



## **The status of deeds of shareholders' general meeting made by notary through teleconference media**

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### **Article Info**

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#### **Article history:**

Received 06-06-2023

Revised 17-07-2023

Accepted 30-09-2023

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#### **Keyword:**

Deed, General Meeting, Law Number Two of 2014, Notary, Teleconference Media

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### **ABSTRACT**

In accordance with Law Number 40 of 2014 about the Role and Position of a Notary, a General Meeting of Shareholders (GMS) must adhere to the rules that require the minutes of the meeting to be prepared by a notary as an official deed. It is crucial to emphasize that the minutes of a General Meeting of Shareholders (GMS) conducted by a teleconference, along with the indicated paperwork, would need to comply with the regulations specified in notary law before being officially transformed into a legally binding document by a notary. The objective of this study is to examine the current condition of the notarized General Meeting of Shareholders' Deed conducted using teleconference media, as regulated by Law Number Two of 2014. This research uses the normative legal technique to examine legal issues that occur and pertain to legal norms stipulated in statutory rules. The study's findings allow for the formulation of specific conclusions. To preserve the records of the teleconference General Meeting of a limited liability company, it is necessary to document the meeting minutes as a formal declaration of the decisions made at the meeting.



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## **INTRODUCTION**

The development of information and communication technology (ICT) provides many conveniences, allowing human interactions to occur quickly and easily without being limited by space and time or having to meet physically (Indrawan & Ilmar, 2020). Responding to this, the proposal entails the enactment of Law Number 40 of 2007, which pertains to limited liability companies, known as the Law of Limited Liability Company (hereafter LLLC). The presence of LLLC provides an alternative to organizing GMS via teleconference media, as stipulated in Article 77, Paragraph 1.

The General Meeting of Shareholders (GMS) constitutes one of the integral components of a limited liability company, alongside the board of directors and the board of commissioners (Yuwono, 2015). It is an indispensable element in shaping a company's policy as it plays a pivotal role in, through the GMS, the shareholders can control the performance of the directors or the assets owned by the company, and it also acts as an exercise of control over the management that implements company policies. The outcomes of conducting a General Meeting of Shareholders (GMS) using electronic media, as specified in Article 77, paragraph (1), should be documented in meeting minutes sanctioned by the participants of the GMS, as outlined in Article 77, paragraph (4) of the Limited Liability Companies Law (LLLC).

Minutes of meetings must be created for each GMS. A GMS whose minutes are not made is considered invalid and is deemed to have never existed. As a result, matters decided and determined at the GMS cannot be implemented (Wahono, 2022). Any decision declared during the General Meeting of Shareholders (GMS) must be documented in the form of meeting minutes. The minutes of the General Meeting of Shareholders (GMS) can be stated in an authentic deed in the form of the Deed of Minutes of the GMS or the Deed of Statement of Meeting Resolutions. In practice, the minutes of the General Meeting of Shareholders (GMS) are encapsulated within an authentic deed crafted by a notary, which

can be called the "Minutes of the General Meeting of Shareholders," or the minutes of the meeting are made in the form of minutes of meetings in the form of a private deed, and then the deed is stated in the form of an authentic deed, which is then referred to as the deed of participation in the decision made during the General Meeting of Shareholders. (Harahap, 2021).

The generation of an authentic deed serves the fundamental objective of establishing legal certainty and precision within the context of corporate governance, structure, and legal safeguarding (Army, 2020). Additionally, an authentic deed is produced by or The presence of a notary during this process is not only a legal requirement but also a sought-after safeguard by the involved parties. They seek to secure the rights and responsibilities of the involved parties, all in the interest of ensuring certainty, structure, and legal protection for all parties involved.

LLC has provided a solution for organizing GMS through teleconference media, but does not provide a comprehensive explanation regarding the details of its implementation. The law of notarial acts clearly regulates how the minutes of meetings must be written down in an authentic deed. If they collide, these two regulations create different interpretations (Utami, 2017).

In Dewi's (2016) study, the legal validity of using electronic media for the deed of minutes of the general meeting of shareholders (GMS) was examined. The research concluded that the deed of GMS minutes conducted through electronic media is considered an authentic document and can be accepted as valid evidence in court. This is due to the application of the principle *lex specialis derogate lex generali* and extensive interpretation. In a study conducted by Rizkianti (2016) titled "Authentic act of the general meeting of shareholders (GMS) through teleconference media," it was found that there is a lack of agreement in legal regulations regarding the documentation of GMS proceedings conducted via teleconference and the reliability of the evidence.

From the above depiction, it is necessary to conduct research analyzing these different interpretations. Therefore, the aim of the present research is to attain solutions to the problems arising from these different interpretations.

## **RESEARCH METHODS**

In this study, the theory of legal certainty was applied. This has the purpose of analyzing problems related to legal uncertainty. This will not occur if the government makes strict and clear rules regarding the making of deeds carried out through teleconference media. To facilitate analysis, this study employed the theory of authority. This theory was applied because, basically, the authority of a notary comes from the granting of authority by the government to carry out legal actions, both related to public law and private law.

Research is a means used to strengthen, foster, and develop knowledge. This research is classified within the realm of normative juridical research, employing an approach that scrutinizes legal matters through an analysis of legal norms stipulated in statutory regulations. with the aim of scrutinizing legal issues through reference to and derivation from legal norms enshrined in statutory regulations. The research methodology encompasses library research techniques, involving the examination of various library materials. The data utilized in this study consisted of library records and served as secondary data. This approach is closely linked to the analysis of legal issues based on the norms, laws, and regulations applicable within Indonesia.

## **RESULTS AND DISCUSSION**

The decision of the GMS is the highest authority, and thus it exceeds the decisions of the directors or commissioners, as shown in the following quote (Anasite Amanat in Ramadhan, 2019):

Decisions taken in the GMS forum are the embodiment of the highest authority in concrete form. They are the highest law in the company and must be carried out without reservation by other components, The authority to make decisions resides with the Board of Directors and Commissioners, as long as those decisions align with the provisions outlined in the articles of incorporation or the organization's bylaws, state laws, decency, or public order.

Indonesia is a constitutional state, which is reflected in the laws and regulations that are present in Indonesian law (Iswari, 2020). In addition, almost all aspects of social life have been regulated by clear legal rights. Through legal rights or the constitution, the government is able to regulate and discipline its societies, and their lives become more orderly.

The theory of legal certainty is the principle that a state of law, compliance, and justice is the main foundation in the implementation of a state policy.

In carrying out their duties, notaries must be able to create legal certainty in order to develop and maintain certainty of rights and obligations for every community member who needs them while still adhering to the applicable laws and regulations.

The theory of authority derives from the government's authority in conducting legal actions related to public and private law. Attributional authority arises from attributional authority is born through the division of state power by law, while delegated authority stems from the delegation of power as an attribute. In contrast, a mandate does not arise as a delegation of authority (Philipus M. Hadjon in Huda & Afdol, 2021).

The GMS is an implementation of the interests of the shareholders, since in the GMS the shareholders can provide various inputs related to the planning and development of the company, and hence the company develops better in accordance with the company's objectives, which is making a profit.

The General Meeting of Shareholders (GMS) represents a distinct authority within a limited liability company that is separate from the powers vested in the board of directors and the board of commissioners, and the organization of the GMS is a forum for shareholders to convey their rights in carrying out supervisory duties on what is embodied in the GMS resolutions related to business activities, governance management, the company's financial reports, and others as specified in the company's Articles of Association. Law No. 40 of 2007 emphasized that the position of the GMS has a central function for shareholders in determining the company's strategic policies.

The duties, responsibilities, and obligations of the GMS and other tasks related to it are stated in the deed of establishment or the company's articles of association (Philipus M. Hadjon in (Syarif, 2023).

The advancement of technology, particularly within the telecommunications sector, has had a huge impact on the growth of the business world. One of these advancements is the arrangement for GMS to use teleconferences at the concept of a Limited Liability Company (LLC) in legal terms involves the use of teleconferencing, which constitutes a real-time electronic meeting or dialogue involving three or more participants, whether human or automated, interconnected through a telecommunications system.

Law Number 40 of 2007, pertaining to limited liability companies, offers a contemporary solution in Article 77, streamlining the establishment of a General Meeting of Shareholders (GMS) (Indonesia, 2007). It states that a GMS can be organized by using technology, such as teleconferencing media. As a result, while participating in a GMS, participants are not permitted to be directly in the location where it is taking place. Shareholders can use teleconferencing media in order to see, hear, and participate in meetings organized by the company.

The arrangement of a company's GMS through teleconference media is regulated by LLLC, particularly in Article 77 Paragraph 1. It states that "In addition to organizing a GMS as referred to in Article 76, it can also be conducted through teleconference media, video conferences, or other electronic facilities that allow all GMS participants to see each other, listen directly, and participate in the meetings."

The outcomes of a General Meeting of Shareholders (GMS) conducted via electronic media, as referred to in Article 77 paragraph (1), must be recorded in the form of minutes of meetings that are approved by the GMS participants in accordance with Article 77 paragraph (4) of the LLLC. It states, "Every arrangement of the GMS as referred to in paragraph 1 must be recorded in the form of minutes of meetings that are approved and signed by all participants in the GMS."

GMS organized conventionally (non-video conference) or held physically, all meeting participants are present on the same day and place and at the same time, whether attended or not attended by a notary. If the notary is not present, the records of the proceedings during the General Meeting of Shareholders (GMS), commonly referred to as the minutes, may be created privately and without the direct involvement of a notary, which can then be made into a notarial deed in the form of a party deed (Partij), or if attended by a notary, the minutes of the GMS (annual or extraordinary) can be made directly in the form of a relaas deed.

In cases where the General Meeting of Shareholders (GMS) of a limited liability company is conducted through teleconference or videoconference and does not involve the presence of a notary or

the creation of hand-picked minutes, then according to the provisions of Article 76 (4) for the matter as referred to in paragraph (1), its minutes of meeting must be made, which are approved and signed by all participants in the GMS.

In signing a conventional GMS, all participants who are present or appointed by the GMS must also sign their presence with wet signatures directly after the GMS is over. On the reverse, the GMS can be conducted by video conference without being attended by a notary, and the signing can be done by means of an electronic signature (e-sign) or digital signature (digital sign) or both. This is done since the signing is a form of approval regarding the matters or issues submitted or listed in the GMS documents.

The arrangement of the GMS through teleconference media is based on Article 77, paragraph 4 of the LLLC, which requires that the minutes of the meeting be approved and signed by all GMS participants. The results of the GMS, which was held through a conference without being attended by a notary, can be stated in the Deed of Statement of Meeting Resolutions, which is one of the partij deeds or party deeds (Philipus M. Hadjon in Mhd Taufiqurrahman SH, 2022).

The GMS decision requires minutes of the meeting to be made; hence, the GMS can be carried out in two ways, namely:

1. The minutes of the General Meeting of Shareholders (GMS) are meticulously crafted by a notary who actively observes, listens, and physically witnesses the proceedings of the GMS. In this context, the minutes of the GMS are meticulously documented within the Deed of GMS Minutes.
2. In accordance with the provisions of the law, the minutes of the meeting are prepared by the shareholders in the absence of a notary. Following this, the Board of Directors or their designated representatives present these meeting minutes for formalization, which takes the form of an authentic deed commonly referred to as the Deed of Statement of Meeting Resolutions.

Basically, the Statement of Resolutions of the GMS contains everything discussed and decided at the GMS. The resolutions of the GMS, in the form of minutes or minutes of meetings, are submitted by the board of directors or the proxy of the company by going to a notary to be recorded in an authentic deed in the form of a Deed of Statement of Meeting Resolutions.

Referring to Article 90 of the LLLC, there are two ways to create minutes of GMS (Nindyo Pramono in Umam & Antoni, 2018), such as:

- in the form of a private deed.

GMS minutes like this are also known as a record or minute. The minutes of this meeting are drawn up and compiled by the Board of Directors.

- in the form of an authentic deed in the form of GMS minutes.

The official record of a meeting, crafted directly by a notary, in the form of an authentic deed, based on the notary's firsthand observation and testimony, is referred to as the "Deed of Minutes of the General Meeting of Shareholders" (GMS). In it, the discussion is usually broader, and the results of the meeting are decided not only internally but also externally.

While arranging this GMS, the notaries are not merely recording or formulating what is experienced and witnessed by them, which will later be set forth in an authentic deed, but they are also required to carry out their functions and roles as a public official, namely providing detailed explanations and advice to the parties so that the deed made is lawful and In accordance with the relevant laws and regulations, as stipulated by the prevailing legal framework.

The implementation of the GMS via teleconference conducted by a limited liability company is regulated in Article 77, paragraph (1) that "Notaries who are also present and directly witness the implementation of the GMS must still pay attention to the juridical provisions stipulated in the notary law, furthermore, it is imperative to delve into the intricacies of Article 16, with a specific focus on the notary's obligations. As articulated in Article 16, paragraph (1), letter (m), the obligations of a notary include "reading the deed before the appearer, attended by at least two witnesses, or four special witnesses for the making of a private will, and signed at the same time by the appearers, witnesses, and notary. "The reading of this deed is a part of the *verlijden* (reading and signing) of the deed".

Based on Article 16 paragraph (1) letter m, the notary is obliged to be present directly to elaborate further, the stipulation requires the notary to present the deed to the appearer in the presence of two witnesses, as outlined in legal procedures, and specifically, the inheritance deed must be attended by four witnesses, meaning that the procedure for making the deed of minutes of the GMS also requires to be attended directly by a notary, appearers, and two witnesses. If a notary does not follow this procedure, or if the notary does not read and come physically (directly) with the parties and witnesses, furthermore, it's crucial to understand that if a notary fails to adhere to this requirement, the legal consequences of the deed they produce may relegate it to the status of a private deed. This holds particularly true in the context of General Meetings of Shareholders (GMS) conducted via teleconference or similar electronic media, the presence of all shareholders is a must. This is because all shareholders or meeting participants do not have to come to a specified place, what is important is the implementation of the GMS carried out using teleconference media, hence the meeting participants or shareholders only need to be at each branch office where they are domiciled. The following are the reasons for having the deed read by a notary:

1. In order for the appearers to receive guarantees regarding the contents of the deed signed according to what was read out by the notary;
2. In order for the appearers to obtain certainty that the contents of the signed deed are in accordance with their expectations.

Referring to the above explanation, it can be concluded that in addition to carrying out the mandate of the act, the purpose of reading the deed is to make the appearers comprehend and believe the contents of the deed drawn up by a notary. In addition, the aim of reading the deed is to provide confidence and certainty that the deed made is really what the appearers desire. If it is not read, then, it will only have power as a private deed.

The deed read by a notary must be immediately signed by the appearers, witnesses, and the notary. In cases where the appearers cannot affix signatures, the reason for their inability to affix the signature must be explained, and this has been stipulated in Article 44, paragraph (1) of the notary law.

Basically, the purpose of arranging a GMS, whether it is held conventionally or via teleconference media, is the same: to make all shareholders immediately find out all information about the developments taking place in the company (Dharmawan, 2015). Therefore, the presence of shareholders is very necessary. In case a shareholder or shareholders cannot be present at the GMS, they can be represented or authorized by their proxy; hence, the shareholders who are not present at the GMS still acquire all information regarding the company's developments.

In the notary law, especially Article 17 letter a, it is emphasized that there is a prohibition for a notary to exercise his authority outside his area of office, which means that a notary is prohibited from carrying out his/her job or holding office outside the province where he/she is domiciled. The regulation aims to prevent notaries from engaging in unfair competition, which may lead to them ignoring their primary goals, which are to provide legal certainty to the community.

Legal consequences for a notary who violates his/her obligation when The act of creating an authentic deed may be susceptible to the following sanctions:

1. Civil Sanctions

This sanction entails the reimbursement of costs, compensation, and interest to be received by the notary for claims made by the parties involved. Additionally, any deed produced under these circumstances carries only the evidentiary power of a private deed or, in more severe cases, may render the deed null and void.

2. Administrative Sanctions

Notaries who violate the prohibitions specified in Article 17 paragraph (1) of the notary law are subject to sanctions in the form of:

1. Written warning;
2. Temporary suspension;
3. honorable discharge; or
4. Dishonorable discharge.

## CONCLUSION

Based on the findings of this study, certain conclusions can be formulated :

1. In order to maintain the existence of the minutes of the GMS conducted via teleconference that occurred in a limited liability company, the minutes of the meeting should be drawn up in the form of a deed of Statement of Meeting Resolutions.
2. The legal consequences of a deed drawn up by a notary who violates the notary law are that the deed only has the power of a private deed, and sanctions can be imposed for such violations in accordance with the provisions of the notary law, Specifically, these sanctions take the form of written warnings, temporary dismissals, honorable discharges, or dishonorable discharges.

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