calon Notaris Dalam Menghadapi Perkembangan Disrupsi Era Digital", *Jurnal Notarius*, Vol 12 No 2 (2019), h.658.

¹⁹ Sulaiman, Nur Arifudin, Lily Triyana, "Kekuatan Hukum *Digital Signature* Sebagai Alat Bukti Yang Sah Di Tinjau Dari Hukum Acara Perdata", *Risalah Hukum*, Vol 16 No 2 (2020), 95-105

²⁰ Ni Made Trisna Dewi, Ni Made Rai Sukardi, "Kekuatan Hukum Tanda Tangan Digital Dalam Pembuktian Sengketa Perdata Menurut Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik", *Jurnal Ilmiah Raad Kertha*, Vol 6 No 2 (2023), 37-44

security compared to the deed in conventional form.

There are several efficiencies and benefits to the application of cyber notary in the GMS electronically, one of which is in the implementation of the notary profession which can streamline time and speed up performance. In making a deed produced by a notary not only requires documents, but also needs to meet the parties, by making a deed that uses the concept of cyber notary makes the notary minimize expenses for meetings between the parties because it is done online and in the services provided by the notary are more effective and efficient compared to making a deed conventionally. The parties only need to meet in cyberspace and can be done anywhere, with digital transformation, making deeds will be more practical and save time.

According to Gustav Radbruch, the law should contain three identity values, one of which is the principle of legal expediency (*zweckmatigheid*) or *doelmatigheid* or utility.²¹ The application of cyber notary in electronic GMS brings benefits to companies, notaries, shareholders, because it is efficient and cost-effective and guaranteed security and confidentiality by using technological sophistication. However, with all the efficiency and benefits of implementing cyber notary in electronic GMS, Indonesia is considered unable to implement this because of the contradiction in the main study in the UUNJ, namely the point of physical arrival in making the deed of

GMS minutes, even though the electronic GMS has received legal certainty and obtained legality to be applied. If there is a review of the Notary Position Law, then the application of cyber notary in electronic GMS can bring changes by prioritizing the principles of expediency, certainty, and obtaining legality related to cyber notary in the electronic GMS.

CONCLUSION

The implementation of cyber notary in the General Meeting of Shareholders (GMS) has brought a positive impact in simplifying the overall decision-making process of the company. Notary plays a key role in ensuring the validity of the deed resulting from the GMS, referring to the applicable laws and regulations including Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 2 of 2014 concerning Notary Position. The adjustment of legal rules to accommodate cyber notary technology in electronic GMS, in accordance with the principle of legal expediency, increases the efficiency of its use. By allowing the notary to be virtually present in the meeting and recognizing digital signatures as valid, the process of making the GMS deed can be done faster without compromising security or legal validity. This reduces unnecessary bureaucracy and speeds up corporate decision-making, creating a conducive legal environment for the application of cyber notary technology in the process of making the GMS deed electronically. As such, this adjustment to the legal rules is in line with the broader legal objectives of supporting technological development and ensuring that legal processes provide maximum benefits to society as a whole.

²¹ Satjipto Raharjo, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, h.45

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