

THE VALIDITY OF THE ELECTRONIC SIGNATURE IN ELECTRONIC GENERAL MEETING OF SHAREHOLDERS OF THE LIMITED COMPANY'S

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Received: 11/05/2021; Reviewed: 03/08/2021; Accepted: 13/08/2021.

DOI: <https://doi.org/10.24815/kanun.v23i2.21044>

ABSTRACT

The enactment of electronic signatures, especially at the General Meeting of Shareholders (GMS) and responses to legal actions from electronic signatures in the deed of Decision of the General Meeting of Shareholders in a Limited Liability Company, will be confronted by the progress of the era and the legality of the deed. This research method is classified as normative research, the approach method is descriptive analytical. This study shows that the regulation of electronic signatures on the deed of the Statement of Shareholders' Meeting Resolutions is the development of the form of legal evidence. For this reason, the form of evidence is made in the form of electronic information or electronic documents. The effect of the signing if it is done through electronic media, namely the result of the GMS decision has a legal impact on the status of ratification in the law. If the GMS has an electronic signature so that the legality of the legal action is recognized, the government and especially the legislators make legal rules to regulate with certainty the validity of the results of the GMS electronically, so that legal certainty is formed.

Key Words: electronic signature; gms; the form of evidence.

INTRODUCTION

Limited Liability Company is a business entity that is a legal entity having limited liability in accordance with the amount of business capital placed or paid up in the form of shares, and besides that it is also known as a business entity that is not a legal entity whose liability is not limited to include personal assets as in Venoschap Firm and Commanditer (Putra, 2019).

Business actors can choose their business activities according to their needs and capital capabilities to develop the business activities they are interested in, so that later when they start their business activities, they will be able to determine the choice of the right type of business entity. Limited Liability Companies are often one of the choices of business actors, including the

business entity as a legal entity whose rules provide legal certainty in the development of a business, but in practice there are still problems in decision making that require all shareholders to attend and participate in the GMS. These provisions are regulated based on Law no. 40 of 2007 concerning Limited Liability Companies Article 77 Paragraph 1 as an imperative regulation, and in addition to referring to the provisions of Article 1 Paragraph 4 of the Company Law, it is stated that the holding of the GMS is part of a company that has privileges over power and authority that is not owned by the Company. the other two parts of the company, namely the Board of Directors and the Commissioner of the company (Putra, 2019).

In the development of information technology, it plays a very important role, because it is one form of innovation that is believed to bring positive benefits in carrying out the duties of a Notary. Here the role of information technology can encourage world economic growth, including in carrying out the duties of a Notary. The development of new information and communication technology is often referred to as Digital Transformation which has important consequences and affects legal developments, including the loading of the duties of a Notary as a public official. It is undeniable, the development of community needs is also increasingly using and utilizing digital technology tools. The development of new digital technology has made face-to-face communication no longer a necessity in the pattern of interaction between parties, through which it is possible to enter into a direct relationship (online contract) by using the Internet.

Digital transformation is a strategic solution for competitiveness that is not only physical connectivity, digital connectivity is used so that public services become faster and national unity is also strengthened. Infrastructure is built for physical connectivity, because the government has a major development program in the next few years. The government also wants digital connectivity that connects the archipelago. This connectivity is expected to be able to make the country of Indonesia able to be connected even though it is a very large archipelagic country. This is as President Joko Widodo said that physical and digital connectivity is needed so that public services

can be fast and national unity will become stronger. The development of digital connectivity is expected to realize the digital transformation that has been pursued by the government. The government provides capacity to support the realization of digital transformation. President Joko Widodo stated that “it is very important to make digital transformation in order to create digital sovereignty and independence”.

Digital Transformation is the most important part as one of the information technology innovations needed in holding the GMS which is carried out by utilizing advances in teleconference technology, video calls and other electronic media. GMS is used at meetings of course to discuss everything related to activity reports and strategic policies of business activities in accordance with the goals of the company itself. GMS is a means for making decisions of shareholders related to reports on business activities and strategic policies in accordance with the objectives of the company's line of business as outlined in the GMS document in accordance with the company's Articles of Association. The GMS is part of the company and has the power and authority and is not owned by the Directors or Commissioners of the company in accordance with the provisions of the Company Law (Seto, 2017).

Advances in information technology can make it easier and more efficient, effective, and will become a renewable science in terms of the GMS using electronic media facilities with the aim of producing electronic documents. Digital Transformation in the implementation of the e-GMS will have a direct impact on the provisions of the Company Law itself, and one of them is related to the presence of some shareholders in the implementation of GMS activities based on an electronically signed power of attorney. The existence of a signature is used in the process of implementing the electronic GMS because it can present the verification from the signatory of what was signed. The signer must read it first and check it (Makarim, 2011). That a signature must be based on a statement of willingness from the person who made the signature, the writing according to law acts

as his own writing. While the general intention of the signature is that it is an arrangement (letters) in the form of writing from the signer, with a statement from the individual (Budiono, 2007).

An electronic signature is not a signature made on paper, an electronic signature is created using a message digest or hash, such as a mathematical summary of a document and sent via cyberspace (Partodihardjo, 2009). The signing of the deed of the GMS at the cyber notary to make the deed of the Minutes of the Meeting through the cyber notary must be electronically signed. As for the electronic signature, the signature contains Electronic Information and describes Electronic Information for verification and authentication (Sembiring, 2009) while (Dwiparyo, 2005) argues that this electronic signature contains electronic identity and its function for approval which is attached and legally obligatory on the contents of the electronic deed.

Electronic signatures function as authentication and verification for signing and authenticating electronic information. The signing agreement through an electronic information will be signed with an electronic signature, there is an affirmation mechanism to show the intent and purpose of signing an electronic transaction.

Electronic signing will be made for the deed of the minutes of the general meeting of shareholders through electronic media, there must be further regulations applied in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions (Notary Position Act) in order to make clear the legal force in the preparation of the minutes of the general meeting of shareholders through electronic media and to avoid duplicates.

Several methods are used to ensure the integrity of electronic signatures, namely by using cryptological techniques. Cryptology is a Greek language, namely "kryptos" (hidden) and "Logos" (science) which means the science of secret writing and encrypted documents (Singara, 2004) Cryptology is a combination of cryptography and cryptanalyst (Siagian, 2020).

The holding of the GMS through video conferences must include the minutes of the GMS which are contained in the form of a notarial deed and the making of the deed is carried out through

a notary and registered with the OJK and does not require the signature of the GMS participants, and this provision is regulated in Article 12 Paragraph (1) POJK 16/2020. In addition, the e-GMS Provider or PT Tbk must provide the Notary with a printed copy of the GMS activities. In addition to being required to submit a printed copy of the GMS, the e-GMS provider is also required to keep a data folder on the implementation of the GMS, and this is stated in Article 12 Paragraph (4) and (5) of POJK 16/2020. This means that the authenticity of the deed can be said to have met the qualifications.

If linked an electronic document to affixing on paper with a wet signature to adjust the truth according to the original, you will have a different opinion when analyzing the electronic document. The existence of an electronic signature made in accordance with the forms and procedures as well as the legal rules on which it is based is considered correct as evidence in accordance with the Limited Liability Company Law and Notary Position Act", and many have discussed discussing it by considering combining advances in digital technology in the manufacture of electronic documents, which turned out to be obstacles. to find a solution.

The Notary Position Act does not yet regulate the meaning of "being in front of" or "facing" through electronic media, and even so, a notary can act as legalizing company documents related to the existence of an agreement between various parties, and the duties of a notary public. This is in line with the position of a Notary as a public official who is entitled to authority in the context of making perfect evidence.

In holding the GMS, it must be integrated with the document of the minutes of the meeting which requires all meeting participants to interact directly and also the audience of the meeting who attends to sign the minutes of the meeting as regulated clearly, firmly and in detail in the provisions of Article 76 paragraphs (1), (2), and (3) Limited Liability Company Law. The main thing that must be proven is that each participant can directly meet and hear each other and attend the meeting, which can then be verified by recording audiovisual data. Second, it is mandatory to

prove that all meeting participants have signed the minutes of the meeting physically or electronically, which begins to prove the complexity of proving the validity of each participant's signature.

The electronic certification operator as a legal entity produces and stores and maintains a military-grade FIPS certified device called a hardware security module (HSM) in carrying out its activities, which can prevent data retrieval from being damaged. In addition, the electronic certificate issued by the certification authority contains an electronic document containing the signature logo. The problem is, if you have signed documents that are more than two years old (such as rental contracts and other long-term agreements), then you have to re-register every contract signed over the internet and put a stamp at the time of signing. It is better if there is a timestamp for the digital signature, the timestamp remains valid until the end of the digital signature. If all parties have a stamped copy, it can be proven and the electronic document has been signed validly. All electronic documents are signed electronically and then attached with a timestamp to ensure that a digital signature is on the electronic document.

After the key of each signatory expires, it must be re-verified, so that it can be trusted by all parties, witnesses and notaries sign the GMS contract, the results of the previous GMS are announced at the opening ceremony of the GMS contract held in a conference call. Previously, the results of the GMS were read out by a Notary digitally. This signing is done electronically and using digital devices so that security is guaranteed.

This study will discuss the contents of the provisions of Article 16 Paragraph (1) and Article 15 Paragraph 3 Notary Position Act- amendment, and from these provisions in carrying out the duties of a Notary's position there is an obligation to be present by the appearers, witnesses and Notaries to face each other and sign the decision document. in the form of minutes of GMS results which must be signed directly. In addition, based on the provisions of Article 15 Paragraph (3) Notary Position Act-Amendment, Notaries also have the authority to certify electronic transactions

(cyber notary) with the obligation to put them in an authentic deed. Electronic signatures in practice cannot be separated from juridical provisions which are normative in nature, and with the existence of electronic signatures, the legal principles are then regulated in Article 1 Paragraph 19 Government Regulation of the Republic of Indonesia No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions which confirms that the function of electronic signatures is an authentic means of verification and identity. In addition, the ITE Law also explains that electronic signatures only apply during the process of making electronic signatures because they are in accordance with statutory regulations.

Meanwhile, legal norms are also regulated in the Notary Position Act- amendment related to the implementation of the duties of a Notary, not specifically regulating the forms and procedures for the use or utilization of electronic signatures as a basis or as supporting documents in making a deed, and therefore if it is associated with the presence of shareholders attending the meeting based on e-proxy does not mean that the responsibility of the Notary also includes guaranteeing the validity of the electronic signature.

Finally, the provisions for making the minutes of the GMS decision to be signed electronically if it is associated with the Notary Position Act-amendment still cause disagreements related to a vagueness of norms in the article, especially in carrying out their duties, the Notary is unlikely to guarantee the validity of the use and/or use of the sign. electronic hand as a basis or as one of the supporting documents in making an authentic deed. This study aims to determine the use and/or utilization of the electronic signature system for the holding of the General Meeting of Shareholders of a Limited Liability Company and the legal consequences it causes.

RESEARCH METHODS

This research is a normative research (Mamudji, 2005). This literature review is carried out with several things, the first being discussed related to the use and/or use of electronic signatures in

the holding of the GMS and the legal consequences it causes. The research is made according to the law. This study was made by updating the improvement and refutation of the legislation on electronic business transactions and the Law on Notary Positions. This research creates an analytical form that is very critical and has never been carried out, both in theory and in practice.

This research uses normative legal research, namely based on conflicting norms, then research is carried out which becomes library material, which consists of primary legal materials, secondary legal materials, and legal materials. (Arianti, 2020). The type of data classification used is data analysis carried out in a qualitative descriptive way, the data is then collected in the form of (descriptive) obtained from interviews with the Law approach and analyzed in a qualitative way that is subjective and interpretive, then understands and assembles the data obtained and have been classified systematically, then conclusions are drawn (Marzuki, 2009).

DISCUSSIONS AND ANALYSIS OF RESULTS

The individual who has responsibility for the issuance of the deed is the notary who made the deed which is the main requirement. Notaries have an obligation to attend the GMS by teleconference so that they can witness the meeting, and write down the results of the meeting in a deed known as the Minutes of the General Meeting of Shareholders (Ginting, 2007).

Certification authority is an institution and is intended as a facilitator of the parties in electronic business transactions in fact can not replace the position and function of the Notary in making an authentic deed.

Based on article 77 of the Limited Liability Company Law regarding the implementation of the GMS using electronic means, three conditions must be met, namely; 1) meeting participants are required to see each other directly, 2) meeting participants are required to hear each other directly, and 3) meeting participants must be able to participate while the meeting is running. As for these

conditions cannot be implemented, then the GMS which has been held through digital media, has not met the standard provisions of Article 77 of the Company Law.

The validity of the electronic signature which is used as the basis for making the minutes of the results of the decision to hold the GMS through teleconference, audio-visual and other electronic media still creates difficulties in giving awards in proving the truth or authenticity of the signature even though the legal rules regulated in UUTE have confirmed the existence of a signature legally. Electronic signatures are considered valid if the manufacturing process is carried out in accordance with government regulations 82/2012 which confirms the function of electronic signatures as a means of authentication and verification. As for the basis for legal considerations, there are no norms or legal rules in the Notary Position Act- amendment related to the authority to carry out the duties of a Notary, yet it is not sufficient to specifically regulate the form and procedure for administering electronic signatures to be poured into an authentic deed.

Thus, although it is possible in the Company Law and POJK No. 15 of 2020 and POJK No. 16 of 2020 in the implementation of the e-GMS it is possible among shareholders who attend based on an electronic proxy (e-proxy) does not mean that the burden of responsibility of the Notary also includes the validity of electronic signature. Forms and procedures for administering electronic signatures that have not been regulated normatively in the Notary Position Act section, so that the Notary in carrying out his duties of office can only apply the precautionary principle by asking for confirmation and acknowledgment from other shareholders who are present facing the Notary directly in the form of a statement on the signature. The electronic hand attached to the making of a true deed is none other than the actual which is due to the law as long as the interested parties do not deny the truth is considered as perfect evidence (Adigita, 2019).

If in the future it turns out that the interested parties deny the existence of the electronic signature which is used as the basis for making the deed, especially if there is a forgery of the

electronic signature, the responsibility cannot be charged to the Notary. The basis for this consideration is that the Notary does not directly see the electronic signing process.

It is undeniable that the existence of an electronic signature has been recognized by law as one of the important documents in legal evidence. The implementation of an integrated electronic signature certification as a system security system has made it easier for users to sign at different places. The existence of electronic signatures is one form of innovation in the development of digital transformation along with technological advances that have made it easier for users to conduct interaction patterns directly (online) by signing electronic documents without the need to come to the same place.

The use and utilization of electronic signatures through online-based digital services has quite a positive impact on accelerating the administrative process of approval of the will of the parties marked by the presence of signatures stored in electronic documents without having to meet physically face to face, and in carrying out their duties. Notaries are obliged to apply the precautionary principle to the misuse of electronic signatures which are used as supporting documents in making the deed.

Elucidation of Article 15 paragraph (3) of Law Number 2 of 2014 concerning the Position of a Notary is not sufficient to regulate the other authorities of a Notary to certify electronic transactions (cyber notary), and according to the ITE Law, the authority as an electronic certification provider is fully delegated to a legal entity. Thus, related to the truth which is nothing but the truth about the existence of electronic signatures, it is entirely the burden and responsibility of the legal entity that administers the electronic certificate that has the authority to issue certification of electronic signatures.

The development of the concept of cyber notary in the notary world, especially in the context of electronic certification of electronic transactions (cyber notary) cannot legally be carried out, as a result, electronic signatures which are used as supporting documents in making authentic deeds

need to be justified. In the implementation of the e-GMS in a limited liability company, if the minutes of the decision are made in the form of a notarial deed, it is hoped that there will be an arrangement that clearly regulates the terms and conditions for the use of electronic signatures as the basis for the attendance of meeting participants/shareholders. carried out by means of electronic media. Slowly but surely the interaction pattern of social relations will shift from conventionally implemented relationships to electronic-based ones, so that digital transformation in the context of implementing the e-GMS is one form of electronic-based public service embodied in the form of increasingly rapid digitalization technology innovations were new in Indonesia can make very signifycant changes in various necessities of life that can be carried out with various existing facilities.

Digital transformation is an innovation in technology that facilitates fast and precise work processes or interaction patterns, including digitalization of various other forms of business transactions that can be carried out directly (online) in a fast, efficient and easy way that can be completed immediately. In addition, the use of digitalization technology in various forms of making documents and recordings of other business transaction activities which of course must meet the power of proof against parties who have interests whose goal is to achieve legal certainty in accordance with the requirements set by the Indonesian government through the ITE Law (Aditya, 2021). Digital transformation is expected to provide speed, timeliness and efficiency that are usually needed or needed by the parties. In addition, during the Covid-19 pandemic, there is a limitation of physical contact within a certain distance which results in the appearers being unable to face directly (physically) or face to face with the Notary directly in his office, the appearers may be in a different area from each other. different from the position of the Notary's office area (Handoko, 2020).

Currently, the implementation of the duties and positions of a Notary as a General Officer to carry out several parts of the State's duties as a public service which essentially PP-INI makes a

letter with Number: 65/33-III/PP-INI/2020 on March 17, 2020 associated with the Appeal for Prevention Covid-19 and its letter Number: 67/36-III/PP-INI/2020 on March 23, 2020, the Central Board of the Indonesian Notary Association (INI) in the context of preventing the spread of the corona virus and implementing the transfer of work service activities through the home recommended by the Government of Indonesia (known as with the term Work From Home) does not include a form of violation as stipulated in the provisions of Article 17 Notary Position Act.

The era of digitalization which is also marked by the development of information and communication technology has facilitated facilities for everyone to interact (interact) among its users, so that through the work system of information and communication technology, the use of which tends to be unlimited, has crossed space and time, all of which have brought various significant impacts in the pattern of interaction relationships in various aspects of human life.

The development of the Cyber Notary concept is in line with the development of digital transformation related to the latest innovation of signing a document known as a Certificate Authority (abbreviated: CA) issued by a legal entity appointed as the provider of electronic certification for identification of electronic signatures or with digital signatures aimed at encrypting electronic signature documents in the form of digital certificates can be used as markers to prove a document that has been perfectly signed and encrypted by someone whose identity is valid.

Certificate Authority contains electronic documents used to display identification signatures consisting of the identity of a person or legal subject or parties in electronic transactions.

Electronic signatures must pay attention to the requirements contained in Article 11 paragraph (1) of the ITE Law, including: (a) Electronic signature creation data relates only to the signer; (b) The electronic signature creation data at the time of the signing process is only in the power of the signer; (c) Any changes to the electronic signature that occur after the signing time can be noticed; (d) Any changes to the electronic information associated with the electronic signature after the signing time can be noticed; (e) There are certain ways that can be used to identify who the signer

is; and (f) There are certain ways to show that the signer has given consent to the associated of electronic information. Regarding the implementation of the GMS against the Limited Liability Company Law, it is important for a company to observe that shareholders do not have rights and obligations such as the Board of Directors and Commissioners at the meeting. Meetings can only be held by the relevant party, namely the Board of Directors of the Company because their rights and authorities are stated in Article 79 paragraph (1) of the Company Law regarding the holding of the annual GMS and other GMS must be carried out by the Board of Directors and there must be notification for shareholders to attend the GMS. The GMS may be held if the GMS exceeds (one half) of the total shares with voting rights present or represented, except for the Law and or the articles of association which determine a higher amount.

In the second GMS activity, the results of the first GMS must be announced and do not result in a quorum meeting decision, and according to the Company Law, the second GMS is legally valid and has the right to make decisions at the GMS at least 1/3 (one third) of the total. the total number of all shares with the number of voting rights that came or were present or represented. However, if there is a change in the articles of association of the number of quorums, this is certainly greater than 1/3 (one third).

When the second GMS quorum has been implemented, but has not yet produced a joint decision by the shareholders, of course the company is obliged to make an application for the determination of the implementation of the third GMS to the Chairman of the District Court in the area where the company is domiciled. (Nurcahyo, 2018).

The deed of statement of the decision of the meeting is carried out by selecting the directors who will meet with public officials, namely a notary so that their rights and obligations can be signed and legalized by a notary. Furthermore, the Deed of the results of the meeting can be agreed upon by the shareholders and the requirements are in accordance with the relevant laws such as Article 11 of the ITE Law with the requirements contained in Article 77 of the Company Law. The

Board of Directors of the company concerned explains matters relating to the GMS and has been agreed upon by the shareholders in the deed before a notary. In the end, the Deed of Statement of Meeting Resolutions is an Authentic Deed (Yusman, Reski, & Yunus, 2021).

The things contained above are in the form of the perfection of the deed of Meeting Resolutions which is an authentic deed and everyone is bound by the deed according to the principle of *pacta sanservanda*. if it is proven in court that the aspects listed are not true, the deed of the Statement of Meeting Resolutions should only be limited to a deed under hand.

Furthermore, it can be seen that the strength of proof of the minutes of the general meeting of shareholders made by a Notary participating in the meeting is that they have a very perfect proof of power, with special notes for the deed of Statement of Meeting Resolutions, the contents of which are the deed which is a statement and statement of the viewer. based on the minutes or minutes of the meeting made under the hand, it is said that it does not have perfect proof of strength because the shareholders are still trying to be able to refuse the signatures listed in the minutes of the meeting. The minutes of the GMS and the Statement of Meeting Resolutions must then be registered or notified to the Minister.

Amendments to the Articles of Association cannot be stated in a Notary deed after 30 (thirty) days, applications for approval to amend the articles of association and notification to the minister must be submitted a maximum of 30 (thirty) days after the Notary Deed containing changes to the articles of association, after past the 30 (thirty) day deadline, requests for approval and assessment of amendments to the articles of association cannot be submitted or submitted to the Minister (Suherman, 2019).

Here the advantages of electronic signatures when comparing signatures manually regarding changes to documents, regarding writings or metadata, electronic signatures should result in invalid data and documents that are guaranteed from changes made by parties who do not have the authority, this will make it easier in a proof process if comparing signatures manually will certainly

make the process of further review in the forensic laboratory to prove the authentication. In terms of legal force and consequences, electronic signatures have the same status as manual signatures and electronic signatures. The law has guaranteed in Article 11 UUIE. it should be in Article 1869 in conjunction with Article 1874 of the Civil Code and Article 1 of Ordinance 1867 No. 29 must be applied to electronic signatures, if an electronic signature is made, the electronic document already has permanent legal force. By loading the signature, showing an agreement to the information or electronic document that is signed and the validity of the signature contained in the deed.

CONCLUSIONS

The legal consequences of electronic signatures will be considered legal if the manufacturing process is carried out in accordance with Article 11 UUIE and PP 82 of 2012 which emphasizes the function of electronic signatures as a means of authentication and verification, and however the Notary Position Act- amendment does not contain legal norms or rules related to authority. the implementation of the duties of a Notary's office has not sufficiently regulated the forms and procedures for administering electronic signatures to be poured into an authentic deed.

The effect of the signing if it is done through electronic media, namely the result of the GMS decision has a legal impact on the status of ratification in the law. If the GMS has digital signatures so that legal actions are recognized as valid, the government and in particular the legislators make legal rules, especially making laws specifically to regulate with certainty the validity of the results of the GMS electronically, so that legal certainty is formed.

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