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THE URGENCY OF REGULATING THE VALIDITY OF GRANTING DIGITAL POWER OF ATTORNEY GENERAL AGREEMENTS IN GMS

Marcellino Ananda Salba Siregar[1*], Miftakhul Huda[2]
[1]Fakultas Hukum, Universitas Narotama, Surabaya
[2]Fakultas Hukum, Universitas Narotama, Surabaya
E-mail: kontaksinyo@gmail.com[1*], miftakhul.huda@narotama.ac.id[2]

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ABSTRACT

The General Meeting of Shareholders (GMS) is the highest organ of a Limited Liability Company (PT) whose decisions are highly dependent on the validity of the presence and power of attorney representing shareholders. Article 85 of Law Number 40 of 2007 concerning Limited Liability Companies requires that power of attorney be in writing, but this provision does not explicitly accommodate power of attorney that is made and signed electronically. Technological developments have led to the emergence of an electronic power of attorney (e-proxy) mechanism through the eASY.KSEI system based on Financial Services Authority Regulations Number 15/POJK.04/2020 and Number 16/POJK.04/2020, but these regulations only apply to Public Companies and do not cover the much larger number of Private Limited Companies. This article uses a normative legal research method with a statutory and conceptual approach to examine the validity of digital power of attorney in the GMS in terms of the Civil Code, the Electronic Information and Transactions Law, and the Limited Liability Company Law. The study's findings indicate a legal vacuum for private limited companies (PTs) and ambiguity regarding the validity of digital powers of attorney, linked to the exclusion of documents requiring a notarial deed. This article recommends urgent regulatory harmonization to ensure legal certainty regarding the validity of digital powers of attorney in GMS meetings for all types of limited liability companies.

Keywords: Legal Certainty, Digital Power of Attorney, Limited Liability Company, GMS, Electronic Signature.

INTRODUCTION

A Limited Liability Company (PT) is the most widely used legal entity by business actors in Indonesia because it provides a separation of responsibilities between shareholders' personal assets and company assets. The highest organ in the PT structure is the General Meeting of Shareholders (GMS), which holds all authority not granted to the Board of Directors or the Board of Commissioners as stipulated in Article 1 number 4 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the UUPT), which has been amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. Through the GMS, shareholders make strategic decisions such as amendments to the articles of association, appointment and dismissal of Directors and Commissioners, approval of annual reports, and decisions regarding mergers and dissolution of companies. In practice, not all shareholders can attend the GMS in person. Article 85 paragraph (1) of the Company Law grants shareholders the right to be represented by another party through a power of attorney. This provision is traditionally implemented with a printed power of attorney form that is wet signed, stamped, and physically submitted to the company or securities administration bureau before the meeting. This mechanism creates its own obstacles, especially for shareholders who live far from the meeting location, making the process of granting power of attorney inefficient in terms of time and cost. The digital transformation accelerated by the Covid-19 pandemic prompted the Financial Services Authority (OJK) to issue Financial Services Authority Regulation No. 15/POJK.04/2020 concerning the Planning and Implementation of General Meetings of Shareholders of Public Companies and Financial Services Authority Regulation No. 16/POJK.04/2020 concerning the Electronic Implementation of General Meetings of Shareholders of Public Companies. Through these two regulations, PT Kustodian Sentral Efek Indonesia (KSEI) developed the eASY.KSEI

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system, which provides an e-Proxy feature, a mechanism for granting electronic power of attorney to shareholders of Public Companies to appoint their representatives to attend the GMS without being physically present. The problem is that the e-Proxy regulation through the OJK Regulation is expressly intended only for Public Companies (Tbk) whose shares are listed on a stock exchange. However, the majority of Limited Liability Companies in Indonesia are private (non-Tbk) and are not subject to the regulatory authority of the Financial Services Authority (OJK) in the capital market. For private PTs, there are no explicit regulations regarding the validity of powers of attorney created and signed electronically, so notaries and shareholders often face uncertainty when trying to use this mechanism in practice.

This uncertainty is exacerbated by the provisions of Article 5 paragraph (4) of Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 (hereinafter referred to as the ITE Law), which excludes electronic documents as evidence equivalent to written documents if the law requires a document to be made in the form of a notarial deed or a deed made by a deed-making official. This provision raises fundamental questions regarding the extent to which a GMS power of attorney, the product of which decisions often have to be set out in a notarial deed, can be made electronically without reducing its validity. Based on the above description, this article raises three problem formulations, namely: first, how are the legal regulations regarding the granting of power of attorney in the GMS according to current Indonesian positive law; second, how is the validity of the granting of digital power of attorney in the GMS reviewed from the Civil Code, the UUPT, and the ITE Law; and third, what is the urgency of special regulations regarding the validity of digital power of attorney in the GMS for all types of Limited Liability Companies in Indonesia. This study aims to contribute ideas for the makers of legislation in formulating policies that provide legal certainty for the increasingly developing digitalization of corporate governance practices.

LITERATURE REVIEW

Power of attorney from a civil law perspective is regulated in Article 1792 of the Civil Code (KUHPerdata), which defines granting power of attorney as an agreement that contains the granting of power to another person, who receives it, for and on behalf of the grantor to carry out an affair. As an agreement, the validity of granting power of attorney is subject to the conditions for a valid agreement as regulated in Article 1320 of the Civil Code, namely the existence of an agreement, capacity, certain things, and lawful causes. These provisions do not require a specific form or media, so conceptually power of attorney can be made verbally or in writing, including in electronic form, as long as these four conditions are met. As a lex specialis, Article 85 of the UUPT regulates technical provisions regarding power of attorney in the GMS. Article 85 paragraph (1) confirms that shareholders, either individually or represented by a power of attorney, have the right to attend the GMS and exercise their voting rights. Article 85 paragraph (3) prohibits shareholders from granting power of attorney to represent part of their shares, thus preventing split voting. Article 85 paragraph (4) prohibits members of the Board of Directors, Board of Commissioners, and company employees from acting as shareholder proxies in voting, while Article 85 paragraph (5) confirms that the power of attorney granted becomes invalid if the shareholder in question is present in person at the GMS. These provisions indicate that the UUPT provides a technical framework for the exercise of power of attorney, but does not expressly regulate the format or media for preparing the power of attorney.

The development of electronic GMS implementation is based on Article 77 paragraph (1) of the Limited Liability Company Law as amended by the Job Creation Law, which opens up space for GMS implementation via teleconference, video conference, or other electronic media. This provision serves as the legal basis for the development of the electronic GMS (e-GMS) system, including the e-Proxy and e-Voting features provided by KSEI through eASY.KSEI. However, the provision of the official e-GMS system by the OJK only covers Public Companies, so that private PTs must use other electronic means such as commercial video conferencing applications without an equivalent technical regulatory umbrella.

The validity of an electronically signed power of attorney then depends on the fulfillment of the electronic signature requirements as stipulated in Article 11 paragraph (1) of the ITE Law, which stipulates six cumulative requirements, namely that the data for creating the electronic signature is only related to the signatory, the data is in the signatory's power at the time of signing, any changes to the signature or related electronic information can be identified, and there is a way to identify the signatory and show their approval. This provision is reinforced by Article 59 paragraph (3) of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, which distinguishes between certified and uncertified electronic signatures, with certified signatures providing a higher level of certainty of proof because they are issued by a state-recognized Electronic Certification Provider.

Several previous studies have addressed the validity of electronic GMSs from various perspectives. Salsabila (2021) examined the validity of GMS decisions held via e-proxy and concluded that electronic proxy appointments remain valid under Article 1792 of the Civil Code as long as they adhere to POJK Number 16/POJK.04/2020. However, this study was limited to the context of Public Companies. Ghibran (2022) and Triandini, Sutrisno, and Kartina (2023) highlighted the implementation of e-GMSs based on Article 77 of the Limited Liability Company Law and emphasized the validity of GMS minutes prepared by a notary in the form of a deed release. Meanwhile, Bonaventura and Sendrawan (2024) specifically examined the legal basis for holding e-RUPS for closed PTs and found that official electronic media facilities such as eASY.KSEI were only provided for open PTs, while for closed PTs the legal basis must be drawn analogously from Article 15 paragraph (3) of Law Number 2 of 2014 concerning the Position of Notary.

Throughout the author's research, previous studies generally focused on the validity of holding an electronic GMS as a whole or on the validity of the notarial deed resulting from the electronic GMS, but have not specifically examined the validity of the digital power of attorney instrument itself as a stand-alone legal object, especially in relation to the regulatory vacuum for private PTs. This vacuum is the starting point for the novelty of this article, namely focusing the study on the urgency of regulating the validity of digital power of attorney as a legal instrument that determines the validity of the quorum and decisions of the GMS, regardless of the company's status as a public or private company.

RESEARCH METHODS

This research uses a normative legal research method (normative juridical), namely research that examines law as a written norm by examining legal materials in the literature. The approaches used are the statute approach and the conceptual approach. The statutory approach is used to examine the relationship between norms in the Civil Code, the Company Law, the ITE Law, Government Regulation Number 71 of 2019, and relevant Financial Services Authority Regulations, while the conceptual approach is used to develop the concept of the validity of digital power of attorney based on the theory of contract law and the theory of electronic evidence.

The legal materials used consist of primary legal materials in the form of laws and regulations governing Limited Liability Companies and electronic transactions, as well as secondary legal materials in the form of books, scientific journals, previous research results, and legal opinions of practitioners relevant to the research topic. The legal material collection technique is carried out through library research on these documents. The analysis is carried out qualitatively prescriptively, namely by interpreting and systematizing the collected legal materials to answer the problem formulation and formulate legal arguments regarding the urgency of regulating the validity of digital power of attorney in the GMS.

RESULTS AND DISCUSSION

This section presents the results of the study and discussion on three main issues, namely the regulation of the power of attorney of the GMS according to positive law, the development of the regulation of electronic power of attorney and the issue of its validity, and the urgency of special regulations for the validity of digital power of attorney in the GMS.

Provision of Power of Attorney in the GMS According to Indonesian Positive Law

Conceptually, the power of attorney of the GMS is the application of the lastgeving institution as regulated in Article 1792 of the Civil Code to the context of company law. This provision does not require a specific form, so that the power of attorney can be made verbally or in writing. However, Article 85 paragraph (1) of the UUPT implicitly requires a written form through the phrase "power of attorney", which in the practice of notaries and securities administration bureaus is always understood as a physical document with a stamp signed in wet paper by the principal.

The provisions of Article 85 paragraph (3) and paragraph (4) of the UUPT provide functional limitations on the power of attorney of the GMS, namely the prohibition on splitting votes and the prohibition on the Board of Directors, Board of Commissioners, and company employees from acting as proxies in voting. These limitations are substantive and apply independently of the media used to create the power of attorney, so they remain relevant to be applied to both conventional and digital powers of attorney. Conversely, Article 85 paragraph (5) of the UUPT which states that the power of attorney is revoked if the shareholder is present in person is also relevant to be applied in the context of an electronic GMS, considering that the electronic presence of the shareholder himself should also revoke the power of attorney that has been registered digitally.

The Development of Electronic Power of Attorney (e-Proxy) Regulations and the Issue of Their Validity

The legal framework for holding an electronic GMS originates from Article 77 paragraph (1) of the Company Law, which accommodates the implementation of GMS via teleconference, video conference, or other electronic means. For Public Companies, this provision is followed up through POJK Number 15/POJK.04/2020 and POJK Number 16/POJK.04/2020, which was then updated through Financial Services Authority Regulation Number 14 of 2025 concerning the Implementation of General Meetings of Shareholders. Based on this framework, KSEI was appointed as one of the providers of the e-GMS system and developed the eASY.KSEI platform with an e-Proxy module since May 2020, which allows shareholders to electronically grant power of attorney to the appointed party to attend on their behalf at the GMS.

A fundamental problem arises when the regulatory framework is reviewed from the perspective of the regulatory authority. The OJK Regulation (POJK) is an administrative and technical regulation in the capital markets sector, so its reach is strictly limited to Public Companies. Consequently, the validity of e-Proxy for Public Companies relies more on the technical administrative certainty provided by the OJK and KSEI, rather than solely on testing the validity of the power of attorney itself under civil law or general corporate law. For private PTs that are not subject to the OJK's authority in the capital markets sector, no similar administrative framework exists, so the validity of digital powers of attorney depends entirely on the interpretation of the Civil Code, the Company Law, and the ITE Law in general.

Testing the validity of the electronic signature on the GMS power of attorney can be done by referring to the six cumulative requirements of Article 11 paragraph (1) of the ITE Law. As long as the electronically signed power of attorney meets these six requirements, the document in principle has legal force and valid legal consequences as stated in Article 5 of the ITE Law. However, Article 5 paragraph (4) of the ITE Law excludes the application of these provisions to letters that according to the law must be made in written form, as well as letters and documents that according to the law must be made in the form of a notarial deed or a deed made by a deed-making official. This exception provision creates a gray area, because although the GMS power of attorney itself is generally not required to be in the form of a notarial deed, the resulting GMS decisions often have to be stated in a notarial deed in the form of a deed release, so that the notary needs to have sufficient legal certainty regarding the validity of the digital power of attorney that forms the basis for the presence of shareholders at the GMS.

Table 1. Comparison of the Coverage of Power of Attorney and Electronic GMS Regulations

Legal Instruments	Settings Object	Subject Coverage	Digital Power of Attorney Validity Status
Articles 1792 & 1320 of the Civil Code	Terms of validity of the power of attorney agreement	All legal subjects	Does not require a specific form; has the potential to accommodate digital power
Article 85 of the Company Law	Power to attend and vote at the GMS	All Limited Liability Companies	Requires written form; does not yet explicitly regulate electronic form
Article 11 & 5 of the ITE Law	Validity of electronic signatures and documents	All electronic transactions	Valid if it meets 6 conditions; except for mandatory notarial deed documents
POJK 15 & 16/2020 jo. POJK 14/2025	Implementation of GMS and electronic e-Proxy	Public Company (Tbk)	Administratively recognized through eASY.KSEI

The Urgency of Digital Power of Attorney Regulation in GMS: Legal Certainty for Private Limited Companies and Regulatory Harmonization

Practical data shows that the number of private limited companies in Indonesia is far greater than that of public companies. The lack of regulation regarding the validity of digital power of attorney for private PTs has the potential to create a disparity in legal certainty, where shareholders of public companies obtain technical protection through the eASY.KSEI system, while shareholders of private PTs must bear the risk of uncertainty when attempting to use similar mechanisms independently, for example through electronic signatures on documents sent by email or through commercial digital signature platforms.

This risk of uncertainty could lead to several legal consequences. First, notaries may refuse to base the minutes of a GMS on electronically signed powers of attorney due to doubts about their compliance with Article 11 of the ITE Law, thus hampering the efficient holding of GMS, which should be the goal of digitalization. Second, interested shareholders may question the validity of the GMS quorum at a later date, citing procedural flaws in the digital power of attorney used, potentially leading to civil disputes or the annulment of GMS decisions. Third, the lack of uniform technical standards opens up opportunities for the abuse of digital powers that do not meet the principle of single linkage and exclusive control of signature data as required by the ITE Law.

Based on the above description, the author believes that there is an urgent need to harmonize regulations regarding the validity of digital power of attorney in GMS, with several steps that can be taken. First, explicit affirmation is needed, either through amendments to the Company Law or through implementing regulations at the level of Government Regulations or Regulations of the Minister of Law and Human Rights, which recognize the validity of electronically signed GMS power of attorney for all types of Limited Liability Companies, not limited to Public Companies. Second, these regulations need to establish minimum technical standards by referring to the requirements for certified electronic signatures as regulated in Article 59 paragraph (3) of Government Regulation Number 71 of 2019, in order to guarantee authentication and non-repudiation of the power of attorney granted. Third, it is necessary to establish harmonization of definitions and requirements between the Company Law, the Civil Code, the ITE Law, and the POJK to avoid overlapping or gaps in norms. Fourth, the role of notaries within the cyber notary framework needs to be strengthened through technical guidelines for verifying digital powers of attorney, so that the deed of minutes of the GMS based on digital powers of attorney still has the same evidentiary force as authentic deeds in general.

CONCLUSION

Based on the discussion above, several things can be concluded. First, the regulation of power of attorney in the GMS according to Indonesian positive law is derived from Article 1792 of the Civil Code as a general norm of lastgeving and Article 85 of the UUPT as a special norm that requires a written form without explicitly regulating the possibility of an electronic form. Second, the validity of digital power of attorney in the GMS can conceptually be maintained as long as it meets the requirements for a valid agreement according to the Civil Code and the requirements for the validity of an electronic signature according to Article 11 of the ITE Law, however, this validity is still shrouded in uncertainty due to the exception of Article 5 paragraph (4) of the ITE Law for documents related to the creation of notarial deeds, as well as because the technical regulations for e-Proxy through POJK only apply to Public Companies. Third, there is an urgent urgency to harmonize regulations through explicit affirmation of the validity of digital power of attorney for all types of Limited Liability Companies, the establishment of technical standards for certified electronic signatures, and strengthening the role of notaries within the cyber notary framework. Further research is recommended to empirically examine the practice of using digital power of attorney in closed PTs in various notary offices, as a supporting database for the formulation of more comprehensive policies regarding the digitalization of Limited Liability Company governance in Indonesia.

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