



JOURNAL OF PRIVATE AND COMMERCIAL LAW

DEPARTMENT OF PRIVATE AND COMMERCIAL LAW, FACULTY OF LAW, UNIVERSITAS NEGERI SEMARANG

P-ISSN : 25990314 <> E-ISSN : 25990306

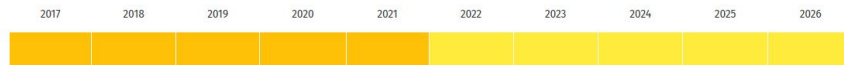
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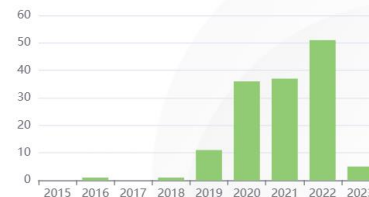
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Journal of Private and Commercial Law is a media to bring together the results of thought and research by academics and practitioners in selected legal fields of study covering Private Law, Commercial Law, Intellectual Property, Economic Law, Business Law, Adat Law, Anthropology Law, Sharia Law, Insurance Law, Banking Law, Consumer Protection Law, and cognate in other Private Law fields. The manuscript that has been received and is ready to be published will be published online (OJS) and the printed version.

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Vol 6, No 1 (2022)

Journal of Private and Commercial Law

DOI: <https://doi.org/10.15294/jpcl.v6i1>

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The Urgency of The Organization and Legitimacy of The Digitalization of The General Meetings of Shareholders of The Limited Liability Company During the Covid-19 Time in Review of The Ius Constitutum

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Abstract

Limited Liability Company is a legal entity of capital partnership that is engaged in business with authorized capital which is fully divided through shares. The purpose of a limited liability company is to run a business with capital divided into shares in which the shareholders have a stake in carrying out legal actions without being responsible for themselves regarding agreements in the company. One of the organs in a limited liability company that also has an important role is the General Meeting of Shareholders. Oftentimes, the General Meeting of Shareholders is crowned as the most vital organ of a limited liability company because it has the authority that other limited company organs do not have, such as the Board of Directors and the Board of Commissioners. The rapid development of



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Covid-19 has hampered the holding of the GMS which was previously carried out in person but has now become virtual via teleconference media due to the physical distancing policy. Article 77 Paragraph 1 of Law Number 40 of the Year 2007 and *POJK* Number 16/*POJK.04/2020* is a breakthrough to accommodate the online General Meeting of Shareholders of Limited Liability Companies. Based on this description, this research is aimed at knowing and analyzing the new arrangements for the General Meeting of Shareholders in Limited Liability Companies, especially in its implementation after Covid-19 hit Indonesia. The research method used is normative juridical law research, namely by collecting secondary legal data consisting of secondary and primary legal materials. Data collection techniques are carried out by studying facts, documents, and books related to the problems studied. The implementation of the digitization of the GMS can generally be carried out either through teleconference media, video conferences, or other electronic media

KEYWORDS *General Meeting of Shareholders, Digitization, Covid-19, Ius Constitutum, Limited Liability Company*

Introduction

Based on Article 1 point 1 of Law Number 40 of the Year 2007, a Limited Liability Company is a legal entity that is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this Law and its implementing regulations. According to Zaeni Asyhadie, Limited Liability Company is a legal entity, which was originally known as *Naamloze Vennootschap (NV)*. The term “limited” in a Limited Liability Company refers to the liability of shareholders which is only limited to the nominal value of all the shares they own¹. The purpose of its establishment is to run a company with a certain capital divided by shares, in which the shareholders (*Persero*) participate in taking one or more shares and carry out legal actions made

¹ Zaeni Asyhadie, *Hukum Bisnis (Prinsip dan Pelaksanaannya di Indonesia)* (Jakarta: PT. Raja Grafindo Persada, 2010).

The Role of Infrastructure Guarantee Institution in Infrastructure Project Provision Through Public-Private Partnership Scheme

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Abstract

This study aims to examine the role of Indonesia Infrastructure Guarantee Fund (IIGF). in the Public and how it functions to encourage the acceleration of infrastructure development. This study utilizes a normative juridical research method with a specification of descriptive-analytical. Results indicate that: from a legal perspective, IIGF is an institution that provides a guarantee for losses due to political risks such as changes in regulations, delays, or failures of financial close, as well as failures in granting licenses and approvals. As an institution that provides a guarantee, IIGF is a development of a corporate guarantee whose legal basis uses the concept of a Recourse Agreement according to Civil Code, but its implementation regulated in separate statutory regulations. IIGF performs a guaranteed function and adds value to infrastructure development that has the greatest impact on the benefit of the people of Indonesia; protects the interests of the government in fulfilling infrastructure development through transparent and accountable processes; and increases investor trust by providing investment convenience and payment certainty for claims of risk of loss for a collaborative infrastructure project.

KEYWORDS *Public-Private Partnership, Indonesia Infrastructure Guarantee Fund, Development of Guarantee institutions*



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The Urgency of The Organization and Legitimacy of The Digitalization of The General Meetings of Shareholders of The Limited Liability Company During the Covid-19 Time in Review of The Ius Constitutum

Submission date: 10-Apr-2023 10:54PM (UTC+0700)
by Hermi Widanarti

Submission ID: 2060649877

File name: 36443-93804-2-PB.pdf (312.44K)

Word count: 7621

Character count: 40421

The Urgency of The Organization and Legitimacy of The Digitalization of The General Meetings of Shareholders of The Limited Liability Company During the Covid-19 Time in Review of The Ius Constitutum

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Abstract

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Limited Liability Company is a legal entity of capital partnership that is engaged in business with authorized capital which is fully divided through shares. The purpose of a limited liability company is to run a business with capital divided into shares in which the shareholders have a stake in carrying out legal actions without being responsible for themselves regarding agreements in the company. One of the organs in a limited liability company that also has an important role is the General Meeting of Shareholders. Oftentimes, the General Meeting of Shareholders is crowned as the most vital organ of a limited liability company because it has the authority that other limited company organs do not have, such as the Board of Directors and the Board of Commissioners. The rapid development of



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KEYWORDS *General Meeting of Shareholders, Digitization, Covid-19, Ius Constitutum, Limited Liability Company*

Introduction

Based on Article 1 point 1 of Law Number 40 of the Year 2007, a Limited Liability Company is a legal entity that is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this Law and its implementing regulations. According to Zaeni Asyhadie, Limited Liability Company is a legal entity, which was originally known as *Naamloze Vennootschap* (NV). The term "limited" in a Limited Liability Company refers to the liability of shareholders which is only limited to the nominal value of all the shares they own¹. The purpose of its establishment is to run a company with a certain capital divided by shares, in which the shareholders (*Persero*) participate in taking one or more shares and carry out legal actions made

¹ Zaeni Asyhadie, *Hukum Bisnis (Prinsip dan Pelaksanaannya di Indonesia)* (Jakarta: PT. Raja Grafindo Persada, 2010).

by the joint name, without being responsible for the company's agreements. The company's organs are the directors, the board of commissioners, and the General Meeting of Shareholders. Based on Article 1 point 4 of Law Number 40 of the Year 2007 concerning Limited Liability Companies, the General Meeting of Shareholders (GMS) is a company organ that has the authority that is not given to the Board of Directors or the Board of Commissioners within the limits specified in this Law and/or the Articles of Association. GMS is a meeting held by the board of directors of the company every year and at any time based on the interests of the company, or at the request of the shareholders following the provisions contained in the Articles of Association.

Since the occurrence of the global pandemic, Corona Virus Disease-19 or Covid-19, Indonesia has also been affected by the pandemic that has attacked many sectors, especially when the Large-Scale Social Restrictions (PSBB) have been enforced which require the public to limit physical interaction². Companies require their workers to do work from home or Work From Home (WFH). This is done to reduce the transmission of the virus and suppress the increase in the positive number of Covid-19 in Indonesia.

The GMS aims to find out the financial statements and reports on the Company's activities, replacement, or appointment of the Board of Commissioners and/or directors. This GMS is divided into an annual GMS and an extraordinary GMS. Which is held annually at least once a year and is the company's routine agenda. Meanwhile, the extraordinary GMS has an agenda that can occur at any time outside the annual agenda. Extraordinary GMS often occurs because of a big problem that requires a decision with the shareholders immediately following the Articles of Association. However, today's problem is that it is difficult to hold a general

² Nea Ningtyas, "Normal Yang Baru: Seperti Apa Tatahan Kehidupan Bersama COVID-19?," *Jabar Digital Service*, last modified 2020, accessed March 18, 2022, <https://opendata.jabarprov.go.id/id/artikel/normal-yang-baru-seperti-apa-tatanan-kehidupan-bersama-covid-19>.

meeting of shareholders because of the Covid-19 pandemic which requires everyone to keep their distance and not gather together to break the line of spreading the Coronavirus. However, it does not rule out the possibility of GMS activities through teleconferencing, videoconferencing, or other electronic media facilities that allow all GMS participants to see and hear each other directly and participate in meetings, which is stated in Article 77 Paragraph 1 of Law Number 40 of the Year 2007 and further regulated regarding the implementation of the GMS of Limited Liability Company electronically in *POJK* Number 16/*POJK*.04/2020. This regulation, it makes a breakthrough during the Covid-19 pandemic that disrupts community activities. With the Covid-19 pandemic, the implementation of the GMS is hampered, so digitalization is needed to increase the efficiency and effectiveness of holding a general meeting of shareholders, and also to support the use of information technology developments. However, what is the urgency of digitizing the GMS during this pandemic? and what is the authority and position of the GMS through online media?

Cyber Notary or E-Notary is a concept that utilizes technological advances for notaries in carrying out their daily tasks, such as digitizing documents, electronically signing the deed, conducting the General Meeting of Shareholders by teleconference, and other similar matters³. The concept of the cyber notary has been introduced in 1995. However, since there is no facilitation in the form of a law that regulates the cyber notary, the concept of the cyber notary in question is only a concept. Concerning the holding of the General Meeting of Shareholders which is conducted through electronic media, of course, it is different from the General Meeting of Shareholders which is held regularly.

The GMS is the main forum for shareholders in submitting their

³ KlikLegal.com, "Urgensi E-Notary Di Saat Pandemi, Pergolakan Antara Kepastian Hukum Dengan Kemanfaatan Hukum Sumber: Urgensi E-Notary Di Saat Pandemi, Pergolakan Antara Kepastian Hukum Dengan Kemanfaatan Hukum | KlikLegal," KlikLegal.Com, last modified 2020, accessed March 13, 2022, <https://kliklegal.com/urgensi-e-notary-di-saat-pandemi-pergolakan-antara-kepastian-hukum-dengan-kemanfaatan-hukum/>.

voting rights to make decisions related to the company. In Law Number 40 of The Year 2007, it is stated that the GMS has a central function for shareholders, such as a forum for determining company policies. This is because the GMS has powers that are not possessed by other limited liability company organs, such as the board of directors and the board of commissioners within the limits established by the Articles of Association and law. Therefore, the GMS is the highest power in the company.

The role carried out by the GMS as the highest power holder in a limited liability company is to be the main protector of the rights of the shareholders. The GMS in carrying out its duties must comply with the laws and regulations and the provisions of the Articles of Association, especially when making important decisions regarding the capital invested in the company by shareholders. Shareholders are not part of the organs of a limited liability company. Thus, the GMS is present so that shareholders can know all forms of information relating to the company described by the board of directors and board of commissioners.

The rapid spread of the coronavirus in Indonesia has led to the emergence of large-scale social restriction policies and a prohibition on holding meetings with several people which also causes all community activities to be carried out completely online. This of course also has an impact on the implementation of the GMS, where many companies cannot hold forums such as the GMS directly and efficiently within an undetermined time limit. However, to overcome this, the government, especially the Financial Services Authority (*OJK*) issued a policy regarding changes to the implementation of the GMS to switch to electronic as stated in *POJK* Number 16/*POJK*.04/2020. This policy is then a breakthrough and is considered the most efficient way to overcome the problems of implementing the GMS after the Covid-19 hit Indonesia. However, of course, there is still a need for a deeper study of the urgency of the implementation of digitization of the GMS during this pandemic and to find out whether the electronic GMS can be recognized and considered

valid by law in Indonesia. So research on the digitization of the GMS will always be important and actual, especially after the Covid-19 pandemic is evolving.

Based on the things that have been stated above, the formulation of the problems in this paper, are as follows: (1) How is the digitization of the GMS of a Limited Liability Company during the Covid-19 pandemic based on the *ius constitutum*? (2) How is the legitimacy or legitimacy of the authority and position of the GMS through online media or teleconference?

Method

According to Erwin Pollack, the Legal Research Method is a study to find concrete facts, which includes various activities to find out what constitutes law that is appropriate to be applied in concrete terms to resolve certain cases. Mohammad Radhi defines legal research as a whole activity based on scientific disciplines to analyze, clarify, collect, also interpret facts and relationships in the legal field based the knowledge obtained can be developed scientific principles and scientific ways to respond to these facts and relationships. It can be concluded that the legal research method is a scientific activity that is carried out empirically, systematically, and rationally to solve the researched problem. The research method used in this writing is normative juridical, by analyzing secondary legal data consisting of secondary and primary legal materials.

Result and Discussions

This research focuses on the problem of knowing the urgency of holding and legitimizing the digitalization of the General Meeting of Shareholders of Limited Liability Companies during the Covid-19 pandemic. The digitization of the GMS is intended to make it easier for both limited liability company organs and shareholders to continue to hold

meetings to determine company policies during a pandemic. This is then used as a framework for thinking as well as a race for the direction of discussion in this research. So that the scope of the research discussion is not too broad, it is necessary first of all to know that the things that will be studied in this research are around the implementation of digitalization and the recognition of the digitization of the GMS of a Limited Liability Company during the pandemic. Through this understanding, it will be easy to determine the limits of consideration so that the discussion in this research is perfectly organized and during the scope of the study.

A. Digitization of The General Meeting of Shareholders of Limited Liability Companies During The COVID-19 Pandemic Based on The *Ius Constitutum*

The change in the paradigm of holding the General Meeting of Shareholders (GMS) from a conventional perspective to a digital one is a necessity. Digitalization in this GMS is a logical consequence of changing the needs, environment, and conditions of a society. Nowadays, people are being difficult with the Covid-19 pandemic which gives limited space to carry out all their activities. However, changes in conditions like this should not reduce the continuity of the GMS for a Limited Liability Company. Especially when viewed sociologically, there are economic fluctuations on a global and national scale that make Limited Liability Companies must provide the right decisions, policies, and/or strategies through all of their organs. Thus, through this digitalization of the holding of the GMS is an urgency to maintain the activities of the Limited Liability Company. In addition to important matters, the digitization of this GMS also brings progressivity to business law and corporate law. That the digitization of the GMS is in line with the progressive law initiated by **Prof. Satjipto Rahardjo** that the law is not an absolute and final institution, because the law is always in the process of continuing to be (*law as a*

process, law in the making)⁴. Related to this important and progressive nature, the digitization of this GMS is an indication of a responsive law as stated by **Phillipe Nonet** and **Philip Selznick** that the law must respond to or fulfill all needs that are present in the community². Thus, the digitalization of this GMS is an important, progressive, and responsive legal method for the community, especially the managers and organizers of Limited Liability Companies.

In connection with the importance of digitizing the GMS of a Limited Liability Company during the Covid-19 Pandemic, it is necessary to understand that the GMS has powers that are not given to the board of directors or the board of commissioners, within the limits specified in the limited liability company law and/or the Articles of Association of the company. At the GMS, shareholders have the right to obtain information relating to the company from the board of directors and/or the board of commissioners as long as it relates to the agenda of the meeting and does not conflict with the interests of the company, including the rights of shareholders to view the list of shareholders, a special list of members of the board of directors and the board of commissioners³. Then, the GMS is practically divided into two types, such as the annual GMS and the extraordinary/other GMS. The basic dissimilarity lies in the timing of its implementation. The Annual GMS is an agenda that is held at least once a year, which is no later than six months after the end of the financial year, by submitting all documents from the company's annual report. Meanwhile, the Extraordinary GMS is a general meeting of shareholders whose implementation is outside the annual agenda, it can occur at any time. The extraordinary GMS was held because there was a big problem that needed to make a decision immediately. In line with the urgency of digitalization, the authority and dissimilarity in the timing of the actual GMS were digitized based on Article 77 of Law Number 40 of the Year 2007

⁴ Satjipto Rahardjo, "Hukum Progresif: Hukum Yang Membebaskan," *Hukum Progresif* 1, no. 1 (2011): 4, https://ejournal.undip.ac.id/index.php/hukum_progresif/article/view/1009.

concerning Limited Liability Companies (*UUPT*) that the GMS can be conducted through teleconference, video conference, or other electronic media means, as well as seeing and listening to each other which allows all participants to interact directly in the meeting⁵. This mechanism must at least meet the requirements of a quorum and decision-making following the Law on Limited Liability Company and the Articles of Association of Limited Liability Company. For every GMS, minutes of the meeting must be approved and signed physically or electronically⁶. Through the *ius constitutum*, in certain circumstances, especially during the Covid-19 pandemic, the GMS can be held online or through teleconference media. This regulation is predictive, progressive, and responsive by providing opportunities or other means besides conventional meetings as in Article 76 of the Law on Limited Liability Company the use of teleconferencing media is also in line with the emergence of various Artificial Intelligence, applications, and technology media in the current 4.0 revolution era. Thus, the mechanism of the Annual GMS or other GMS can be carried out through Zoom Meetings, Google Meet, Microsoft Teams, and other applications to the presence of images regarding the existence of the Metaverse which are the basic facilities of the digitization of the GMS of a Limited Liability Company.

Concerning the regulation on digitizing the GMS in Article 77 of the Limited Liability Company Law, the government has issued a policy by making Financial Services Authority Regulation (*POJK*) Number 16/*POJK.04/2020* concerning the Electronic Implementation of the General Meeting of Shareholders of Public Companies. *POJK* Number 16/*POJK.04/2020* concerning the Implementation of the General Meeting of Shareholders of Public Companies Electronically that “regulates the process of making corporate business decisions quickly and accurately in

⁵ Phillippe Nonet and Philip Selznick, *Hukum Responsif: Pilihan Di Masa Transisi (Law and Society in Transition: Toward Responsive Law)* (Jakarta: Nusamedia, 2003).

⁶ Abdulkadir Muhammad, *Hukum Perusahaan Indonesia* (Bandung: PT Citra Aditya Bakti, 2010).

the holding of the General Meeting of the Public Company through teleconferencing, video conferences, or other electronic media⁷.” The holding of the GMS electronically is intended so that the business carried out does not get stuck and can continue to run for the benefit and success of the business. The implementation of the e-GMS mechanism is also regulated in *POJK* Number 16/*POJK.04/2020*. Where Article 8 paragraph (1) states that the implementation of the e-GMS is required to contain information regarding the planned implementation of the e-GMS in the notification of the GMS agenda to the Financial Services Authority (*OJK*), announcements of the GMS, and invitations to the GMS. Based on *POJK* Number 16/*POJK.04/2020* concerning the implementation of the General Meeting of Shareholders of the Company Electronically, in the holding of the GMS, several parties are also required to attend physically, at least including⁸: (a) Chairman of the GMS; (b) 1 (one) member of the Board of Directors and/or 1 (one) member of the Board of Commissioners; and capital market supporting professions that assist in the implementation of the GMS. Shareholders are allowed to attend physically, as long as the Public Company provides a certain quota (not for all shareholders). Then, Article 8 paragraph (5) explains that the electronic presence of shareholders at the GMS electronically can replace the physical presence of shareholders and is counted as fulfilling the attendance quorum. Article 9 paragraphs (1) and (2) also stipulate that under certain conditions, a Public Company may not physically hold a GMS or limit the physical presence of shareholders either partially or completely in the electronic GMS. These certain conditions will of course be determined by the

⁷ Arya Putra, Rizal Pratama, and Ferdi Kusuma Fadillah, “Penguatan Digitalisasi Perbankan Dalam Pelayanan Costumer Service Nasabah Secara Digital Di Masa Covid-19,” *Simbur Cahaya* 5 (2018): 312–322, file:///C:/Users/user/Downloads/1443-4957-1-PB.pdf.

⁸ Otoritas Jasa Keuangan Republik Indonesia, Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor: 16 / POJK.04 / 2020 Tentang Pelaksanaan Rapat Umum Pemegang Saham Perusahaan Secara Elektronik. (Indonesia, 2020), <https://www.ojk.go.id/id/regulasi/Documents/Pages/Pelaksanaan-Rapat-Umum-Pemegang-Saham-Perusahaan-Terbuka-Secara-Elektronik--/poj16-2020.pdf>.

Government or with the approval of the Financial Services Authority. Furthermore, regarding the voting in the e-GMS, it can be done after the summons until the opening of each agenda. Shareholders who have cast their votes electronically before the GMS is held are considered valid to attend the GMS, this provision is contained in Article 11 paragraph (1) and (3) *POJK* Number 16/*POJK*.04/2020.

The digitization of the GMS in either an Open or Closed Limited Liability Company brings new consequences, namely the existence of electronic data that will be generated by a teleconference. The electronic data referred to in this case includes a notary. This is stated in the provisions of *POJK* Number 16/*POJK*.04/2020 Article 12 paragraph (1) wherein the minutes of the GMS electronically must be made indeed notarial form by a notary registered with the Financial Services Authority (*OJK*) without requiring the signature of the GMS participants. Then, in the Limited Liability Company Law, it is stated that any changes related to the Articles of Association of a Limited Liability Company must be made into minutes of meetings which will later be stated in an authentic deed⁹. As for this authentic document in digital form, it can become legitimacy or legitimacy in carrying out the digitization of the GMS of a Limited Liability Company either for the annual GMS or otherwise. In addition, it also supports legal progress and responsiveness in responding to situations and conditions as well as community needs as in the current era of Covid-19. Meanwhile, in addition to the usefulness and justice values that are trying to be presented from the digitalization of this GMS, there is legal certainty in carrying out this digitalization either through Article 77 of the Limited Liability Company Law (*UUPT*) or *POJK* Number 16/*POJK*.04/2020 as an effort to achieve legal certainty in the *ius constitutum* to achieve the goals and needs of the community.

⁹ Syarifah Indah Safitri and Wardani Rizkianti, "Rapat Umum Pemegang Saham Perusahaan Terbuka Dalam Masa Pandemi Berdasarkan Peraturan Otoritas Jasa Keuangan Nomor 16/*POJK*.04/2020," Call for Paper National Conference For Law Studies: Pembangunan Hukum Menuju Era Digital Society (2020): 577, file:///C:/Users/user/Downloads/1509-5136-1-SM.pdf.

B. The Legitimacy of Authority and Position of General Meeting of Shareholders Through Online Media or Teleconference

The continuous development of technology and the Covid-19 pandemic requires many activities to be accommodated online to prevent the spread of the virus. One of the activities required to follow the health protocol is the General Meeting of Shareholders of a **Limited Liability Company**. This has been stated in Article 77 of Law Number 40 of the Year 2007 concerning Limited Liability Companies, which stipulates that the General Meeting of Shareholders of a Limited Liability Company can also be held through **teleconference, videoconferencing, or other electronic means that allow all GMS participants to see and hear each other directly and participate in the meeting**. In addition, there are at least 3 (three) cumulative conditions that must be met to take advantage of teleconferencing media, such as¹⁰:

- a. Participants must see each other in person;
- b. Participants must listen to each other directly;
- c. Participants participate in the meeting.

This means that if one of the conditions above cannot be met, then the implementation of the activity does not meet the requirements. This is the problem at the GMS through online media and teleconference because, in Article 77 of the Limited Liability Company, members of the GMS cannot participate after all the shareholders are not in the same place.

The provisions of Law Number 40 of the Year 2007 led to a new procedure that any changes related **to the Articles of Association of the Limited Liability Company** must have minutes of the meeting which must be stated in an authentic deed, namely an act notary¹¹. However, because

¹⁰ Sinardi Syawal S Siagian, "Legalitas Cyber Notary Dan Tandatangan Dalam Rapat Umum Pemegang Saham," Universitas Sumatera Utara, no. 061 (2014), <https://mkn.usu.ac.id/images/27.pdf>.

¹¹ *Ibid.*

the GMS is conducted with an electronic mechanism, the resulting data is also electronic data. Based on Article 90 of Law Number 40 of the Year 2007 concerning Limited Liability Companies, every GMS holding, minutes of the GMS must be drawn up and signed by the chairman of the meeting and at least 1 (one) shareholder appointed from and by the participants of the GMS. The signature as referred to in paragraph (1) is not required if the minutes of the GMS are made with a notary. Therefore, if the making of a Notary Deed is done conventionally, then there is no problem. However, if it is done through online media and teleconferencing, there are several problems, namely that the minutes of the meeting must be signed by all meeting participants.

In making a conventional deed, the closing part of the pact indicates that the appearers, witnesses, and notaries are present at the same place and time. While the GMS of Limited Liability Company is through a teleconference, the location of the GMS participants is different from other participants, so it must be stated clearly after the deed so as not to cause the deed to become an underhanded deed. However, Electronic Information and Transaction Law Number 11 of the Year 2008 has stated that electronic information and/or electronic documents and/or their printouts are valid legal evidence and are an extension of legal evidence following the applicable procedural law in Indonesia¹². However, electronic information can be easily falsified and sent to various places within seconds, even though the role of these documents is very important and can be used as strong evidence, so to overcome this, there is a requirement that documents that can be used as evidence must be viewable, sent, and stored in paper form. So, if based on Law Number 2 of the Year 2014, perfect evidence is only authentic. Based on the meaning stated in Article 1868 of the Civil Code, there are two forms of the authentic

¹² Waringin Seto and Hudi Asrori S., "Keabsahan Rapat Umum Pemegang Saham Perseroan Terbatas Dengan Bukti Kehadiran Para Pemegang Saham Secara Online," *Repertorium* 6, no. 1 (2019): 1–15.

deed, such as¹³:

1. Official Deed/*Relaas* Deed/Events Deed, which is a deed made by (*door*) Public Officials, containing descriptions of Public Officials that are seen and witnessed by the General Officials themselves at the request of the parties, so that the actions or deeds of the parties carried out are poured into an authentic deed.
2. Deed of Parties/Deed of *Partij*, namely deed made before (*tenoverstan*) Public Officials, containing descriptions or statements, statements of the parties given or told before Public Officials. The parties want their descriptions or statements to be put in an authentic deed form.

From this grouping, it can be concluded that the deed of the GMS through online media and teleconferences is classified as an official deed. If viewed from the provisions of the official deed, the validity of the notary's statement in the form of the GMS deed through online media and teleconference can be ascertained its legitimacy, even though the GMS parties do not sign the deed, as long as it has been signed by the Notary as the maker of the deed. This is because the minutes containing the description witnessed by the legal notary itself at the request of the parties are then poured in the form of a notary so that it becomes authentic and has perfect evidence power.

Based on Article 77 of the Limited Liability Company Law, the GMS through teleconference media is explicitly possible to be held, as long as it guarantees that the interaction is real. This is reflected in the provisions which state that all GMS participants see and hear each other directly and participate in the meeting. This rule is a legal development that seeks to accommodate technological developments by providing convenience in the implementation of the GMS¹⁴.

The terms of the quorum and the requirements for making GMS

¹³ Siagian, "Legalitas Cyber Notary Dan Tandatangan Dalam Rapat Umum Pemegang Saham."

decisions through electronic media are the same as conventional GMS. Both comply with and refer to the requirements stipulated in Article 86, Article 88, and Article 89. The resolution of the GMS is valid if the conditions for holding it have been fulfilled and attended by the shareholders by fulfilling the quorum provisions and the number of shareholders as determined by the Company Law and the company's Articles of Association¹⁴.

The Position of The Authentic Deed as Evidence of The General Meeting of Shareholders of A Limited Liability Company Held by Teleconference

In the development of technology, especially during the Covid-19 period, which requires many activities to be carried out online or online, the provisions in the latest Limited Liability Company Law also provide breakthroughs with discourse and ideas to combine advances in information technology with the process of making authentic certificates. All forms of writing or deeds that are not authentic deeds are called private deeds or in other words all types of deeds that are not made by or before a public official. The power of proving the deed is underhanded, not as wide and as high as the degree of authentic ink. Authenticity has the power of outward, formal, and material proof. Not so with a private deed, which does not have the power of external evidence, but is limited to formal and material evidence with a much lower weight than an authentic deed. Based on the provisions contained in Article 1868 of the Civil Code and Law Number 30 of the Year 2004 concerning the Position of a Notary (UUJN), a Deed is classified as an Authentic Deed if:

- (a) The form is determined by law, Article 38 Position of Notary Law (UUJN);
- (b) Made by or before a public official, in the case of a notary, Article 1 point 1 in conjunction with Article 15 paragraph (1) 38 Position of Notary Law (UUJN);

¹⁴ Edmon Makarim, *Notaris & Transaksi Elektronik Kajian Hukum Tentang Cybernotary Atau Elektronik Notary* (Jakarta: PT Raja Grafindo Persada, 2013).

(c) The public official must have the following powers: (1) place/region of office, Article 52 paragraph (1) and Article 53 Position of Notary Law (*UUJN*); (2) People (appears and witnesses), Article 52 paragraph 10 and Article 53 Position of Notary Law (*UUJN*); (3) Time, Article 4 and Article 25 Position of Notary Law (*UUJN*); (4) Substance/material contained in the deed, Article 15 paragraph (1) Position of Notary Law (*UUJN*).

Global problems facing the world, such as the technological-economic revolution, trade, investment, competition, and trade-commerce have an impact on legal services for notary services. By itself, the service of notary services has changed, apart from the company, notaries also experience a dilemma, namely that the notary is between the state, society, and the market. Although until now the position of a notary is essentially still using the model and pattern of notarial service at the beginning of the 19th century, following the demands of the notary era, he must also be a pioneer in the field of legal services to the public in the era of globalization¹⁵. By utilizing electronic media, including the creation of an authentic child-based GMS teleconference.

A notary is one of the officials authorized to make an authentic deed as stipulated in Article 1 paragraph (1) of Law Number 30 of the Year 2004 concerning the position of a notary. In terms of the Limited Liability Company Law, in principle, the strength of proof of the Minutes of the GMS made by a Notary or Deed derived from the minutes of the meeting which is then drawn up before a notary in the form of a Deed of Statement of Meeting Resolutions (*PKR*) can be seen from the shareholders who have attended the GMS through a teleconference held to prove that the shareholders participated in the implementation of the GMS through teleconference by filling out the attendance list and approving and

¹⁵ Wardani Rizkianti, "AKTA OTENTIK RAPAT UMUM PEMEGANG SAHAM (RUPS) MELALUI MEDIA TELEKONFERENSI (Mekanisme Pembuatan Dan Kekuatan Pembuktiannya)," *Jurnal Yuridis* 8, no. 33 (2014): 44, file:///C:/Users/user/Downloads/172-400-1-SM.pdf.

approving the resolutions of the GMS through teleconference, whether witnessed directly by a Notary or not witnessed by a Notary. Concerning the position of the board of directors, in this case, which is fiduciary, which is recognized in the Company Law to a certain extent, the responsibility of the board of directors becomes very high (high degree) because it relates to the management of the company. Not only is he responsible for intentional dishonesty (dishonesty), but he is also legally responsible for acts of mismanagement, negligence, or failing or not doing something important to the company¹⁶.

The signing of the GMS attendance list to prove that the shareholders are present can be done in the conventional (direct) way, namely if the shareholders have returned to the Company's premises within a period not exceeding 30 (thirty days), secondly, it can be signed directly at the shareholders' premises. exists using a circular resolution, if it has been signed by all shareholders then it can be evidence that the third teleconference GMS has been held, can be sent via facsimile then it can be evidence that the shareholders have attended the teleconference GMS because what is signed is on paper and the signature is affixed to the original document so that the strength of proof refers to the explanation of Article 77 paragraph (4) of Law Number 40 of the Year 2007 concerning Limited Liability Companies explaining that it is approved and signed physically or electronically. based on the provisions of Article 5 paragraph (1) and (2) Law Number 11 of 2008 concerning Electronic Information and Transaction Law (*UU ITE*) which states that electronic documents and/or their printouts are legal evidence following procedural law in force in Indonesia.

Then it also refers to Article 6 of the Electronic Information and Transaction Law, such as: "If there are other provisions other than those stipulated in Article 5 paragraph 4 of the Electronic Information and

¹⁶ Munir Fuady, *Perseroan Terbatas Paradigma Baru* (Bandung: PT. Citra Aditya Bakti, 2003).

Transaction Law, it must be in written or original form, electronic information is considered legal as long as the information contained in it can be accessed, displayed, guaranteed its integrity and can be accounted for to explain a situation.”

Because the notary⁴ is one of the officials authorized to make an authentic deed, therefore the minutes of the meeting made by the notary at the time of the GMS by teleconference is an authentic deed. If the implementation of the GMS is carried out following the provisions of the Position of Notary Law (*UUJN*) and Limited Liability Company Law (*UUPT*) as described above, which is produced and signed in the form of an original document, not an electronic document following the provisions of Article 5 of Law Number 11 of 2008 concerning Electronic Information and Transaction Law, it states: “Stipulations regarding electronic information and/or electronic documents as well as in the form of a letter as referred to in paragraph (1) must not be made in written form by law deed maker.”

So the deed of Minutes of GMS has the power of proof attached to it is perfect (*volledig bewijskracht*) and binding (*bindendebewijskracht*) as stipulated in Article 1870 of the Civil Code/Article 285 *RBG*. If there is other evidence submitted by another party that meets the formal and material requirements, then it does not reduce the strength of the wrong meeting/Deed of Minutes of GMS which is perfect and the binding force is perfect. The GMS agenda has 3 (three) powers of evidence, such as¹⁷:

- 1) The power of external/external evidence, in the sense that the Deed of Minutes of the GMS can prove its validity is commonly referred to in Latin as deed *publica probants seipsa*. Therefore, the judge and the litigant are obliged to consider that the Deed of Minutes of the GMS is an Authentic Deed so that the opposing party can prove that the Deed in question is not an Authentic Deed.

¹⁷ Ikhsan Lubis, “Digital Transformation The General Meeting of Shareholders of a Limited Liability Company,” *Jurnal Ilmiah Penegakan Hukum* 8, no. 2 (2021): 160–173. file:///C:/Users/user/Downloads/5877-24495-2-PB.pdf.

- 2) The power of formal evidence, in the sense of a Notary's Statement as a Public Official in writing⁸ as stated in the Deed, is carried out and witnessed by a Notary as a Public Official who has the authority to make the Deed in carrying out his position. This is the basis that everything stated in the Deed, whether written directly by a Notary or stated by the presenters, is stated to be true as the information submitted and desired by the parties, including in the strength of this evidence, the certainty of the validity of the deed, the correctness of the signatures contained in the Deed, the identity of the people present and about exactly where the Deed was made.
- 3) The strength of material evidence, in the sense that the contents of the deed are considered to be proven as true against everyone who orders the making of the deed as evidence against him.

The deed of the Meeting's decision is also an authentic deed because it has complied with the provisions of the law as an authentic deed, even though the contents of the deed are derived from the minutes of the GMS under the hands which is a private deed, if it has been stated in the Deed¹⁰ of Statement of Meeting Resolutions (PKR), then the deed is an authentic deed. The differences between an authentic deed and a private deed include: 1) An authentic deed has a definite date while regarding the date of a private deed it is not always the case; 2) Grosse of an authentic deed in some respects has executive power, while private deed does not have executive power.

Conclusion

The emergence of the Covid-19 pandemic is a steppingstone that must be carried out for today's society, including the organs that operate in Limited Liability Companies. The limitations caused by this event² caused many obstacles to the holding of a general meeting of shareholders in a Limited Liability Company which is usually held conventionally, now

it must be carried out without creating a kind of crowd that could become the rope for the spread of the Covid-19 virus. Given that the nature of the law itself is progressive, which means it will never be final and must be adaptive to developments that occur and the needs of the community, Law Number 40 of the Year 2007 concerning Limited Liability Companies (UUPT) provides options that can be used in the current pandemic conditions. Based on Article 77 of the Limited Liability Company Law, the urgency of the community to carry out a digital form of digitalization at the GMS digitally has been supported by that the GMS can be conducted through teleconference media, video conferences, or other electronic media facilities that allow all participants to interact with each other, see, hear directly and participate in meetings. If the GMS is conducted online, then the minutes of the general meeting are in digital form, which with the existence of Law Number 11 of the Year 2018 the legitimacy of the summary of the general meeting is already a legal document. With this, the urgency of digitizing the general meeting of shareholders has been supported by the existence of law in Indonesia and its legitimacy has been recognized. With the Covid-19 pandemic which has been considered the new normal in people's lives, efforts to develop facilities and infrastructure by the government are very necessary, considering that the digitalization of the GMS is urgent in today's conditions. As for laws that are progressive and adaptive, where there is legal certainty in the implementation of the digitization of the GMS, it can still be re-supported so that the legitimacy of this matter is not ambiguous. This can also be a preventive measure against errors to occur if there are provisions that limit the implementation of the GMS digitally.

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DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None

ACKNOWLEDGMENT

The authors thank to the anonymous reviewer of this article vor their valuable comment and highlights.

HISTORY OF ARTICLE

Submitted : February 27, 2021
Revised : April 25, 2021
Accepted : May 23, 2022
Published : May 31, 2022

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