

THE EVIDENTIARY PROOF OF THE ELECTRONIC GENERAL MEETING *MINUTA* IN THE E-ASY KSEI PLATFORM CONCERNING FINANCIAL SERVICES AUTHORITY REGULATION NUMBER 16/POJK.04/2020

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ABSTRACT

*Industrial expansion nowadays successfully set the possible circumstances to held shareholders meetings through electronic devices according to Article 77 Paragraph (2) Law Number 40 of 2007 along with the regulation of Indonesian Financial Services Authority (OJK) which adjusting the public company sector through Regulation Number 16/POJK.04/2020. The electronic shareholders (e-shareholders) meetings held beyond the system called e-ASY KSEI which produce the original deed (minuta) as an output by listed through the relaas deed. Concerned notary accountable to physically see, listen, and witness the shareholders meetings. The regular shareholders meeting still has to be held in any circumstances, unless there are such special condition, the shareholders possible to attend the meeting virtually, except the concerned notary. Through the regulation within Law Number 2 of 2014, it is mentioned as "...in front of the notary..." which refers to the physical presence, not virtually. Law Number 40 of 2007 indeed confirmed that the deed shall be signed by all shareholders. The upcoming issue which then arise is in regards to the conflict of norm between the mentioned law and OJK Regulation Number 16/POJK.04/2020. The consequences of emerged contradiction leading the confusion between the notary in carrying out their role to make the deed. The discussion within this study basically concerned to the role of the notary in carries the occupation to make the e-shareholders' meeting's original deed (minuta) which held through e-ASY KSEI in connection with both position and strength of evidence of the deed. The research method used is doctrinal legal research with analytical explanatory as the research typology. Secondary data was used by literature study that analyzed with qualitative method. Based on the research, it was found that in case of the emergency, notary applying the terms within OJK Regulation Number 16/POJK.04/2020 to make e-shareholders meeting's minuta and it is qualified as an authentic deed. Even though there are no articles that allowed this sort of action refers to the statement in Law Number 2 of 2014 which mentioned that the minuta will probably classify as original deed in case if the minuta signed by all shareholders in front of notary. Yet, the basic principle applied as the primary guidance of following the OJK Regulation Number 16/POJK.04/2020 is the existence of preference principle which clearly said *lex specialis derogat legi generali*. However, since the *specialis* here refers to the OJK Regulation, it is recommended that regulations be made as an act to have a stronger legal basis.*

Keywords: e-ASY KSEI, Notary, Shareholders

INTRODUCTION

Globally, information and telecommunications technology have developed quickly in the fourth industrial revolution era. A borderless world has been made it possible to conquer due to the ability of technology to connect people from all over the world.¹ The expansion of technology has greatly benefited society yet creates new opportunities for crime indeed, particularly in the virtual world. In order to solve these difficulties, the government constructed Law Number 11 of 2008 Concerning Electronic Information and Transactions, or hereinafter mentioned as UU ITE.²

Technological advancement nowadays is also giving a significant impact to the process of General Meetings of Shareholders, or also known as RUPS, for public companies. RUPS is basically held at the registered office of the company, yet, for public companies, it probably potential to held it at the Stock Exchange, where the company's shares are listed.³ During the RUPS, *minuta* of the meeting shall be prepared, which can be done by a notary.⁴ As said beyond the Limited Liability Companies Law Number 40 of 2007, or hereinafter stated as the Company Law, in Article 77 Paragraph (1) said that the RUPS can also be conducted through teleconferencing, video conferencing, or other electronic media that allow all participants to see and hear each other directly and participate in the meeting. The RUPS was previously carried out traditionally, with participants physically present at the RUPS venue.

As the development of technology, numerous businesses today belong to the electronic general shareholder meetings, which also known as e-RUPS. The whole participants shall be able to see and hear to each other directly as well as be able to take part in the RUPS to implement the e-RUPS successfully. The Financial Services Authority, or hereinafter called as OJK, released a Regulation Number 16/POJK.04/2020 Concerning the Implementation of Electronic General Meetings of Shareholders of Public Companies which also called as POJK RUPS to governs the use of e-RUPS for public companies. According to Article 8 Paragraph (1) POJK RUPS, physical RUPS meetings shall be held in person and requires to include at least the RUPS Chairman, a member of the Board of Directors and/or a member of the Board of Commissioners, as well as representatives from the capital market who are helping to implement the RUPS. According to Article 9 of POJK RUPS, in case of such conditions that make it impossible to perform a physical RUPS, this circumstance should be decided by the government or with the Financial Services Authority consent.

In the midst of the Covid-19 pandemic, the necessity for e-RUPS has grown corresponding with the difficulty of large number of people physically contact in compliance with social and physical distancing laws. From this point onwards, the stakeholders then examine this method as an opportune. PT. Kustodian Sentral Efek Indonesia, or hereinafter known as KSEI, has launched the Electronic General Meeting System or also called as e-ASY KSEI to assist e-RUPS. E-ASY KSEI is an electronic platform which giving certain supports to the supply of information, implementation, and reporting process, of RUPS for Securities Issuers, as well as the exercise of shareholders voting rights at the General Meetings.⁵ Furthermore, in April

¹Andi Setyawan and Iin Soraya. (2020). "Efek Media Sosial Dalam Menciptakan "Borderless Communication" Pejabat Publik & Masyarakat". *Journal Komunikasi*, 11(1): 52.

²Jeane Neltje Saly. (2008). "Keabsahan Alat Bukti Elektronik Dalam Suatu Perjanjian Dalam Penyelesaian Sengketa Melalui Arbitrase Online". *Jurnal Legislasi Indonesia*. 5(4): 19.

³Indonesia. *Law Number 40 of 2007*. State Gazette Number 106 of 2007. Addition of State Gazette Number 4756. Article 76.

⁴*Ibid.*, Article 90.

⁵Kustodian Sentral Efek Indonesia. *KSEI Regulation Number XI-A Concerning to Procedures for Holding a General Meeting of Shareholders Accompanied by the Granting of Power of Attorney through the Electronic General Meeting KSEI System*. Attachment to the KSEI Board of Director Decree Number KEP-0025/DIR/KSEI/0721 of 2021. Point 1.3.

2020, KSEI launched a new initiative to supplement e-ASY.KSEI, it is known as the e-voting module with live streaming function.⁶

Through e-ASY.KSEI, shareholders have good possibility to provide electronic proxies if they wish to be represented by others in the General Meetings. Additionally, shareholders can exercise their voting rights through e-voting. Voting can be filed from the General Meeting notice and changed until the voting session closes during the meeting.⁷ According to KSEI data, as of August 2021, in the amounts of 721 of the 740 stock issuers in the capital market had held 2,104 General Meetings through this newly method which consist of 423 issuers of e-Voting that started from June 2021.⁸

As previously stated, a physical method of RUPS is further be held in the implementation of e-RUPS unless in the context of certain criteria. Notary, as a supporting profession in the capital market, is one of the parties necessary to attend the physical RUPS. Notary known as a public official who authorized to perform valid deeds based on Law Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning Notary Profession or so-called as UUJN and other related rules. As a result, a notary represents the state in advance within the scope of civil issues.⁹ However, challenges with the execution of notarial tasks in the deployment of e-RUPS may be more varies. Notary are unable to access the e-ASY KSEI platform when participating in e-RUPS through a physical RUPS.

This is contrary with the feature of the platform which does allow participants to vote and leave comments. Slightly dissimilar with the notary, they only receive notices from the OJK which sent to their registered email account with the substance of RUPS execution details. Even while it is mentioned that the e-RUPS should take place at the venue of the physical General Meeting, if there is one, or at the domicile of the firm, it is feasible that shareholders participating in the execution of e-RUPS are situated outside of Indonesia. However, the notary's power is constrained by their jurisdiction, while in accordance with Article 76 of the Company Law, RUPS shall be takes place in Indonesia. The existence of geographic restriction plays crucial role by this condition according to the data acquired from KSEI which illustrates that around 75% of shareholders participate in RUPS electronically through e-ASY KSEI.

The contradictory rules between Article 77 Paragraph (4) of the Company Law and Article 12 Paragraph (1) of the POJK RUPS serving another problem in the practice of notary profession. In terms the e-RUPS is held, the entire RUPS participants obligated to sign the *minuta* as said through the Company Law. It is negating with the POJK RUPS, as what mentioned on the provision, it is unnecessary for the RUPS participants to signed the *minuta*. Legal systems that are dynamic and complicated frequently produced regulations that conflict with one another. As the consequences, it is essential to apply legal principles since conflicts between standards occur oftentimes in the intricate and evolving positive legal system.¹⁰ These conflicts can arise between rules of the same level, known as horizontal conflicts, or inside a single regulation, known as internal conflicts. It is possibly occurred between lower and higher regulations which are known as vertical conflicts.¹¹

This study will discuss several issues related to the role of notary in the practice of e-RUPS, which regards with the incapability of participants to do face-to-face interaction as regulated

⁶Mahsud Toarik. (2020). *Lengkapi Fitur e-Voting, KSEI Sebut 75% Investor Hadiri RUPS Secara Virtual*. <https://investor.id/market-and-corporate/266065/lengkapi-fitur-evoting-ksei-sebut-75-investor-hadiri-rups-secara-virtual>. Accessed on September 6th 2020.

⁷Kustodian Sentral Efek Indonesia. *Op.Cit.* Point 4.4.3.

⁸Mahsud. *Loc.Cit.*

⁹Bachrudin. (2015). "Jabatan Notaris di Indonesia Dalam Jerat Liberalisasi". *Jurnal Pembaharuan Hukum*. 2(2): 188.

¹⁰Mochtar Kusumaatmadja and Arief Sidharta. (2009). *Pengantar Ilmu Hukum*. Bandung: PT. Alumni, p. 61-62.

¹¹Nurfaqih Irfani. (2020). "Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, Problematika, dan Penggunaannya dalam Penalaran dan Argumentasi Hukum". *Jurnal Legislasi Indonesia*. 16 (3): 308.

in the UUJN, the absence of the deed-reading in the presence of the parties involved, the differences between the provisions of signing requirements in the Company Law UUPT and POJK RUPS, and the flexible location of participants which giving them possibility to do the RUPS in any location desired. In order to the inconsistencies between regulations, the legal principle of *lex specialis derogat legi generali* are possible to be applied.

The legal theories which are potential to be applied during the current legal dispute are commonly known as The *Lex Specialis* Doctrine which consist of *lex superior derogat legi inferiori*, *lex posterior derogat legi priori*, and *lex specialis derogat legi generali*. In the terms of the *lex superior derogat legi inferiori* principle, a higher-ranking legal standard takes precedence over a lower-ranking legal standard. The both of Article 7 and Article 8 of Law Number 12 of 2011 Concerning the Formation of Legislation specified the type and hierarchy of legislation which form the basis for determining the hierarchy of legal standards.

A new legal standard surpasses the applicability of an earlier legal standard, according to the principle of the *lex posterior derogat legi priori*.¹² This rule is restricted to be used unless if the new legal standard is of equal or greater standing than the previous standard. This is due to the fact that lower-ranking norms are invariably derived from higher-ranking norms. You can view the foundation for identifying which regulation is new or old chronologically.

The *lex specialis derogat legi generali*, on the other hand, states that the specific laws or the special legal norms prevail over general laws or general norm.¹³ There is a conjunction between general and particular restrictions. A law may occasionally be deemed the *lex specialis* in reference to one law and *lex generalis* in relation to another.

In accordance with Article 12 of POJK RUPS, the *minuta* of the RUPS shall be made by a notary which registered by OJK in the form of a notarial deed during the implementation of e-RUPS, without the requirement for signatures from the participants. There are two categories of deeds based on their format, firstly called as authentic deed and the latter known as private deed.¹⁴ Private deed signed by the parties independently, without the involvement of a public official, in accordance with Article 1874 of the Indonesian Civil Code. On the other hand, Article 1868 of the same regulation defines authentic deed as a deed made in a form which determined by the law, by or in the presence of a competent public official at the place where the deed is made.

In regards with the provisions of the UUJN, notary is a public official which belong to the authority in constructing authentic deeds. There are two types of notarial deeds concerning to this regulation, firstly known as *Relaas* Deed, secondly called as *Partij* Deed. *Partij* Deed, is created by the notary based on the statements of the parties involved.¹⁵ In terms of this deed, notary are merely guarantee the accuracy of the deed based on the statement given by the parties. To be considered an authentic deed, this deed shall meet the *verlijden* requirements which means that the deed obliged to drawn up, read aloud, and immediately signed by the parties, witnesses, and the notary after it has been read aloud.¹⁶

On the other hand, *Relaas* Deed or also known in Dutch as *ambttelijke akten* is a deed that contains the notary's account of what they have personally seen, heard, and witnessed at the request of the interested parties in their capacity as a notary. Through this deed, the notary is responsible for guaranteeing the accuracy of the content of the deed since they have personally witnessed and heard what took place in their capacity as a notary. *Relaas* Deed cannot be

¹²*Ibid.*, p. 312.

¹³*Ibid.*, p. 313.

¹⁴Indonesia. *Kitab Undang-Undang Hukum Perdata*. Stb. of 1847 Number 23. Article 1867.

¹⁵Desela Sahra Annisa Rangkuti. (2022). "Pelaksanaan Jabatan Notaris Yang Mendapat Kewenangan Dari Negara Membuat Alat Bukti Autentik". *Jurnal Kertha Semaya*. 10 (5): 1215.

¹⁶Alwesiuis. (2021). *Dasar-Dasar Teknik Pembuatan Akta Notaris*. 2nd Publication. Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia. p. 15.

challenged but may be declared false. This deed may not be read aloud to the parties involved or signed by them. However, all of these details must be explained at the end of the deed.¹⁷

From this point onwards, the *minuta* of the e-RUPS is considered as a *Relaas* Deed regarding to the condition where notary is invited to attend the event and it does not require the signatures of the participants of the e-RUPS. During the meeting, the notary will record what they have seen, heard, and witnessed. However, when the process is conducted entirely electronically, it cannot be said that the deed is made in the presence of the notary as stipulated in Article 1 Paragraph 7 of the UUJN in point with the fact that notary does not have direct interaction with the parties involved. Furthermore, Article 16 Paragraph (1) Letter m of the mentioned law states that the notary shall read the deed in the presence of the parties with at least two witnesses, present before it is signed by the witnesses and the notary. In case if this requirement is not fulfilled, as said on Article 16 Paragraph (9), the deed will only have evidentiary force similar to a private deed.

The legal rationale of why the *minuta* of the e-RUPS which is created by the notary considered as an authentic deed seeing that it meets the criteria of the authentic deed as stated in Article 1868 of the Civil Code. Authentic deed is a written document that has full evidentiary proof in court. It possesses three types of evidentiary proof which are consist of physical proof, formal proof, and substantial proof. The physical evidentiary force means that the authentic deed itself can used to prove its authenticity as intended in Article 1870 of the Civil Code. This implies that if an authentic deed met the requirements as an authentic deed, so it is considered as genuine (*acta publica probant seseipsa*) unless proven otherwise.¹⁸ The physical evidentiary force provides complete proof and applies to everyone, not just the parties involved.

Authentic deed possesses formal evidentiary force, meaning that it ensures the accuracy and certainty of the date of the deed, the existing signatures and/or initials, the identities of the parties involved, the statements of witnesses, and the place where the deed is made. This accuracy is guaranteed unless proven otherwise. The formal evidentiary force also applies as evidence for all interested parties, not just the parties directly involved.¹⁹

In terms of the material evidentiary force, an authentic deed proves that the parties involved appeared before the notary, provided explanations, and performed as stated in the content of the deed. If it is later proven that the statements in the deed are untrue, it is not the responsibility of the notary but rather the responsibility of the parties who made the statements. With the presence of material evidentiary force, it means that the authentic deed is possible to provide complete evidence to the parties, heirs, or rights recipients.²⁰

Therefore, it can be concluded that a notarial deed is an authentic deed that serves as written evidence in court. This type of deed possesses the evidentiary force of being clear, formal, and material, thereby providing complete evidentiary strength in court. This strength remains intact until proven otherwise in court. In the case of an authentic deed that does not comply with the requirements, it may be downgraded to a private deed if signed by both parties, as stated in Article 1869 of the Civil Code. However, the *minuta* of the e-RUPS is not signed by the parties involved. It can clearly be seen if it fails to meet the requirements. Accordingly, it cannot be downgraded to a private deed.

The purpose of creating the *minuta* of the e-RUPS in the form of a notarial deed is to ensure legal certainty for all parties involved. Therefore, it is crucial to determine whether the *minuta*

¹⁷Desela Sahra Annisa Rangkuti. *Loc.Cit.*

¹⁸Dedy Pramono. (2015). "Kekuatan Pembuktian Akta Yang Dibuat Oleh Notaris Selaku Pejabat Umum Menurut Hukum Acara Perdata di Indonesia". *Lex Jurnalica*. 12(3): 254.

¹⁹Komang Ayuk Septianingsih, dan I Nyoman Putu Budiarta. (2020). "Kekuatan Alat Bukti Akta Otentik Dalam Pembuktian Perkara Perdata". *Jurnal Analogi Hukum*. 2(3): 338.

²⁰Dedy. *Op.Cit.* p. 255.

of the e-RUPS can meet the requirements of an authentic deed. If the requirements are failed to met, the deed will only have evidentiary force similar to that of a private deed. There is a difference in evidentiary force between the both of these deeds. In the case of an authentic deed, even if it is signed by both parties, the parties shall acknowledge the signature and the content for the deed to become conclusive evidence, as stated in Article 1875 of the Civil Code. If any party disputes the deed, it is the party presenting the private deed who must prove the truthfulness of its content.²¹ Authentic deed equipped with as said three evidentiary force which make it possible to provide conclusive evidentiary strength in court. If any party denies the signature in an authentic deed, it is the burden of that party to prove that the existing signature is forged or, in other words, that the public official who created the deed committed forgery.²²

Based on the issues arose, this study will engage about the particular extent of notary's specific objectives in the implementation of the e-RUPS through e-ASY KSEI application. To get the discussion deeper, this research is given by the exchanged ideas and perspective of the evidentiary strength regarding the *minuta* of the e-RUPS which conducted through e-ASY KSEI.

Basically, the similar research regarding with the role of a notary within the process of e-RUPS and the notarial deed needed upon it has been carried out by Octaviana Evangelista and Daly Erny through their research titled *Kedudukan Hukum Akta Notaris dalam RUPS Melalui Telekonferensi* which published successfully by December 2021. Based on the result of this research, it is known that the role of the notary in the execution of RUPS through teleconference is to perform the e-RUPS notarial deed, which holds a strong legal position.

However, this research only focuses on RUPS through the teleconference and have no any connection with the POJK RUPS.²³ In contrast, the focus of this current research is on the e-RUOS, which is not only conducted via teleconference but also throughout the video calls, Zoom webinars, and e-ASY KSEI, with the practice of e-RUPS examined based on POJK RUPS. Additionally, another study which alike conducted by Pande Gde Satria Wibawa and Pande Yogantara S through their research which titled as *Keautentikan Akta Risalah Rapat Umum Pemegang Saham (RUPS)* which published in December 2021. Even though it is identical, this research focuses on the authenticity of the *minuta* of the e-RUPS from the perspective of a Cyber Notary.²⁴

In contrast, this study focuses on the position and evidentiary strength of the e-RUPS notarial deed which created by a Notary in the implementation of e-RUPS. Additionally, this research also discusses the differences in regulations between the Company Law and POJK RUPS, as well as the performing of deeds which facing a virtual Notary. The expected outcome of this study is to provide recommendations to Notaries as professionals supporting the capital market, Public Companies, and the Financial Services Authority (OJK).

The theoretical benefits of this research are served as a reference for future studies on the role of notaries and surely answer the question regarding to the evidentiary strength of e-RUPS notarial deeds through e-ASY KSEI, as well as enriching and developing legal knowledge, particularly regarding the requirements for authentic deed construction and corporate law indeed. The practical benefits of this research are expected to enhance insights and information, especially for students, regarding the role of notaries and the evidentiary strength of e-RUPS notarial deeds through e-ASY KSEI. Additionally, it is hoped that this research will be

²¹Subekti. (1982). *Pokok-Pokok Hukum Perdata*. Bandung: PT. Intermasa, p. 178.

²²*Ibid.*, p. 179.

²³Octavianna Evangelista dan Daly Erni. (2021). "Kedudukan Hukum Akta Notaris Dalam RUPS melalui Telekonferensi". *Pakuan Law Review*. 7(2): 545.

²⁴Pande Gde Satria Wibawa dan Pande Yogantara S. (2021). "Keautentikan Akta Risalah Rapat Umum Pemegang Saham (RUPS) Secara Elektronik Dalam Perspektif Cyber Notary". *Acta Comitatus: Jurnal Hukum Kenotariatan*. 6(3): 652.

practically useful as a consideration for legal policy-making, legal practitioners, and public companies conducting e-RUPS through e-ASY KSEI.

METHOD

This research uses the doctrinal legal research method. The definition of legal research, according to Soetandyo Wignosoebroto is all efforts to seek and find the true answers and/or those that are never wrong regarding a problem; to answer all legal problems, meticulous and valid research is required to explain and address the existing issues. The doctrinal legal approach involves research that utilizes the doctrines of scholars and relevant legal theories related to the discussed issues.²⁵

In terms of typology, this research can be viewed from various angles. In terms of its nature, this typology is analytically explanatory, meaning it strengthens or tests existing research findings or legal situations, thereby improving and providing new insights into the application of legal theories or norms. The data used in this research is secondary data.²⁶ The data collection method performed through literature or document study, which involves reading, taking notes, and citing from various relevant secondary data sources.

Secondary data consists of primary legal materials such as: laws, final court decisions, and administrative rulings; secondary legal materials which consist of previous research findings, legislative drafts, scholarly works or journals by scholars; and tertiary legal materials which includes internet news articles or dictionaries which in connection to the role of notary and the evidentiary strength of the notarial deed in the e-RUPS.²⁷ The data analysis method used in this research is qualitative, involving the systematic description and organization of existing data in easily understandable sentences for interpretation regarding the role of notary in their work of constructing the e-RUPS notarial deeds and the evidentiary strength of the notarial deed in e-RUPS.²⁸

ANALYSIS AND DISCUSSION

Notary's Duties in Performing the e-RUPS Notarial Deed Through e-ASY KSEI

Based on Article 1 Number 2 of the POJK RUPS, e-RUPS is defined as the organ of a public company that has authority not delegated to the board of directors or board of commissioners as referred to in the Limited Liability Company Law and/or the Articles of Association of the Public Company. Several examples of the RUPS authorities consist of the authority to approved legal actions on behalf of the company conducted by all members of the Board of Directors, approving changes to the Articles of Association, approving increases or reductions of the company's capital, granting approval to the Board of Directors for the transfer or encumbrance of the Company's assets, and other matters as stipulated in the Company Law and Articles of Association.

Article 77 of Law Number 40 of 2007 concerning Limited Liability Companies provides provisions that give permission to public companies to conduct the RUPS electronically under certain conditions, stating that RUPS can also be held through teleconferencing, video conferencing, or other electronic media that enable all RUPS participants to see and hear each

²⁵Kornelius Benuf dan Muhamad Azhar. (2020). "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer". *Jurnal Gema Keadilan*, 7(1): 24.

²⁶Sri mamudji, et al. (2005). *Metode Penelitian dan Penulisan Hukum*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, p. 4-5.

²⁷Kornelius. *Op.Cit.* p. 26.

²⁸Sunarto. (1990). *Metode Penelitian Deskriptif*. Surabaya: Usaha Nasional. p. 47.

other directly and participate in the meeting. The first requirement is that all participants must be able to see and hear each other directly, and the second requirement is that all participants must be able to participate in the meeting. Therefore, conducting RUPS through electronic media should not only rely on audio features since participants would not be able to see each other. Recording video for the meeting is also not allowed as it implies not seeing and hearing each other directly. Meanwhile, the definition of the e-RUPS according to Article 1 Number 3 of the POJK RUPS is the implementation of RUPS by a Public Company using teleconferencing, video conferencing, or other electronic media.²⁹

The execution of the e-RUPS can be done through a system provided by the e-RUPS Provider or by the public company itself. According to Article 4 of the POJK RUPS, the e-RUPS Provider is the Custodian and Settlement Institution appointed by the OJK or another party approved by the OJK. In conducting e-RUPS, the Public Company has an obligation to provide information regarding the plan to conduct e-RUPS in the notice of the agenda of the RUPS to the OJK, RUPS announcement, and RUPS summons. Additionally, according to Article 8 Paragraph (1) of the POJK RUPS, the public company is also required to hold a physical RUPS attended by:

1. The chairperson of the RUPS;
2. One member of the Board of Directors and/or one member of the Board of Commissioners; and
3. Supporting professionals in the capital market who assist in the implementation of the RUPS.

However, if there are certain conditions that prevent the physical RUPS from being held, the RUPS are possible to be fully conducted electronically. Such conditions must be determined by the government or obtain approval from the OJK in accordance with Article 9 of the POJK RUPS. One of the specified conditions set by the government is during the Covid-19 pandemic. If a physical RUPS is held, the venue is where the physical RUPS takes place and is attended by the chairperson of the meeting based on Article 8 Paragraph (2) of the POJK RUPS. If there is no physical RUPS, the venue for conducting the RUPS is the location of the e-RUPS Provider or the location of the public company, if using a system provided by the public company. There are differences in the regulations regarding the venue of the RUPS in the Company Law. According to Article 76 of the Company Law, the RUPS is held at the domicile or the place where the company carries out its main business activities. The RUPS of a public company are also possible to be held at the domicile of the exchange where the company's shares are listed. However, according to Article 76 Paragraph (3) of the Company Law, the place of the RUPS must be within the territory of the Republic of Indonesia. Therefore, by applying the principle of *lex specialis derogat legi generali*, in the implementation of the e-RUPS, the provisions stated in the POJK RUPS apply, which means that the venue of e-RUPS is where the chairperson of the meeting is present.

In order to facilitate the practice of the e-RUPS, PT. Kustodian Sentral Efek Indonesia (KSEI) launched an application called e-ASY KSEI in 2020. This application is a system used for conducting e-RUPS to support the provision of information, implementation, and reporting of RUPS held by public company, as well as the provision of alternative proxy granting and voting rights use in RUPS.³⁰ There are two features in the e-ASY KSEI e-Proxy and e-Voting. Shareholders who are unable to attend both physical and e-RUPS can provide electronic proxy letters through the e-Proxy feature. As of August 2021, 72% of shareholders

²⁹*Ibid.*, p. 80-81.

³⁰Kustodian Sentral Efek Indonesia. *Op.Cit.* Point 1.3.

have used E-ASY KSEI, with 13,880 shareholders using it for e-proxy purposes and 2,206 others participating in e-RUPS. Shareholders participating directly in e-RUPS can exercise their voting rights through the e-Voting feature. Until August 2021, 721 out of 740 listed companies had conducted e-RUPS through e-ASY KSEI, with 423 of them utilizing e-Voting. The total number of e-RUPS conducted is 2,104.³¹

Before participating in e-RUPS through e-ASY KSEI, shareholders obliged to fulfill several requirements, which consist of:³²

1. Possess to Single Investor Identification (SID)³³;
2. Registered as an AKSes user; and
3. Other requirements determined by the e-ASY KSEI Provider in a circular.

After registration, shareholders must provide confirmation of participation before the implementation of e-RUPS through the e-ASY KSEI application. Shareholders can choose whether to attend e-RUPS themselves or grant proxy to another person. Then, shareholders can submit their voting choices before the start of e-RUPS. The voting choices include accept, reject, or abstain. The confirmation of participation and the submitted voting choices can still be changed until the day before at 12.00 PM local time on the date of e-RUPS.

On the day of the e-RUPS implementation, the registration period will be open for two hours before the meeting starts. Shortly before the e-RUPS begins, the e-RUPS materials will appear and can be downloaded by shareholders. The e-RUPS will be conducted on the meeting hall page, which includes a video column for live streaming, a column displaying the meeting agenda, a column for e-Voting, and an electronic opinions column for expressing statements or opinions regarding the agenda. However, the video column for live streaming will not be used because e-RUPS will be conducted through the Zoom webinar application available in the RUPS viewing module on the AKSes platform.³⁴ Therefore, the results of e-Voting in e-RUPS will be in the form of electronic data.

In conventional RUPS, there is no provision in the company law requiring the *minuta* to be in the form of an authentic deed. It is only stipulated that there must be *minuta* of the RUPS, which are made and signed by the chairman of the RUPS and at least one shareholder designated by the participants. However, there is no need for signatures if the minutes are made by a notary. Therefore, a notary can only be present to create the minutes of the RUPS if the interested parties, represented by the company's directors, desire the minutes to be made in the form of an authentic deed. Thus, according to Article 90 of the Company Law, it is the directors who can invite a notary to attend the RUPS. In this case, the deed to be made by the notary is called a *Relaas Deed*.³⁵

In contrast to conventional RUPS, in the implementation of e-RUPS through e-ASY KSEI, the meeting results shall be recorded in the minutes of the RUPS which made by a notary. Article 12 of the RUPS Regulation stated that the electronic *minuta* of the RUPS must be made in the form of a notarial deed by a notary registered with the OJK without requiring the signatures of the RUPS participants. Based on this provision, the deed made is a *Relaas Deed*. A *Relaas Deed* is a statement by a notary regarding everything they have seen, heard, and witnessed in their capacity as a public official. This deed does not require the signatures of the

³¹Mahsud Toarik. *Loc. Cit.*

³²Kustodian Sentral Efek Indonesia. *Op.Cit.* Point 3.3.

³³*Single Investor Identification* or hereinafter known as SID is a sort of single code which specifically established by KSEI. The expected outcome of this purpose of this code is to conjunct customer, financier, or another parties, based on the applicable rules to execute any stocks transaction. Kustodian Sentral Efek Indonesia. *KSEI Regulation Regarding to Single Investor Identification*. KSEI Regulation Number I-E. Attachment to the KSEI Board of Director Decree Number KEP-0029/DIR/KSEI/0616 June, 21st 2016. Point 1.1).

³⁴*Ibid.*, p. 25-26.

³⁵Desela Sahra Annisa Rangkuti. *Loc. Cit.*

parties involved but is read by the notary to the witnesses and then signed by the witnesses and the notary.³⁶

The essence of the *Relaas* Deed lies in the legal events witnessed directly by the notary in their official capacity, which includes observing the conduct of e-RUPS. If a physical RUPS is also held alongside the e-RUPS through e-ASY KSEI, then according to Article 8 Paragraph (1) of the RUPS Regulation, the notary, as one of the supporting professions in the capital market assisting in the implementation of RUPS, shall be present in the physical RUPS.³⁷ However, if the RUPS is fully conducted through e-ASY KSEI without a physical meeting, the notary will create the *minuta* of the meeting by following the proceedings through the Zoom webinar room provided. In e-ASY KSEI, the notary only receives email notifications regarding the date and venue of the RUPS. The Notary does not have access to the e-ASY KSEI platform, thus cannot participate in the live streaming feature or view the Q&A column provided, yet the participants of e-RUPS are possible to do it.³⁸ Additionally, regarding activities conducted through e-ASY KSEI, such as comments and e-voting, the notary will utilize the data transcript provided by the public company. The company has an obligation to download the necessary e-RUPS data required by the notary for legal purposes and provide the e-RUPS data through e-ASY KSEI to the notary.³⁹ Therefore, in accordance with Article 12 of the RUPS Regulation, the *minuta* of the e-RUPS do not require the signatures of the parties involved, only the notary and the signatures of the witnesses are sufficiently to perform such action.

In carrying out their duties to perform the *minuta* of the RUPS, the notary must adhere to the provisions of the applicable laws and regulations. However, there are differences in the regulations concerning the minutes of the e-RUPS between the Company Law and the POJK RUPS. According to Article 77 Paragraph (4) of the Company Law, it states that the *minuta* of the e-RUPS must be approved and signed, either through physical or electronic signatures, by all participants of the RUPS. On the other hand, based on Article 12 Paragraph (1) of the POJK RUPS, the minutes of the e-RUPS do not require signatures from the RUPS participants. These regulatory differences can lead into confusion for the notary. Under the provisions of Company Law, the regulations apply to both closed and public companies, while the POJK RUPS only applies to public companies. In public companies, the number of shareholders can be significantly high. This may be the basis for the provision in the POJK RUPS stating that the minutes of the e-RUPS do not require signatures from the RUPS participants.

In the event of contradictory regulations, it is necessary to apply the legal doctrines. In this matter, the *Lex Specialis* Doctrine which said *lex specialis derogat legi generali* are possible to applied. It means that a specific law supersedes a general law.⁴⁰ The general law in this case is the Company Law. This is lead to the provisions in the Company Law which apply to both closed and public companies, and they cover both conventional RUPS and e-RUPS. On the other hand, the specific law is the RUPS Regulation or called as POJK RUPS. This is because the POJK RUPS specifically regulates e-RUPS for public companies. Therefore, by applying this principle, the notary, in fulfilling their duties to create the *minuta* of the e-RUPS, follows the provisions stated in the POJK RUPS. According to Article 12 of the POJK RUPS, it is stated that the *minuta* of the e-RUPS performed by the notary do not require signatures from the RUPS participants.

³⁶Alwesius. *Loc. Cit.*

³⁷Indonesia. Law Number 8 of 1995 Concerning to Capital Market. State Gazette Number 64 of 1995. Additional of State Gazette Number 3608. Article 64 Paragraph (1).

³⁸PT. Kustodian Sentral Efek Indonesia, "Frequently Asked Question". easy.ksei.co.id, accessed on September 9th 2022.

³⁹Kustodian Sentral Efek Indonesia. *Op.Cit.* Point 4.6.4.

⁴⁰Nurfaqih Irfani. *Op.Cit.* p. 313.

Evidentiary Strength and Legal Standing of the *Minuta* of the RUPS Which Held Through Electronic Devices

The e-RUPS shall be documented in the form of a notarial deed, as stated in Article 12 of the POJK RUPS. Based on their form, there are two types of deeds, which are consist of authentic deed and private deed. It is as stated in Article 1867 of the Civil Code. According to Article 1874 of the Civil Code, private deed is signed by the parties themselves, without any intervention of a public official. On the other hand, an authentic deed, as defined in Article 1868 of the Civil Code, is made in the form prescribed by law by or in the presence of a public official authorized to do so at the place where the deed is made.

The phrase made in the form prescribed by law means that an authentic deed shall comply with the requirements for deed construction stated in Article 38 of the UUJN, which includes the beginning, body, and end of the deed. The phrase by or in the presence of a public official authorized to do so within this article means that the deed must be made by or in the presence of (*ten iverstaan*) a public official, namely a notary.⁴¹

According to Article 1 Number 1 of the UUJN, a notary is a public official authorized to create authentic deeds. The phrase at the place where the deed is made means that the notary creating the deed must be authorized in the place where the deed is made, referring to the territorial jurisdiction of the notary's office. This condition due to the provision which mentioned that in carrying out their duties, a notary has a place of establishment in the regency or city where the notary's office is located and a territorial jurisdiction covering the entire province from their place of establishment, as stated in Article 18 of the UUJN.

Therefore, it can clearly be seen that a deed can be considered an authentic deed if it is made in accordance with the systematic requirements specified in the UUJN, performed by an authorized public official, namely a notary, at their place of establishment or territorial jurisdiction. If these requirements are failed to be obtained, the deed will be downgraded to a private deed. However, this certain condition is possible to be occur if the deed is signed by the parties involved, as stated in Article 1869 of the Civil Code.

The expected outcome from the establishment of the *minuta* of the e-RUPS are a certain document in the form of a notarial deed which could ensure legal certainty for all parties involved. Therefore, it is crucial to determine whether the construction of the *minuta* of the e-RUPS can fulfill the requirements of an authentic deed. This happened if the requirements are not met, the deed will only have evidentiary value similar to a private deed. There is a difference in evidentiary value between a private deed and an authentic deed.

In terms of evidence, both of private deed and authentic deed classified as written evidence. Authentic deed possesses three types of evidentiary proof which are consist of physical proof, formal proof, and substantial proof. Having literal evidentiary value means that an authentic deed can prove its authenticity itself, as stated in Article 1870 of the Civil Code. An authentic deed has formal evidentiary value, meaning that it ensures the accuracy and certainty of the date, signatures, party identities, and the place of the deed.

As for material evidentiary value, it proves that the parties appeared before the notary, provided several explanations to the notary, and performed as stated in the deed content. Therefore, an authentic deed can provide strong evidence in court as long as no party proves otherwise. On the other hand, regarding to the private deed, even though they are signed by both parties, the parties must acknowledge the signatures and content for the deed to become conclusive evidence, as stated in Article 1875 of the Civil Code. If a party denies the deed, the party presenting the private deed must prove the truth of its content.⁴²

⁴¹G.H.S. Lumban Tobing. (1996). *Peraturan Jabatan Notaris*. 4th Publication. Jakarta: Erlangga, p. 48.

⁴²Subekti. *Loc.Cit.*

There are two types of notarial deeds concerning to this regulation, firstly known as *Relaas* Deed, secondly called as *Partij* Deed. *Partij* Deed is made by a notary to record the statements provided by the parties regarding to their intentions.⁴³ On the other hand, *Relaas* Deed or also known as Official Deed contains the statements of the notary regarding to the matter they have directly seen, heard, and witnessed, based on the request of the interested parties in their capacity as a notary. In the *Relaas* Deed, the notary is responsible for ensuring the accuracy of its content due to their capacity as a notary, they personally observe, witness, and hear what transpires. *Relaas* Deed may not be read aloud to the parties or signed by the parties, but all of its contents must be explained in the concluding part of the deed.⁴⁴

The *minuta* of the e-RUPS is legally classified as an *Relaas* Deed, which is served as a form of written evidence in the form of an authentic deed with conclusive evidentiary value according to Article 1866 of the Civil Code. In the establishment of the *minuta* of the e-RUPS, only a notary registered with the OJK, as stated in Article 12 Paragraph (1) of the POJK RUPS, is authorized to perform this sort of action. Therefore, it is important to verify whether the notary is registered with the OJK before inviting them to attend the e-RUPS. In the case of a public company conducting the e-RUPS through both of e-ASY KSEI and physical RUPS, as mentioned in Article 8 Paragraph (1) of the POJK RUPS, the notary, as a supporting profession in the capital market, shall be present at the physical RUPS. However, if it is conducted entirely through e-RUPS, the notary will participate through the provided webinar platform.

Dalam UUJN, dijelaskan bahwa yang dimaksud dengan “dihadapan” adalah Notaris harus hadir secara fisik dan menandatangani aktanya dihadapan Penghadap. Pasalnya, dalam melakukan e-RUPS, mayoritas dari para peserta e-RUPS berhadapan dengan Notaris secara virtual, bukan secara fisik. Hanya sedikit pihak yang diwajibkan hadir dalam RUPS fisiknya. Walaupun demikian, Notaris tetap dapat melihat dan mendengar apa yang dibicarakan oleh para peserta e-RUPS secara langsung dalam *zoom webinar*. Maka dari itu, dalam e-RUPS, frase dibacakan “dihadapan” para penghadap menjadi kurang tepat. Sangat disayangkan bahwa belum terdapat ketentuan hukum yang jelas dalam UUJN yang mengizinkan “berhadapan” dengan Notaris secara elektronik atau virtual. Padahal, berdasarkan Pasal 16 ayat (9) UUJN, dikatakan bahwa apabila tidak memenuhi ketentuan pada Pasal 16 ayat (1) huruf m UUJN, maka akta tersebut hanya memiliki kekuatan pembuktian sebagai akta bawah tangan. Namun dikarenakan Akta Risalah e-RUPS merupakan Akta *Relaas*, maka walaupun Notaris hadir dalam RUPS fisik, Notaris tidak perlu menandatangani dihadapan para peserta RUPS yang hadir. Pada akhir akta, Notaris dapat menjelaskan bahwa akta tersebut hanya dibacakan dan ditandatangani dihadapan saksi-saksi dan Notaris dikarenakan para peserta RUPS telah meninggalkan tempat RUPS ketika akta ini dipersiapkan.

Berbeda dengan yang diatur dalam UUJN, pada Pasal 77 ayat (1) jo. Pasal 9 POJK RUPS memperbolehkan RUPS dilakukan sepenuhnya secara elektronik dalam kondisi tertentu. Hal ini berarti bahwa Notaris diperbolehkan untuk hadir mengikuti jalannya RUPS dan membuat Akta Risalah e-RUPS secara elektronik. Dengan demikian, maka sudah pasti dalam membuat Akta Risalah e-RUPS Notaris hanya berhadapan secara virtual dengan para peserta e-RUPS. Tentunya hal ini bertentangan dengan UUJN yang mengharuskan Notaris hadir secara fisik. Dalam pembuatan Akta Risalah e-RUPS ini berlaku asas “*lex specialis derogat legi generali*”. Dimana ketika terdapat perbedaan pengaturan, dapat menggunakan ketentuan yang terdapat dalam UUPT dan POJK RUPS sebagai *lex specialis*-nya. Dalam hal sepenuhnya dilakukan e-RUPS melalui eASY.KSEI, maka Notaris pada akhir akta harus menyatakan dengan jelas

⁴³Alwesius. *Loc.Cit.*

⁴⁴Desela Sahra Annisa Rangkuti. *Loc.Cit.*

bahwa RUPS dilakukan sepenuhnya secara elektronik. Apabila terdapat RUPS fisik pun Notaris tetap harus menyebutkan diakhir akta bahwa terdapat peserta RUPS yang hadir secara elektronik.

In the *minuta* of the e-RUPS, the notary will record everything they hear during the e-RUPS process, such as when the meeting chairman opens the meeting, announces the quorum, and reads out the decisions made in the e-RUPS. The available data needs to be attached to the *minuta* of the e-RUPS. Therefore, according to Article 12 Paragraph (2) of the POJK RUPS, a public company is obliged to submit data to the notary, which must include at least:

1. A list of shareholders who attended electronically;
2. A list of shareholders who provided electronic authorization;
3. A recapitulation of attendance quorum and decision quorum; and
4. A transcript of the entire electronic interaction in the RUPS to be attached to the minutes of the RUPS.

Based on the data obtained from the KSEI, approximately 75% of the shareholders participated in the e-RUPS electronically.⁴⁵ Therefore, in the e-RUPS, only a few parties are present in the physical RUPS, or even in some cases, the e-RUPS is conducted entirely through e-ASY KSEI. According to Article 1 Number 7 of the UUJN, authentic deed is made in the presence of the notary. Moreover, in Article 16 Paragraph (1) Letter m of the UUJN, it states that the notary must read out the deed in the presence of the attendees, with at least two witnesses present, before it is signed by the witnesses and the notary. Article 44 also contains provisions stating that:

1. Immediately after the deed is read out, the deed is signed by each attendee, witness, and notary, unless there is an attendee who cannot sign and states the reason;
2. The reason referred to in Paragraph (1) must be explicitly stated at the end of the deed.

The UUJN explained that “...in the presence of...” means that the notary shall be physically present and sign the deed in the presence of the attendees. However, in conducting the e-RUPS, the majority of the e-RUPS participants interact with the notary virtually, not physically. Only several parties are required to be present in the physical RUPS. Nevertheless, the notary can still see and hear what the e-RUPS participants discuss directly through the Zoom webinar.

Therefore, in the e-RUPS, the phrase “...in the presence of...” the attendees becomes less appropriate. Unfortunately, there is no clear legal provision in the UUJN that allows electronic or virtual interaction with the notary. However, according to Article 16 Paragraph (9) of the UUJN, it states that if the provisions in Article 16 Paragraph (1) Letter m of the UUJN are failed to met, the deed will only belong to the evidentiary value as a private deed. However, because the *minuta* of the e-RUPS is classified as an *Relaas* Deed, even if the notary is present at the physical RUPS, they do not need to sign it in the presence of the attending RUPS participants. In the concluding part of the deed, the notary can explain that the deed was only read out and signed in the presence of the witnesses and the notary because the RUPS participants had left the RUPS venue when the deed was prepared.

In contrast to the UUJN, Article 77 Paragraph (1) in conjunction with Article 9 of the POJK RUPS allows the RUPS to be conducted entirely electronically under certain conditions. This means that the notary is allowed to attend the progress of the RUPS and create the *minuta* of the e-RUPS electronically. Therefore, it is certain that in creating the *minuta* of the e-RUPS, the notary only interacts virtually with the e-RUPS participants. Undoubtedly, this contradicts

⁴⁵Mahsud Toarik. (2020). “Lengkapi Fitur e-Voting, KSEI Sebut 75% Investor Hadiri RUPS Secara Virtual”. <https://investor.id/market-and-corporate/266065/lengkapi-fitur-evoting-ksei-sebut-75-investor-hadiri-rups-secara-virtual>. Accessed on September 6th 2020.

the provision of UUJN, which requires the physical presence of the notary on the meeting. The principle of *lex specialis derogat legi generali* applies to the establishment of the *minuta* of the e-RUPS. This exactly means that when there is a difference in regulations, the provisions of the Company Law and the POJK RUPS in this case stood more specific so it possible to be applied as the specific law.⁴⁶ In the case of conducting the e-RUPS entirely through e-ASY KSEI, the notary shall clearly state at the end of the deed that the RUPS was conducted entirely through electronic devices. Even if there is a physical RUPS, the Notary must still mention in the concluding part of the deed that there were participants present in the RUPS electronically.

Another issue which then arise is correlated to the jurisdiction of the notary. Notary is only authorized to create deed within their jurisdictional area. While the RUPS are possible to be conducted electronically, either partially or entirely. In this regard, according to Article 9 Paragraph (3) of the POJK RUPS, the place of conducting the e-RUPS is the same as the physical RUPS location, if any, or the domicile of the e-RUPS Provider or public company if there is no physical RUPS. However, when the majority of shareholders participate in the e-RUPS, there is a possibility that some may participate outside the jurisdictional area of the notary. If more shareholders participate in the e-RUPS from outside the notary's jurisdictional area, it may contradict the UUJN. Furthermore, in creating the *Relaas* Deed, or the *minuta* of the meeting, the notary virtually witnesses a larger number of the RUPS participants. Additionally, Article 76 of the Company Law stated that the RUPS shall be conducted within the territory of the Republic of Indonesia. If there are shareholders participating from outside the territory of the Republic of Indonesia, the e-RUPS becomes invalid, and so with any decisions made within it. In this context, considering that Article 8 Paragraph (2) of the POJK RUPS states that the place of conducting RUPS is where the chairman of the meeting is located, as long as the chairman participates in the e-RUPS within the domicile or jurisdictional area of the notary, it does not contradict the UUJN.

Moreover, in creating the *Relaas* Deed, all statements within the deed must be based on events witnessed, heard, and directly observed by the notary. In the establishment of the *minuta* of the e-RUPS through e-ASY KSEI, the notary entirely participates throughout the provided Zoom webinar. This circumstances then permit the on-duty notary to virtually witness everything they seen, heard, and observed. However, due to the restriction given to the notary in accessing the e-ASY KSEI, interactions on the platforms such as Q&A in the comment section and e-voting will be provided to the notary as electronic data. The UUJN does not specify the creation of the *Relaas* Deed based on events witnessed virtually by the notary. However, by applying the principle of *lex specialis derogat legi generali* with Article 9 of the POJK RUPS as the specific law, it can be stated that the *minuta* of the e-RUPS meet the requirements of Article 1868 of the Civil Code and are considered authentic deed.⁴⁷

Regarding to the data and recorded transcripts downloaded by the public company which subsequently attached to the *minuta* of the e-RUPS, this is fall under the category of electronic documents according to Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Electronic Information and Transactions, or hereinafter mentioned as UU ITE. According to Article 1 Number 4 of the UU ITE, an electronic document is defined as any Electronic Information created, transmitted, delivered, received, or stored in analog, digital, electromagnetic, optical, or similar form, which can be seen, displayed, and/or heard through computer or electronic system.

⁴⁶Pande Gde Satria Wibawa dan Pande Yogantara S. (2021). "Keautentikan Akta Risalah Rapat Umum Pemegang Saham (RUPS) Secara Elektronik Dalam Perspektif Cyber Notary". *Acta Comitatus: Jurnal Hukum Kenotariatan*, 6(3): 648.

⁴⁷Mira Nila Kusuma Dewi. (2016). "Kedudukan Hukum Akta Risalah Rapat Umum Pemegang Saham Melalui Media Elektronik". *Jurnal Arena Hukum*. 9(1): 119.

Based on Article 5 of the UU ITE, electronic information and/or documents stood as valid evidence in accordance with the applicable procedural law in Indonesia, as long as the electronic system used complies with the provisions stated in Article 16 of the UU ITE. In civil procedural law, electronic documents and/or information are an extension of valid evidence in accordance with the applicable Civil Procedural Law in Indonesia.⁴⁸

Responding to this circumstance, based on the author's opinion, in the *minuta* of the e-RUPS, it is advisable to require signatures from the e-RUPS participants, where the provided signature would be an electronic signature. According to Article 11 of the UU ITE, a certified electronic signature holds legal validity. Therefore, to further strengthen the *minuta* of the e-RUPS, it would be beneficial to have regulations that require the inclusion of certified electronic signatures. It also known that an electronic signature serves as a means of authentication and verification of the signatory identity, as well as the integrity and authenticity of the electronic information.⁴⁹ Furthermore, since the regulation governing e-RUPS is the RUPS Regulation (POJK RUPS), it would be preferable to establish legislation at the statutory level specifically addressing e-RUPS.

CONCLUSION

Berdasarkan Pasal 77 UUPT, Rapat Umum Pemegang Saham ("RUPS") dapat dilakukan melalui media telekonferensi, video konferensi, atau sarana media elektronik lainnya yang memungkinkan semua peserta RUPS saling melihat dan mendengar secara langsung serta berpartisipasi dalam rapat. Salah satu media yang dapat digunakan dalam e-RUPS adalah eASY.KSEI. Adapun peran Notaris dalam e-RUPS adalah untuk membuat risalah e-RUPS sesuai dengan Pasal 12 POJK RUPS. Akta yang dibuat adalah Akta Relas (*ambttelijke akten*). Notaris yang membuat risalah e-RUPS haruslah Notaris yang terdaftar dalam OJK. Apabila terdapat RUPS fisik, Notaris sebagai salah satu profesi penunjang pasar modal yang membantu pelaksanaan RUPS harus hadir dalam RUPS fisik tersebut. Apabila dilakukan sepenuhnya secara elektronik melalui eASY.KSEI, maka Notaris harus mengikuti jalannya rapat melalui ruangan *zoom webinar* yang disediakan dan melihat data-data elektronik yang terdapat dalam aplikasi eASY.KSEI seperti tanya jawab dalam kolom komentar dan juga hasil dari *e-Voting*. Dikarenakan terdapat benturan pengaturan dalam Pasal 77 ayat (4) UUPT dan Pasal 12 POJK RUPS mengenai pembubuhan tanda tangan para peserta RUPS dalam Akta Risalah e-RUPS, maka dengan menggunakan asas "*lex specialis derogat legi generali*", Notaris mengikuti ketentuan dalam POJK RUPS. Dimana pada Pasal 12 POJK RUPS dikatakan bahwa pada Akta Risalah e-RUPS yang dibuat oleh Notaris tidak memerlukan tanda tangan dari peserta RUPS.

Dalam pembuatan Akta Risalah e-RUPS, walaupun tidak ada ketentuan dalam UUJN yang memperbolehkan Notaris membuat akta "berhadapan" dengan para penghadap atau sebagian besar penghadap secara virtual, namun Notaris tetap dapat membuat Akta Risalah e-RUPS tersebut. Hal ini dikarenakan berdasarkan Pasal 77 ayat (1) jo. Pasal 9 POJK RUPS pelaksanaan e-RUPS diperbolehkan hingga sepenuhnya secara elektronik. Selain itu, dikarenakan terdapat perbedaan pengaturan dalam UUPT dan POJK RUPS, maka Notaris dapat menggunakan asas "*lex specialis derogat legi generali*". Adapun yang menjadi aturan hukum umum adalah UUPT sedangkan yang menjadi aturan hukum khusus adalah POJK RUPS. Hal ini dikarenakan dalam POJK RUPS secara spesifik mengatur mengenai e-RUPS dari Perusahaan Terbuka. Oleh karena itu, dengan menggunakan asas "*lex specialis derogat legi generali*", Notaris dalam

⁴⁸Waringin Seto. (2019). "Keabsahan Rapat Umum Pemegang Saham Perseroan Terbatas dengan Bukti Kehadiran Para Pemegang Saham Secara Online". *Jurnal Repertorium*. 6 (1): 12.

⁴⁹Indonesia. *Regulation of the Government of the Republic of Indonesia Number 71 of 2019 Concerning Implementation of Electronic Systems and Transactions*. State Gazette Number 185 of 2019. State Gazette Number 6400. Article 60.

menjalankan jabatannya untuk membuat Akta Risalah e-RUPS mengikuti ketentuan dalam POJK RUPS. Maka dari itu, dapat disimpulkan bahwa pembuatan Akta Risalah e-RUPS telah memenuhi syarat akta autentik sebagaimana dimaksud dalam Pasal 1868 KUHPerdata. Oleh karena itu, dalam hukum acara perdata, Akta Risalah e-RUPS yang merupakan Akta Autentik termasuk dalam alat bukti tulisan yang memiliki kekuatan pembuktian sempurna secara lahiriah, formil dan materiil. Sedangkan data elektronik yang dilekatkan pada Akta Risalah e-RUPS merupakan perluasan alat bukti yang sah dalam hukum acara perdata. Namun, dikarenakan pengaturan spesialisnya pada tingkat POJK, disarankan agar dibuat peraturan dalam bentuk Undang-Undang agar memiliki dasar hukum yang lebih kuat.

Regarding to the data and recorded transcripts downloaded by the public company which subsequently attached to the *minuta* of the e-RUPS, it relied under the category of electronic documents according to the UU ITE. According to Article 1 Number 4 of the UU ITE, electronic document is defined as any electronic information created, transmitted, delivered, received, or stored in analog, digital, electromagnetic, optical, or similar form, which can be seen, displayed, and/or heard through a computer or electronic system.

Based on Article 5 of the UU ITE, electronic information and/or documents are valid evidence in accordance with the applicable procedural law in Indonesia, as long as the electronic system used complies with the provisions stated in Article 16 of the UU ITE. Based on the perspective of the Civil Procedural Law, electronic documents and/or information are an extension of valid evidence in accordance with the applicable the Civil Procedural Law in Indonesia.

In the author's opinion, in the *minuta* of the e-RUPS, it is advisable to require signatures from the e-RUPS participants, where the provided signature would be an electronic signature. According to Article 11 of the UU ITE, a certified electronic signature holds legal validity. Therefore, to further strengthen the *minuta* of the e-RUPS, it would be beneficial to have regulations that require the inclusion of certified electronic signatures. Not only that, an electronic signature serves as a means of authentication and verification of the signatory identity, as well as the integrity and authenticity of the electronic information. Furthermore, since the regulation which govern the e-RUPS is the POJK RUPS, it would be preferable to establish legislation at the statutory level specifically addressing the e-RUPS.

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