

AUTHENTICITY OF THE DEED OF GENERAL MEETING OF SHAREHOLDERS (GMS) CONDUCTED ON THE BASIS OF CYBER NOTARY DURING THE COVID-19 PANDEMIC

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ABSTRACT

The Covid-19 pandemic that has hit the entire population of the world in recent times has had a significant impact on human life. People around the world have to start getting used to adapting to new habits due to the presence of the Covid-19 virus. This is also the case in Indonesia, one of the government's policies is to issue a policy to carry out all activities at home, starting from work, school, and the obligation to limit activities outside the home or even limit meeting people. This policy also has an impact on the performance of the Notary, where the Notary in making an authentic deed is obliged to deal with the parties. The solution related to this then emerged a policy regarding cyber notary, where in making an authentic deed the Notary does not have to deal with the client and the deed can be signed electronically. This policy raises pros and cons, including the authenticity of the GMS deed which is carried out using the cyber notary method. This study uses a normative juridical method with a qualitative approach. The purpose of this study is to find out about the authenticity of the deed of the GMS made with a cyber notary during the covid-19 pandemic. The result of this research is that the deed of the GMS made using the cyber notary method is an authentic deed if it is made on the basis of the *lex specialist derogate legi generali* principle. it is in Article 77 paragraph (1) in conjunction with Article 77 paragraph (4) of the Limited Liability Company Law. After the parties have signed the deed of the GMS, the Notary on the basis of Article 11 of the ITE Law and the fulfillment of the *lex specialist* principle, the deed can be used as perfect evidence in court.

Keywords: *Deed of GMS, Covid-19, Cyber Notary*

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INTRODUCTION

Some time ago, precisely from the beginning of 2019 to 2021, the world was facing the attack of the Covid-19 virus which quite affected the order of human life throughout the world, including Indonesia (Arif & Octarina, 2020). Many people became victims, both experiencing mild symptoms and dying. As a result of the large number of victims who died or who only had mild symptoms, the World Health Organization (WHO) made a policy by declaring the status of "Pandemic" related to the presence of the Covid-19 virus in the midst of people's lives (Wandra, 2021).

Countries around the world make each other's policies within their governments to prevent the rapid transmission of this virus between humans, in order to minimize the loss of lives that continue to increase day by day with a number of deaths that are not small. This is also done by the Indonesian state, the government has done various ways to prevent the transmission of the Covid-19 virus, one of which is by issuing policies for the community to limit activities outside the home, school, work, and other activities that if they can be done at home, they must be done at home. This policy is commonly called Large-Scale Social Restrictions (PSBB) (Sakroni, 2021).

This restriction applies to all people in Indonesia, without exception (O'donnell et al., 2008). The existence of this policy certainly has an impact on the community, one of which is

for Notaries (Garcia-Teruel & Simón-Moreno, 2021). As a general official, in carrying out their duties and obligations, Notaries are obliged to comply with the code of ethics and orders of Law Number 30 of 2004 which has been amended by Law Number 2 of 2014 concerning Notary Positions (hereinafter referred to as the Notary Position Law). In Article 16 letter m of the Notary Office Law, it is stated that in carrying out their obligations, Notaries are required to read a deed attended by at least 2 witnesses and Notaries must also be physically present and face to face with the parties to jointly sign an authentic deed. This rule is certainly an obstacle in the process of signing an authentic deed before a Notary, because the concept of government policy is to prohibit face-to-face meetings, especially with rarely close together (Toryanto, 2022).

The existence of the PSBB policy then makes humans start making the latest innovations, especially in the field of technology. Coupled with rapid technological advances in this era, humans are starting to find ways to stay active amid social restrictions due to the Covid-19 Pandemic. Everything is made virtual, for example for office workers who want to meet with all employees because it is not possible to attend offline in the office, so they use "Zoom" technology media to still be able to meet but not face to face. This virtual activity is then used in all lines of community activities, not only for office workers, even school children in participating in learning using this "Zoom" media.

This innovative step was also carried out by Notaries, where to accommodate the Notaries' anxiety about this PSBB, a program or method of signing authentic deeds by means of Cyber Notary was raised. The basic principle of this Cyber Notary is that Notaries and parties do not need to attend and meet in person, they can use virtual meetings through application media, and then signatures on authentic deeds can be done electronically. This concept raises pros and cons among Notaries and the public, some agree with this method considering that they are currently constrained by the PSBB which does not allow them to meet offline, but there are also those who regret the existence of the policy, because it is considered prone to misappropriation or malpractice (Setiadewi, 2020).

The existence of Cyber Notary which is being the subject of gossip among Notaries, precisely without realizing it or not, this method actually synergizes with the rules in Article 77 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Limited Liability Company Law). In this article, it is stipulated that in a General Meeting of Shareholders, it is possible to be carried out through videoconference or other electronic media facilities. This means that in a GMS, shareholders do not have to meet each other face to face but can be done virtually (Nurudin et al., 2021). This concept is certainly very suitable if applied during this Pandemic and indeed several companies have implemented this concept during the Covid-19 Pandemic. Therefore, through this research, it will be described the authenticity of the GMS deed carried out on the basis of Cyber Notary during the Pandemic. Referring to the background introduction mentioned above, the following researcher will describe the formulation of the problem in this study, namely, How is the validity of the GMS deed which in its preparation was carried out on the basis of cyber notary?

METHOD

This research uses normative juridical methods, meaning that research is based on literature studies which are then associated with legal principles, legal opinions, legal theories

and also related laws and regulations. In addition, there are three types of legal materials used, primary legal materials consisting of laws and regulations, secondary legal materials which include related books and journals, and tertiary legal materials which include materials from the internet, legal dictionaries, encyclopedias, and so on (Amiruddin, 2017). The legal material by the researcher will be inventoried, for laws and regulations it will be analyzed and related to the legal issue that the researcher will raise, namely regarding the validity of the GMS deed carried out by the cyber notary method during the Covid-19 Pandemic. Broadly speaking, the data collection technique carried out by researchers is by literature study, then these materials after being obtained will be described to answer any problems that arise in this study.

RESULTS AND DISCUSSION

In a limited liability company, an important part of the PT organ is the General Meeting of Shareholders (GMS) (Mann et al., 2006). In a company, the authority, duties, and obligations carried out by the GMS are not determined by the management of the company, but are determined directly by the Limited Liability Company Law and also the company's Articles of Association. In addition, in the activities carried out by the company, the GMS, which is a forum, has the right to know all activities carried out by the company. The information obtained is often used as a basis for the GMS to determine attitudes and policies towards the company's activities. Every GMS holds a meeting, it must be stated in a minutes of meeting, if it is not made, the GMS is considered invalid or never occurred (Widyaswari, 2020).

GMS in the past before the promulgation of the Limited Liability Company Law in 2007, was required for all members and related parties to come to a predetermined place and jointly discuss the future and activities of the company. However, since the promulgation of the Limited Liability Company Law in 2007, this concept has changed. In Article 77 paragraph (1) of the Limited Liability Company Law, a new rule is determined, namely:

"In addition to the GMS as referred to in Article 76, the GMS can also be conducted through teleconference, video conference, or other electronic media means that allow all GMS participants to see and hear each other directly and participate in meetings."

Based on these rules, the GMS is not required to meet face to face, because it can be done by virtual or video conference (May & Carter, 2001). This is good news for the company's management because it makes it easier for them to continue their activities, especially in the midst of the Covid-19 pandemic which actually limits community activities to meet in person. Related to this, to accommodate technological updates where everything is currently done virtually, especially coupled with the Covid-19 pandemic which is indeed issued by the government PSBB policy, the performance of Notaries can now be done electronically. This is based on the interpretation of Article 15 paragraph (3) of the Notary Office Law, that Notaries are allowed to exercise other authorities as long as they are regulated by laws and regulations. Related to this interpretation, if it is related to Article 77 paragraph (1) of the Limited Liability Company Law, the Notary is also authorized to make an electronic-based deed or called a cyber notary. This is in accordance with the explanation in the article that Notaries have the right to authenticate transactions carried out electronically (Maulidiya, 2020).

In an activity in the community in order to get legal certainty, the authentic deed of Notary product is one way to achieve legal certainty. This then makes people, especially those who have businesses or businesses, come before a Notary to make deeds related to their companies,

one of which is the GMS deed (Chamidah et al., 2019). Because with the making of an authentic deed before a notary, the deed has legal force and becomes perfect evidence before the court. The emergence of the cyber notary concept then made these notaries required to be able to provide fast and precise services for their clients which were then associated with the acceleration of economic growth in Indonesia. Actually, the idea of cyber notary has existed since 2011 but has only been realized since Law Number 11 of 2008 concerning Information and Electronic Technology (hereinafter referred to as the ITE Law) was born and discussions about cyber notary resumed. (Setiadewi, 2020).

According to the Manager of the Cyber Notary Project-US for International Business, Theodore Sedwick, cyber notary is a concept related to the performance of Notaries that are usually done conventionally but are currently applied electronically. The emergence of this concept makes a security related to electronic transactions via the internet (Setiadewi, 2020).

Over time, coupled with the PSBB due to the Covid-19 Pandemic, this service has been carried out by many people, one of which is related to making the GMS Deed. Basically, the deed of electronic GMS is also regulated in Article 77 paragraph (1) of the Limited Liability Company Law. Its implementation is also guaranteed safe with the legal basis of the ITE Law. However, in its implementation, it is not necessarily subscribed virtually, there are still several requirements that must be met, if one of them is not met, the electronic documents produced do not meet the requirements for the implementation of the GMS. These conditions are:

1. Participants are required to see directly between parties in the forum;
2. Participants must listen directly to matters in the forum;
3. Participants must be active during the meeting. (Dewi, 2017)

In an authentic deed according to Article 38 of the Notary Office Law, it must be included regarding the reading of the deed so that the deed becomes authentic, but in the cyber notary method based on media or electronic means in the signing, this must be included at the end of the deed in accordance with the provisions of Article 38 of the Notary Office Law, so that the deed becomes authentic. But not only that, the next conflict occurs when in the Limited Liability Company Law it is possible to hold GMS via video conference which means that the faces do not face directly with notaries and they do it in various regions, this is contrary to the principle of notarial deeds which must be carried out by dealing with a Notary, this is stated in Article 16 paragraph (1) letter m of the Notary Position Law.

This contradiction can then be assessed using the principle of *lex specialis derogate legi generali*. A principle that gives primacy to specific laws over the interests of general laws. If it is related to the conflict between the two laws and regulations, then the *lex generalis* is article 16 paragraph (1) letter m UUIJN, while the *lex specialis* is the provision of Article 77 paragraph (1) jo. Explanation of Article 77 (4) of the Law. With this legal construction, the sanctions provisions contained in Article 16 (9) do not apply and the provisions in article 16 (1) letter m only apply to deeds other than the GMS deed as specified in article 77 (1) jo. Explanation of article 77 (4) of the Law.

The implementation of the law is then linked to Article 38 of the Notary Office Law where generally at the end of the deed it is usually mentioned about the place of residence and time the faces are located, but if the GMS is conducted by virtual method, this must also be included at the end of the deed so that the notary deed remains authentic.

CONCLUSION

The GMS deed made by the cyber notary method and in the implementation of the GMS carried out by the virtual method can actually be authentic or still maintain the authenticity of the Notary Deed, if using the statutory principle of *lex specialis derogate legi generali* where the *lex generalis* is article 16 paragraph (1) letter m, while the *lex specialis* is Article 77 paragraph (1) jo. Explanation of Article 77 paragraph (4) of the Law on PT. The GMS made can be ratified by a Notary after the parties sign the minutes of the deed and in accordance with Article 11 of the ITE Law and also other requirements as contained in Article 77 of the Limited Liability Company Law. If everything has been ratified by a Notary, then the GMS deed has perfect evidentiary power and can be used as evidence in court.

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