Authentication of Deed of Minutes of General Meeting of Shareholders Implemented With The Concept of Cyber Notary Reviewed From Article 16 Paragraph (1) Letter M of Law No. 2 of 2014 On Notary Department

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Abstract
Cyber Notary is the use or utilization of information technology such as computers, computer networks, and/or other electronic media, such as teleconferences or video conferences in carrying out the tasks of the authority of a Notary Public. This study analyzes the authentication of electronic documents in the form of the minutes of the General Meeting of Shareholders in the Cyber Notary concept and the proof of the minutes of the General Meeting of Shareholders held with the concept of Cyber Notary. The research method used in this study is normative juridical. The source of legal material in this research is secondary legal material. This Legal Material Analysis Method is Normative Qualitative. Based on the results of the study found that Authentication of electronic documents in the form of the minutes of the General Meeting of Shareholders in the concept of Cyber Notary can be done by means of a Notary does not need to be present during the General Meeting of Shareholders of the Cyber Notary takes place. If the Notary is present directly at the meeting then it is actually dangerous for the Notary, because in the Cyber Notary RUPS there are meeting participants who attend using teleconferences or video conferences that do not allow the Notary to get to know all meeting participants who were present at the meeting. Making Deed of Minutes of the meeting is sufficient to be made by a Notary based on the Minutes of Meeting under the hand of the authorized shareholders to the Board of Directors to be drawn up by a Notary.

Keywords: Strength of Proof; GMS Deed; Cyber Notary.

Abstrak

Kata Kunci: Kekuatan Pembuktian; Akta RUPS; Cyber Notary.
Introduction

The development of computer technology, telecommunications, and information has been going on in such a way that at the moment it is very different from ten years ago (Ninik Suparni, 2009). The rapid utilization of technology has driven growth in all areas, whether social, economic, or political. Due to growth in all areas, whether social, economic, or political, there is a shift in business behavior from conventional or classical models to the modern business era (E-Commerce). E-Commerce is a trade transaction between the seller and the buyer using internet media. The development of E-commerce is inseparable from the pace of internet growth because E-commerce runs through the internet network. E-commerce is a modern business model that eliminates transactions as in conventional businesses that require the presence of parties and papers as documents that must be completed. This business model is more non-face and non-sign (Rochani Urip Salami and Rahadi Wasi Bintoro, 2013).

Notary as one of the public officials authorized to make an authentic deed through Law No. 30 of 2004 on notary office as amended by Law No. 2 of 2014 on Amendment to Law No. 30/2004 on Notary Department Law (UUJN), serves to carry out the principles of state law namely ensuring certainty, order, and protection of laws focused on truth and justice. (Sunarto and Siswanto, 2007) Notary as a trusted public official, the deeds he made must be a powerful tool of evidence in the event of a legal dispute in court. (Marsudi Triatmojo, 2007) The Law of the Notary Department requires the Notary to read the deed he made before the parties and sign the deed, based on that, then the purpose of the Notary is appointed by the government as a public official not only for the benefit of the Notary itself but also for the benefit of the wider public.

The rapidly evolving advancement of information and communication technology makes notary have the opportunity to exercise its position of authority in serving the community efficiently, quickly, and practically. The opportunity exists in the implementation of notary duties and authority as a general officer in making authentic deed related to contracts/agreements or other deed shifted from conventional systems by facing face-to-face or face-to-face with the parties concerned, to Cyber Notary based on electronic systems located in cyberspace.

Cyber Notary is a concept of Notary in general that performs notary functions by applying it into transactions or relationships electronically through the internet as the main medium to create a notary deed and lead to a form of deed that is initially valid when set in a paper, to the deed electronically or in the form
of electronic documents. Electronic documents in Indonesia are regulated in Law No. 11/2008 on Electronic Information and Transactions, (hereby called ITE Law). Based on Article 5 paragraph (1), paragraph (2) and paragraph (3) of ITE Law that formulates:

1. Electronic information and/or electronic documents and/or printouts are valid legal evidence.
2. Electronic information and/or electronic documents and/or printouts referred to in paragraph (1) constitute an extension of a valid evidence tool in accordance with the applicable event law in Indonesia.
3. Electronic information and/or electronic documents are declared valid when using electronic systems in accordance with the provisions set forth in this law.

The concept of Cyber Notary is in carrying out the duties and authority of the Notary as its position by associating information technology in the making of the deed. The deed of minutes of gms by notaries attended by gms participants through electronic media is the Concept of Cyber Notary. The implementation of gms held under the concept of Cyber Notary where shareholders who for reasons of distance, time and cost are not allowed to physically attend the meeting, may attend and approve the results of the General Meeting of Shareholders through Video Conference, Teleconference, and other electronic media. This is stipulated in Article 77 paragraph (1) of Law No. 40/2007 on Limited Liability Companies: "In addition to the implementation of gms as referred to in Article 76, gms can also be done through teleconference media, video conferences, or other electronic media facilities that allow all participants of the GMS to see and hear each other directly and participate in meetings."

Article 77 paragraph (3) of Law No. 40 of 2007 requires that meeting participants present through the Video Conference be considered to be present as well as the meeting participants who are physically present. Article 77 paragraph (4) of Law No. 40 of 2007 orders that the Meeting is made its minutes and the participants of the General Meeting of Shareholders either physically present or via video conference to approve and sign the deed of minutes of the General Meeting of Shareholders. Such circumstances may be a problem for notary officials who make the deed of the Minutes of gms if connected with Article 16 paragraph (1) letter (m) of the Law of the Notary Department, that notaries are obliged to read the deed before the face by attending by at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of the will deed under hand and signed at that time also by the witness, witnesses, and notaries. Habib Adjie explained, Notaries
who do not carry out obligations as stipulated in Article 16 paragraph (i) letter (m) of the Law of the Notary Department, then the deed made before or by the Notary concerned, resulting in only having the power of proof as a deed under hand or deed becomes null and void, which is the reason for the party suffering losses to demand reimbursement of costs, damages, and interest to the Notary concerned (Habib Adjie, 2014).

Research Problems

Based on the issues outlined above, it is interesting for the authors to carry out this research, so the legal issues raised in this study is How is authentication of Deed of Minutes of General Meeting of Shareholders with Cyber Notary Concept?

Research Methods

The research method used in discussing this research issue is a normative juridical research method, complemented by the statutory approach (Statute Approach) and Conceptual Approach (Conceptual Approach) and Comparative Approach. This type of research is prescriptive. Methods of collecting legal materials used are literature studies by collecting, studying, and studying primary legal materials and secondary legal materials, as well as non-legal materials, Legal Material Analysis Methods conducted using qualitative normative analysis methods.

Discussions

1. Authentication of Deed of Minutes of General Meeting of Shareholders Held With Cyber Notary Concept

The meaning of Limited Liability Company consists of two words, namely "company" and "limited". The Company refers to pt capital consisting of sero-sero or shares. The word limited refers to shareholders whose "roles and responsibilities" are limited to the face value of the shares they own. (Kansil, 1996) Article 1 number 1 of Law No. 40/2007 on Limited Liability Company (UUPT) contains the understanding of the Company as a legal entity that is a capital alliance, established by agreement, conducts business activities with a basic capital that is entirely divided into shares, and meets the requirements outlined in this law and its implementing regulations. This is in line with what Solomon theory reveals about the establishment of a Limited Liability Company, namely that the company
becomes a separate part of the person who formed it or runs it, in which the company has rights and obligations that are closely related to its activities not to others who own or perform it. (Christopher L. Ryan, 1990)

The GMS decides important matters regarding the policies of a company that is not limited to the appointment or dismissal of commissioners and directors only. The authority of the GMS is realized in the form of the number of votes cast in each meeting. Voting rights in the GMS may be used for various purposes and purposes such as asset sales plan and debt guarantee, approving financial statements submitted by the board of directors, a board of directors' accountability, merger plan, smelting, takeover, and dissolution plan of the company. (Kurniawan, 2014) The GMS has authority not granted to the board of directors or board of commissioners, within the limits specified in this law and/or the articles of association. In the GMS forum, shareholders are entitled to information relating to the company from the board of directors and/or board of commissioners as long as it relates to the meeting and does not conflict with the interests of the company, including the right of shareholders to view the register of shareholders, a special list of members of the board of directors and the board of commissioners and their families. The GMS in other currencies is not entitled to make a decision unless all shareholders are present and/or represented at the GMS and agree to the addition of the meeting event. The decision on the added meeting event must be approved unanimously (Article 75 of Law No. 40/2007). (Abdulkadir Muhammad, 2010)

The GMS is essentially stipulated in Law No. 40 of 2007 concerning Limited Liability Companies, but to improve the implementation of good corporate governance principles for Issuers or Public Companies relating to the duties and responsibilities of the Board of Directors and Board of Commissioners, The Financial Services Authority establishes two legal bases stipulated concerning gms through Regulation of the Financial Services Authority No. 33 /POJK.04/2014 concerning the Board of Directors and Board of Commissioners of Issuers or Public Companies and Financial Services Authority Regulation No. 32 /POJK.04/2014 concerning the Plan and Implementation of the General Meeting of Shareholders of Public Companies. The Financial Services Authority issued Regulation of the Financial Services Authority No. 33 /POJK.04/2014 on the Board of Directors
and Board of Commissioners of Issuers or Public Companies and Financial Services Authority Regulation No. 32 /POJK.04/2014 on the Plan and Implementation of the General Meeting of Shareholders of Public Companies on December 8, 2014. The General Meeting of Shareholders (GMS) is the process of the implementation of the GMS, both physical and administrative actions, from start to finish, i.e. from the summons process to the making of the minutes of the meeting and its signing. According to Agus Budiarto, that the duties, obligations, authorities of each organ including the GMS are independently regulated (autonomous) in the Constitution. (Agus Budiarto, 2006)

Article 2 of the Financial Services Authority Regulation No. 32 /POJK.04/2014 on the Plan and Implementation of the General Meeting of Shareholders of Public Companies states that:

1. The GMS consists of the annual GMS and other GMS.
2. The annual GMS shall be held within a period of no later than 6 (six) months after the financial year ends.
3. Other GMS may be held at any time based on the needs for the benefit of the Public Company.

Article 3 of the Financial Services Authority Regulation No. 32 /POJK.04/2014 on the Plan and Implementation of the General Meeting of Shareholders of Public Companies states that the implementation of the GMS is conducted based on the request of the GMS. A shareholder who together represents 1/10 (one-tenth) or more of the total number of shares with voting rights, unless the Public Company's articles of association determine a smaller amount, may request that a GMS be held. The request for gms is submitted to the Board of Directors with a letter of record with the reason and has the following conditions:

a. performed in good faith;

b. consider the interests of the Public Company;

c. is a request that requires a GMS decision;

d. accompanied by reasons and materials related to things to be decided in the GMS; Dan

e. does not conflict with the laws and articles of association of public companies

The GMS can be held at the request of:
a. 1 (one) person or more shareholders who together represent 1/10 (one-tenth) or more of the total number of shares with voting rights, unless the Articles of Association determine a smaller amount; Or

b. The Board of Commissioners submitted to the Board of Directors with a recorded letter accompanied by the reason. If the request comes from shareholders, the recorded letter is submitted to the Board of Commissioners. For open companies, before the invitation of the GMS shall be preceded by an announcement about the invitation of the GMS about the laws and regulations in the field of capital markets. Announcements are made within a period of no later than 14 (fourteen) days before the invitation of the GMS.

The Board of Directors shall call the GMS within a period of no later than 15 (fifteen) days from the date the gms request is received. In the case that the Board of Directors does not call the GMS, then:

a. If the request for gms is made by shareholders, it must be submitted back to the Board of Commissioners; Or

b. In the case of a request made by the Board of Commissioners, the Board of Commissioners shall call its own GMS.

The Board of Commissioners calls the GMS within a period of no later than 15 (fifteen) days from the date the gms request is received. The Board of Directors or Board of Commissioners shall not call the GMS within the above period, shareholders requesting the implementation of the GMS may submit their application to the head of the district court whose legal district includes the position of the company to determine the grant of permission to the applicant to make his/her summons to the GMS. The head of the district court after summoning and hearing the applicant, the Board of Directors and/or the Board of Commissioners, determines the granting of permission to hold the GMS if the applicant has Constantia that the requirements have been met and the applicant has a reasonable interest to hold the GMS.

The determination of the chief justice of the district court also contains about:

a. The form of GMS, gms agenda by the application of shareholders, the period of the invitation of the GMS, quorum attendance and/or provisions on the terms of decision-making of the GMS, as well as the appointment of the chairman of the meeting, by or without being bound by the provisions of this Law or the Articles of Association; and/or
b. Orders requiring the Board of Directors and/or Board of Commissioners to attend the GMS.

The determination of the chief justice of the district court regarding the granting of such permits is final and has permanent legal powers. The head of the district court rejects the application if the applicant is unable to prove in full that the requirements have been met and that the applicant has a reasonable interest in the GMS. In the case of the determination of the chief justice of the district court to reject the application, the legal action that can be filed is the only cassation. The provision also applies to open companies about the terms of the announcement of the GMS and other requirements for the implementation of GMS as stipulated in the laws and regulations in the field of capital markets. In the context of the company openly required notification of the invitation of the GMS within 14 (fourteen) days before the invitation of the GMS is carried out. The invitation of the GMS is made within a period of no later than 14 (fourteen) days before the date of the GMS is held, taking into account the date of summons and date of the GMS.

The provisions of Article 7 of the Financial Services Authority Regulation No. 32 /POJK.04/2014 on the Plan and Implementation of the General Meeting of Shareholders of Public Companies formulate that:
1) The GMS shall be held in the territory of the Republic of Indonesia.
2) Public Companies shall determine the venue and time of the GMS.
3) The venue of the GMS as referred to in paragraph (2) shall be done at:
   a. the seat of the Public Company;
   b. where the Public Company conducts its main business activities;
   c. the provincial capital where the seat or venue of the main business activities of the Public Company; Or
   d. the province where the Stock Exchange’s shares are listed.

Article 10 of the Financial Services Authority Regulation No. 32 /POJK.04/2014 on the Plan and Implementation of the General Meeting of Shareholders of Public Companies formulate that:
1) Public Companies shall make a GMS announcement to shareholders no later than 14 (fourteen) days before the gms call, regardless of the date of announcement and date of summons.
2) Announcement of GMS as referred to in paragraph (1) contains at least:
   a. provisions of shareholders entitled to attend the GMS;
   b. provisions of shareholders who have the right to propose the meeting event;
c. date of gms; and

d. date of gms call.

The implementation of the GMS must be preceded by the invitation of the GMS. The Board of Directors holds annual GMS and other GMS with precedence of the invitation of the GMS. The Board of Directors calls shareholders before holding a GMS. In certain cases, the summons of the GMS may be made by the Board of Commissioners or shareholders based on the determination of the head of the district court.

The invitation of the GMS is made by a registered letter and/or by advertisement in the Newspaper. The invitation of the GMS shall be stated the date, time, venue, and event of the meeting accompanied by a notice that the material to be discussed in the GMS is available at the company’s office from the date of the gms call until the date the GMS is held. The Company is obliged to provide free copies of the material to shareholders if requested. If the summons is not made within the specified period time and the call is not made by registered letter or through a newspaper advertisement, then the decision taken by the GMS remains valid if all shareholders with voting rights are present or represented at the GMS and the decision is approved unanimously.

Article 77 of the Law provides convenience for shareholders who are well within the territory of Indonesia outside Indonesia, which formulates:

(1) In addition to the implementation of the GMS as referred to in Article 76, the GMS may also be conducted through teleconference media, video conferences, or other electronic media facilities that allow all participants of the GMS to see and hear each other in person and participate in meetings.

(2) Quorum requirements and decision-making requirements are requirements as stipulated in this law and/or as stipulated in the Company’s articles of association.

(3) The requirements as referred to in paragraph (2) shall be calculated based on the participation of participants of the GMS as referred to in paragraph (1).

(4) Each gms ceremony as referred to in paragraph (1) shall be made the minutes of the meeting approved and signed by all participants of the GMS.
Based on PT Law there are two ways of organizing gms namely ordinary or conventional GMS regulated in article 76 of PT Law and GMS through electronic media regulated in Article 77 paragraph (1) of PT Law, where the participants of the GMS do not have to be physically present at the same place where the GMS is held but these absent participants can still follow the course of the meeting by hearing, viewing and witnessing what is discussed in the GMS, through a technology called Teleconference, video conference or other electronic media.

Munir Fuady explained that every AGM, "mandatory" is made minutes. Therefore, its creation is "imperative" (mandatory rule). gms that are not made minutes, are invalid and are considered never existed. As a result, the things decided and determined in the GMS cannot be implemented. Article 77 paragraph (4) of the Law instructs that each gms be held through electronic media:
1. "must" be made minutes of the meeting,
2. Minutes of the meeting, "must" be approved and signed by all participants of the GMS. (Munir Fuady, 2002)

Article 32 of the Financial Services Authority Regulation No. 32 /POJK.04/2014 on the Plan and Implementation of the General Meeting of Shareholders of Public Companies formulate that:
(1) Public Companies shall make minutes of GMS and a summary of minutes of GMS.
(2) Minutes of gms shall be made and signed by the chairman of the meeting and at least 1 (one) appointed shareholders from and by the participants of the GMS.
(3) The signature as referred to in paragraph (2) shall not be required if the minutes of the GMS are made in the form of a deed of news of the GMS event made by the Notary.

Regulation of the Financial Services Authority No. 32 /POJK.04/2014 on the Plan and Implementation of the General Meeting of Shareholders of Public Companies are found to be free that, Signature, as referred to in paragraph (2), is not required if the minutes of the GMS are made in the form of a deed of news of the GMS event made by the Notary. That is, the procedure for making a deed of minutes of gms that does not bring the parties together, Witness and Notary physically (GMS Teleconference) is considered contrary to JN Law where Article 16 paragraph (1) letter m of the
Notary Department Law determines that "In carrying out his/her office, the Notary shall read the Act before the intercept by attending by at least 2 (two) witnesses, or 4 (four) special witnesses for the creation of the Deed of a will underhand, and signed at the same time by the intercept, witness, and Notary.

Notaries have the authority to make an authentic deed. This is stipulated in Article 1 number 1 and article 15 paragraph (i) namely: Article 1 number 1 states that:

"A notary is a public official authorized to make an authentic deed and has other authority as referred to in this Act or under any other law."

Article 15 paragraph (i) of the JN Law Change Act states that:

"Notaries are authorized to make authentic deed concerning all acts, agreements, and determinations required by the legislation and/or desired by the interested to be stated in the authentic deed, to be stated in the authentic deed, guarantee the certainty of the date of creation of the deed, save the deed, provide Grosse, copy and quote of the deed, all of which as long as the making of the deed is not also assigned or excluded to other officials stipulated by law."

Based on article 1 number 1 and article 15 paragraph (i) of the JN Law it is clear that the Notary is a public official authorized to make an authentic deed concerning deeds, treaties, and determinations. The GMS can be said to be an agreement or agreement between the participants of the GMS to the company, therefore the deed of the resolution of the GMS made by the Notary can be said to be an authentic deed. By article 1868 of the Civil Code, the authentic deed is: "a deed made in the form determined by law by/or in the presence of a public official authorized for that purpose, in the place where the deed was made."

Victor M. Situmorang and Cormentyna Sitanggang stated that an authentic deed is a deed that in the form determined by law, is made by or before the public servants in charge of it in the place where the deed is made (Article 1868 of the Civil War.). Thus qualified as an authentic deed if the deed is listed as a signature, is a statement of legal action and used as evidence. The Deed is made by or before a public office, its form is determined by the laws and regulations, and the office that makes the act has authority. Thus the authentic deed must meet the following requirements:
a. the deed must be made "by" or "before" a public official;
b. the deed shall be made in the form determined by law;
c. the public official by or before whom the deed is made, must have the authority to make the deed. (Victor M. Situmorang and Cormentyna Sitanggang, 1993)

According to the technical sense, the authentication process means carrying out a method of authenticity (Edmond Makarim, 2015), at least for:
1) Identify or discover and ensure the correctness of the identity of legal subjects (whether persons or legal entities) who convey information (e-identification), and
2) Check and guarantee the validity of the identity of the content of the information itself so that there is no possible e-authentication.

Further review, the authentication process will pay attention to the following:
1) The validity, truthfulness, or validity of the identity of the party from which an Information or Electronic Document originates and the party that transmits and receives such Information or Electronic Documents.
2) The validity of the authority of the party that creates, transmits, and receives such Information or Electronic Documents.
3) The validity or validity of such equipment (or more broadly, information and communication systems, including electronic systems) used to create, store, transmit, and receive such Information or Electronic Documents.
4) The validity of the process in the creation, storage, delivery, and receipt of Information or Electronic Documents, as well.
5) Guarantee of the integrity of Information or Electronic Documents which means that such information or documents are indeed true and valid information or documents, or unique, which are indeed made for the first time for the intended purpose without any alteration without rights/ authority. (Edmond Makarim, 2015)

Based on the provision stipulated in the above authentic deed, the Author argues that the Authentication of The Deed of The Minutes of the General Meeting of Shareholders with the Concept of Cyber Notary can be done in a notary manner that does not need to be present at the time of the Cyber Notary General Meeting of Shareholders. If the Notary is present directly in the meeting then it is dangerous for the Notary, because in the GmS Cyber Notary there are meeting participants present using
teleconferencing or video conferences that do not allow notaries to know all the meeting participants present at the meeting.

The creation of the Deed of Minutes of the meeting is sufficiently made by notary based on the Minutes of Meeting under the hand authorized by the shareholders to the Board of Directors to be made a deed by a notary. In this way, the Notary in carrying out its position remains by the corridors of Article 16 paragraph (1) letter (m) of the Law of the Notary Department, that notaries are obliged to read the deed before the face by attending by at least 2 (two) witnesses, or 4 (four) special witnesses for the making of the will deed under hand and signed at the same time by the intercept, witness, and Notary. The reading of the deed is only done against the face-to-face intercept, not to be read before shareholders, because the Minutes have been approved by all shareholders present at the AGM.

Notary Notaries usually supplement the deed with a self-protection clause, which is a clause stating that if in the future there is a description that does not comply with the deed, there is a dispute or there are things/descriptions that will one day prove to be incorrect from the intercepts themselves, then it will not involve the Notary. The self-security clause stipulated by a notary in the partij deed is an effort to protect not to engage in legal proceedings. This is due to the lack of understanding of other law enforcement officers regarding the role and duties of Notaries as authentic deed makers, especially in the partij deed as described above.

**Conclusion**

Authentication of Deed of Minutes of General Meeting of Shareholders With The Concept of Cyber Notary can be done using Notary does not need to be present at the Cyber Notary General Meeting of Shareholders. If the Notary is present directly in the meeting then it is dangerous for the Notary, because in the GmS Cyber Notary there are meeting participants present using teleconferencing or video conferences that do not allow notaries to know all the meeting participants present at the meeting. The creation of the Deed of Minutes of the meeting is sufficiently made by notary based on the Minutes of Meeting under the hand authorized by the shareholders to the Board of Directors to be made a deed by a notary. In this way, the Notary in carrying out its position remains by the corridors of Article 16 paragraph (1) letter (m) of the Law of the Notary Department, that
notaries are obliged to read the deed before the face by attending by at least 2 (two) witnesses, or 4 (four) special witnesses for the making of the will deed under hand and signed at the same time by the intercept, witness, and Notary.

**Suggestions**

There are arrangements related to the utilization of technology that can be done by notaries in the manufacture of deed both deed relaas and deed partij. There are similar perceptions about cyber Notary considering there is still debate among Notaries regarding the concept of cyber Notary.

**References**


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