

## AN URGENCY TO ARRANGE THE MEETING OF FOUNDATION FOUNDERS THROUGH TELECONFERENCE MEDIA?

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### Abstract

Each legal entity has distinctive characteristics for each of its organizations. Not all legal entities make members' meetings one of the organizational tools. The same applies to Foundations and their organs. This is different from the position of the GMS and the Cooperative Member Meeting. Digital transformation in community and organizational activities has been increasingly massive since the Covid-19 pandemic. This study examined organizing the meeting of the Foundation's supervisors through virtual meetings. This research was normative research using a conceptual approach, a statutory approach, and a comparative approach. The results indicate that there is a need for strict regulation in the legislation related to the mechanism of the Foundation's supervisory meeting which is carried out through teleconference. Due to the anticipation of the law that is in line with the development of the reality of the interaction of legal subjects who are no longer affected by territorial boundaries.

**Keywords:** boards meeting, e-RUPS, foundation, legal entity, organ meetings

## INTRODUCTION

A legal entity is defined by a legal as the bearer of rights and obligations. For this reason, it requires a special internal organ to act outward and inward. In order to achieve the aims and objectives of the establishment as well as the interests of the founders of the legal entity. Each legal entity has different characteristics in the organs it has. This has been determined imperatively through the laws and regulations governing legal entities. Implementation of legal entity organ meetings is an important part of the management and management of legal entities. In particular, legal entities such as Limited Liability Companies (PT), have organs in the form of meetings, namely the General Meeting of Shareholders (abbreviated as GMS), and Cooperatives, namely the Cooperative Member Meeting (abbreviated RAK in Indonesian). Both types of meetings are expressly determined by law as organs of a legal entity. Unlike the case with the Foundation, its organs consist of coaches, administrators, and supervisors. Looking at the position of the meeting of the founders of the Foundation and the authority given in Law no. 16 of 2001 concerning Foundations (Foundation Law) authorizes the meeting in any substantial policy-making related to the implementation of the interests of the Foundation, in the form of amendments to the articles of association, appointment, and dismissal of management and commissioners including the merger and dissolution of foundations.

The development of people's lives cannot avoid the use of technology, information, and communication. Adapting to the 4.0 era, now towards the era of society 5.0. The pattern of interaction of legal subjects with each other in carrying out their life activities cannot be separated from the use of technological devices, smartphones, the internet, artificial intelligence (AI), Internet of Things (IoT). Then transform to big data.<sup>1</sup> Efficiency and effectiveness in terms of cost, time, and speed are the conveniences offered. The Covid-19 pandemic has brought digital transformation into more massive aspects of human life. Almost all community, government, education, private and social activities are carried out through electronic media, video calls, and virtual meetings.<sup>2</sup> Virtual meetings through teleconferencing-based communication media are the main keys to staying active. This step is also a social restriction policy for community activities in handling the pandemic.<sup>3</sup>

The mechanism for meeting legal entities through teleconference meetings has been regulated in Article 77 of the Limited Liability Company Law. It is regulated that the general meeting of shareholders can be held through electronic media or video teleconference media. Likewise, the e-Meeting of Cooperative Members which has been regulated in the Regulation of the Minister of Cooperatives and MSMEs No. 15 No.19/PER/M.KUKM/IX/2015 concerning the Organizing of Cooperative Member Meetings. Organizing meetings of legal entities is an activity that cannot be excluded. These obligations are determined in the law and the articles of association (statutes). The ongoing COVID-19 pandemic, which limits community activities, creates obstacles in the implementation of the Annual GMS<sup>4</sup>. For this reason, OJK Regulation No. 15/POJK.04/2020 concerning the Plan and Implementation of the General Meeting of Shareholders of a Public Company. This POJK allows participants to attend and make decisions through electronic power of attorney to attend the GMS<sup>5</sup>. Furthermore, the provisions of POJK No. 16/ POJK.04/2020 concerning the Electronic Implementation of the General Meeting of Public Companies. These two provisions provide flexibility in the implementation of the obligations of the Annual GMS to be held by teleconference media. In holding meetings of legal entities, it is obligatory to pay attention to the validity of the meeting through the presence of participants, decision-making quorums, and documentation of meeting implementation. On the other hand, other legal entities such as foundations have not been given the authority to hold virtual meetings for the board of directors' meetings. Based on data from the Ministry of Law and Human Rights (Kemenkumham)<sup>6</sup> the South Sulawesi Regional Office, the establishment of the Foundation from year to year continues to increase.

<sup>1</sup> Benny Riyanto, "National Law Development in Era 4.0 (national law development in the 4.0 era)", *Rechtsvinding Journal: Media for National Law Development*, Volume 9 No. 2, August 2022, p.164.

<sup>2</sup> VOA Indonesia, "WHO: Europe Becomes the Center of the Corona Virus Pandemic, Replaces China," see <https://www.voaindonesia.com/a/who-eropa-jadi-pusat-pandemi-virus-corona-gantikan-china/5329446.html>

<sup>3</sup> Kornelius Benuf, "The Urgency of Legal Protection Policies for Fintech Peer to Peer Lending Consumers Due to the Spread of Covid-19," *Rechtsvinding Journal*, Volume 9 No. 2, 2020, p.204

<sup>4</sup> Andi Suci Wahyuni, "Urgensi Kebutuhan Akta autentik Di Masa Pandemi Covid-19," *Jurnal Hukum dan Dinamika Masyarakat*, Vol. 18, No. 1, 2020, p. 3

<sup>5</sup> OJK Indonesia, "Siaran Pers Nomor SP. 31/ DHMS/OJK/IV/2020, OJK mengeluarkan Peraturan Terkait Penanganan Dampak Pandemi Covid-19," see <https://www.ojk.go.id/id/berita-dan-kegiatan/Documents/Pages/informasi-Covid-19>,

<sup>6</sup> Results of an interview with the Head of Legal Services Sub-Sector of General Legal Administration Services at the Regional Office of the Ministry of Law and Human Rights of South Sulawesi in Makassar, August 10, 2022.

Table 1. Number of Foundation Establishments

No.	Year	Number of Foundations
1.	2018	466
2.	2019	599
3.	2020	733
4.	2021	941
5.	Jan- August 2022	801

The number of applications and legalization of foundation legal entities in the range of  $\pm$  200 foundations each year. In addition, in the legislation, the founder of the foundation can be one or more. In practice, the establishment of foundations with the number of supervisors exceeding 1 (one) is also increasing. Regulation of Article 69 of the Law on Foundations Jo Articles 10, 12, 13, and 26 of Government Regulation No. 63 Year 2008 concerning the Implementation of the Foundation Law also allows the establishment of foreign foundations on the condition that they partner with foundations in Indonesia. This also provides room for the development of foundation establishments, which will require access to organizing meetings of supervisors in the exercise of their authority, which are carried out through teleconference meetings as the convenience for coaches to continue to participate in decision-making related to their authority. On the one hand, the supervisory arrangement may consist of a coach so that the interpretation of this provision does not require decision-making in the Supervisory Meeting. The validity of holding a supervisory meeting requires paying attention to several principal provisions, such as the suitability of the agenda/meeting agenda contained in the invitation of the meeting participants (coach) is different from the agenda of the meeting discussed, and the decisions are taken. So that the deed of the statement of the decision of the supervisory meeting is declared invalid and stated in the notarial deed relating to the agenda of the meeting to amend the articles of association and other authorities.<sup>7</sup>

The fact occurred in the pre-study was that Foundation X due to the need for a change of management in 2020 held a Trustees Meeting through the Zoom Meeting media. The meeting has taken a decision to appoint and appoint a new board of directors. Minutes of the meeting are made privately. Then it was made in the form of a notarial deed, namely a deed of the statement of meeting decisions. However, the notary concerned refuses to make it on the grounds that if the meeting is conducted electronically, there is no basis for its implementation. The foundation consisted of 5 (five) coaches whose coaches were not domiciled at the foundation's domicile. At that time there was also a regulation limiting entry and exit of the province.

Based on these problems, namely the absence of direct rules in the law that allows meetings of Foundation supervisors via electronic means. Of course, it hinders the activities of the supervisor's meeting to carry out their routine and incidental obligations. In addition, along with the development of IT, it is very helpful in streamlining the attendance of participants in the supervisory meeting for decision makers. For this reason, this paper wants to examine the urgency of regulating the implementation of the Foundation's supervisory meeting held through teleconference media.

This research was empirical normative research using the statue approach, conceptual approach, and comparison approach. The collection of legal materials was carried out by researchers by conducting library research and field research. Primary legal materials included various laws and regulations, scientific articles and information from online media related to this research. Meanwhile, field data were obtained from interviews with a number of relevant informants in this study.

## DISCUSSION

### Legal Position of Legal Entity Organ Meeting

Human interaction takes place between humans with one another and the legal relationship between humans and legal entities (as human organizations, associations, corporations). With the same legal position as the "human" legal subject, the law does not regulate specific provisions related to interactions with *rechtspersoon*. The authority possessed by *rechtspersoon* in acting as a supporter of rights and obligations is also the same as *natuurlijkpersoon*<sup>8</sup>. Legal authority (*rechts bevoegdheid*) is the ability to carry out a legal act. The authority of a legal entity is only limited in the field of assets (op

<sup>7</sup> Armitha Viradilla and Fully Handayani Ridwan, "Cancellation of the Deed of Statement of Meeting Resolutions Due to the Implementation of the Foundation Trustees Meeting whose invitations were not in accordance with the Meeting Agenda (Bandung District Court Decision Study No. 389/Pdt.G/2019/PN. Bdg)," Indonesian Notary, Volume 4 No. 1, 2022, p. 128

<sup>8</sup> *Ibid.*, p. 6

vergogensrechtelijk gebied).<sup>9</sup> Based on formal legal sources, the position of a legal entity is determined if the conditions required by legislation have been met, or the conditions required by customary law, or by jurisprudence, or by doctrine have been fulfilled.<sup>10</sup>

Ali Rido states that the conditions demanded by the doctrine as criteria for determining the position as a legal entity, namely: the existence of separate assets, having certain goals, having their own interests and the existence of an organized organization.<sup>11</sup> In the laws and regulations, the conditions that must be met in order to become a legal entity are,<sup>12</sup> Article 1653 of the Civil Code (Burgelijk Wetboek (BW)), the position of a legal entity occurs if the provisions expressly state that an entity or organization is a legal entity. In addition, it can be determined not expressly stated by legal provisions as a legal entity. In Indonesia, positive law regulates the position of legal entities, including Limited Liability Companies, Cooperatives, Foundations, State/Regional Owned Enterprises (BUMN/BUMD), Village Owned Enterprises (BUMDES) and Individual Companies. The absence of thinking power, the will of legal entities and does not have a central *bewustzijn* center. Requires that in carrying out legal actions themselves, they are carried out through the intermediary of ordinary people (*natuurlijke personen*). However, the actions of these persons are for and for the liability of the legal entity they represent. Articles of association and/or laws containing constitutive requirements of legal entities regulate the appointment of persons who can act for and on behalf of legal entities, which are referred to as organs or equipment.<sup>13</sup>

Paul Scholten, said related to the form of representation including special representation because it is stipulated in the articles of association and other regulations of the legal entity organization itself. The form of representation in the *aanstelling* or appointment group<sup>14</sup> So that the actions of the deputy administrator with a power of attorney and the management are appointed by the general meeting, not last-giving of the members. Because the existence of the general meeting itself is an organ of the legal entity. Even though the board is under a general meeting, the board cannot be ordered by a general meeting, because the scope of authority to represent it, the limits have been determined in the articles of association. This is different from "lastgiving" because someone who is given a burden (power / as a representative) can be ordered by the giver of the burden.<sup>15</sup>

Foundation as a legal entity is regulated in Law no. 16 of 2001 concerning the Jo Foundation, Law no. 28 of 2004 (hereinafter abbreviated as UU Foundation) and its implementing regulations. Foundation as a legal entity consisting of assets separated and intended to achieve certain goals in the social, religious and humanitarian fields, has no members. Gatot Supramono,<sup>16</sup> defines the Foundation as a collection of a number of people who are organized and seen from the fact that it looks more like a social institution. The establishment of the Foundation from the beginning was aimed at non-profit, but aimed at helping or improving the welfare of other people's lives. The provisions of Article 2 of the Foundation Law, determine the organs of the Foundation consisting of Trustees, Management and Supervisors. The legal entity status of the Foundation is obtained after the deed of establishment is approved by the Minister of the Ministry of Law and Human Rights (HAM). Like other legal entities, the organs of the foundation have different powers from one another. The authorities and responsibilities of each organ are determined both in the laws and regulations and in the articles of association (deed of establishment).

Trustees as foundation organs have absolute authority or power in terms of assessing, evaluating and observing the performance of the management and supervisors in accordance with Article 28 paragraph (2) letter b, regarding the appointment and dismissal of the Management and Supervisors. The position of the supervisory meeting is not as an organ of the Foundation, but the decision-making mechanism in the case of more than one advisor. The authority of the builder as stipulated in the Foundation Law,<sup>17</sup> is a decision regarding amendments to the articles of association, the appointment and dismissal of members of the management and supervisory members, the establishment of general policies of the foundation based on the articles of association of the foundation, the ratification of the work program and the draft annual budget of the Foundation and the

<sup>9</sup> Ali Rido, *Legal Entity Legal Entity Company, Association, Cooperative, Foundation, Waqf, Bandung*: PT. Alumni, 2012, p. 24

<sup>10</sup> *Ibid.*, p. 79

<sup>11</sup> *Ibid.*, p. 96

<sup>12</sup> *Ibid.*, p. 81

<sup>13</sup> Sudirman Kartohadiprojo, *Introduction to Legal Order in Indonesia*, 1956, p. 39, as quoted in Ali Rido, *Op.Cit.*, p. 15

<sup>14</sup> *Ibid.*, p. 16-17

<sup>15</sup> *Ibid.*, p. 18

<sup>16</sup> Gatot Supramono, *Foundation Law in Indonesia*, Jakarta: Rineka Cipta, 2001. p. 1

<sup>17</sup> Article 28 paragraph (2) of Law no. 16 of 2001 concerning Foundations.

determination of the merger or dissolution of the Foundation. The position of the builder is the highest organ in the foundation.<sup>18</sup>

The form of the decision issued by the foundation builder is subjective (personal argument),<sup>19</sup> Henry P. Pangabean also stated that the coach is a fully dedicated figure with extraordinary authority. Appointment of Trustees is regulated in Article 28 paragraph (3) of the Foundation Law that individuals can be appointed as Trustees/ members of the Trustees, originating from the founders of the Foundation and/or those who based on the decision of the meeting of the Trustees are considered to have high dedication to realizing the aims and objectives of the Foundation. Thus, it is stated that the supervisory authority is the superior authority in managing, supervising and evaluating the performance of the implementation of tasks and the implementation of Foundation activities through the management and supervisors. The authority of the supervisor is routinely and carried out every year.<sup>20</sup> The validity of holding the Board of Directors meeting,<sup>21</sup> and decision-making is also determined through the fulfillment of the quorum requirements for the presence of the supervisor at the meeting and the decision-making quorum. Quorum of attendance in amendments to the articles of association is a coercive provision<sup>22</sup> determined at least 2/3 of the number of members of the builder<sup>23</sup>, decision-making quorum of at least 2/3 of the approval of the number of members of the board of directors present. The supervisory meeting can take place a second time (if consensus is not reached and a quorum of approval is taken) with a quorum of all members of the supervisor. In the case of a foundation merger, that is, if it is attended by of the total number of members of the board of directors and the approval of the decision is approved at least of the total number of members of the board of directors present. The importance of fulfilling the quorum requirements set out in the laws and regulations and the articles of association will determine the validity of the meetings held. In principle, decision making<sup>24</sup> In the meeting, it is attempted through deliberation and consensus. The collective vote of the coaches is the best unanimous decision for that.

In contrast to the organs of a Limited Liability Company (PT), it consists of the General Meeting of Shareholders (GMS), Directors and Commissioners. The GMS is a corporate organ that has authority that is not given to the board of directors or the board of commissioners within the limits specified in this Law and/or the articles of association. The role of the GMS in PT is as a forum for shareholders to be able to maintain and distribute their interests so that it is referred to as GMS.<sup>25</sup> The provisions of Law No. 8 of 1995 concerning the Capital Market regulates the type of PT, a Public Company (Tbk) referred to as a Public Company, with a minimum share ownership of 300 (three hundred) shareholders, the minimum owned and paid-up capital is at least IDR 3,000,000,000.00 (three billion rupiah) or a number of shareholders and paid-up capital stipulated by a Government Regulation.<sup>26</sup>

The general meeting of shareholders by J. Satrio was stated to be the organ of PT, where the GMS is a collection of shareholders whose composition is not fixed. Because the presence of shareholders in the GMS is not always the same.<sup>27</sup> In essence, the duties and authorities of the GMS are to ratify the actions that are intended and have been carried out by the board of directors in managing the company,<sup>28</sup> carry out the task of controlling the implementation of the work of the board of directors as management, being accountable for their policies to the GMS, submitting the annual financial report (Article 66)<sup>29</sup>. The holding of the GMS is the responsibility of the board of directors and the board of commissioners, exceptions are made by the shareholders through the determination of the Chairman of the Court who gives permission to hold the GMS. In principle,<sup>30</sup> The GMS is held to fulfill the rights of shareholders to obtain information and information related to the company according

<sup>18</sup> Gatot Supramono, *Op.Cit.*, p.64

<sup>19</sup> Fajar Rachmad DM and Cholila Adaningrum Hazir, "Rechtsvacuum on the Power of the Trustees of the Foundation," *Muara Journal of Social Sciences, Humanities, and Arts*, Volume 5, No. 2, October 2021, p. 381.

<sup>20</sup> *Ibid.*

<sup>21</sup> Article 18, 19, 20 and 28 paragraph (5) of Law No. 16 Year 2001 concerning the Foundation.

<sup>22</sup> Gatot Supramono, *Op. Cit.*, p. 64

<sup>23</sup> The quorum of the supervisory meeting is regulated both in the Foundation's laws and regulations and also in the Foundation's articles of association.

<sup>24</sup> *Ibid.*, hlm. 64

<sup>25</sup> Rudhi Prasetya, *Theory and Practice Limited Liability Company*, Jakarta: Sinar Graphic, 2011, p. 39-40

<sup>26</sup> Article 1 number 22 of Law no. 8 of 1995 concerning the Capital Market

<sup>27</sup> J. Satrio, *Limited Liability Company (Closed) Based on Law no. 40 of 2007 Part two*, Depok: Rajawali Pers, 2021, p. 81-82

<sup>28</sup> Article 14, Article 19, Article 63 to Article 69 of Law no. 40 of 2007 concerning Limited Liability Companies

<sup>29</sup> J. Satrio, *Op. Cit.*, p. 83

<sup>30</sup> *Ibid.*, p. 86

to the meeting agenda.<sup>31</sup> Settings against<sup>32</sup> the place where the GMS is held, namely the domicile or main place where the company conducts its business activities. The GMS can be held both conventionally and through electronic media, such as video teleconference, which can bring together meeting participants to see and hear each other.<sup>33</sup> The mechanism for implementing the GMS must meet the prerequisites in the law and the articles of association, namely the summons mechanism, implemented according to the meeting agenda as stated in the invitation/invitation, the time interval between the summons for the meeting and the implementation of the GMS, the presence of shareholders in the GMS and the quorum of the GMS. Quorum of attendance, namely, the minimum number of attendances of meeting participants, so that the meeting can take valid decisions, the arrangement of the quorum of attendance in Article 86 paragraph (1). It is also necessary to pay attention to the quorum requirements for the presence of shareholders with voting rights (also related if the AD determines the classification of shares with voting rights and without voting rights).<sup>34</sup>

The legal entity position of Cooperatives, in Law no. 25 of 1992 concerning Cooperatives, determines as a legal entity business entity consisting of people or cooperative legal entities which are organized based on cooperative principles as well as a people's economic movement based on the principle of kinship. Cooperative organs, consisting of cooperative member meetings (RAK), management and supervisors, organs determine goals and how to achieve them<sup>35</sup>. Meeting of authorized members related to general policies in the field of organization, management and business. The position of RAK as the highest organ in the organization of cooperatives. The implementation of the RAK must meet the requirements for implementation, attendance, and decision making. Decisions of the Members' Meetings are taken through deliberation for consensus and/or through voting. Each member has the right to one vote, voting rights in secondary cooperatives can be regulated in the Articles of Association by considering the number of members and the business services of the member cooperatives in a balanced manner. In addition to holding the annual RAK, an extraordinary member meeting can also be held at the request of a number of cooperative members or at the decision of the management whose implementation is regulated by the Articles of Association<sup>36</sup>.

If you look at the authority given to each organ, including the position of the meeting of legal entity organs, then it becomes an obligation to hold meetings of legal entity organs. Based on the working principles of good corporate governance (GCG), namely agency theory and stewardship theory which are derivatives of entity theory. In principle, the two theories<sup>37</sup> This opinion argues that there is a separation between the personal interests of the equity owners and their business entities (companies). So that a business entity / company becomes a personification that has its own character that is not the same as the owner. There are even corporate entities that have their own existence apart from the existence of the owner. Agency theory put forward by David Band, that the main correlation between the company's organs, especially the management with shareholders. So that the founders of the company can bind a balanced agreement between the principal (shareholders) and agents (director). Agents act as guardians of the organization and place the main task of running the company for the benefit of the company owner. So a system of checks and balances is needed to prevent potential abuse of power by representatives (agents). With the implementation of GCG, the management of companies including foundations must be monitored and controlled to ensure that management is carried out in compliance with various applicable rules and regulations.

The presence of legal entity organs, including meetings of legal entity organs is the implementation of good corporate governance principles "Good Corporate Governance (GCG)".<sup>38</sup> GCG Concept,<sup>39</sup> It is expected that it can be implemented in companies or organizations in Indonesia, because through the concept concerning the company structure consisting of the GMS, directors and commissioners, a harmonious relationship and work mechanism can be established, division of tasks, authorities and responsibilities. Internally and externally with the aim of increasing the value of the

<sup>31</sup> Article 75 paragraph (2) of Law No. 40 Year 2007 concerning Limited Liability Companies

<sup>32</sup> Article 76 paragraph (1) of Law No. 40 Year 2007 concerning Limited Liability Companies

<sup>33</sup> Article 77 paragraph (1) of Law No. 40 Year 2007 concerning Limited Liability Companies

<sup>34</sup> Article 53 paragraph (4) of Law No. 40 Year 2007 concerning Limited Liability Companies

<sup>35</sup> Revisond Baswir, Cooperative Indonesia, 2nd Edition, Yogyakarta: BFEM, 2019, p. 107

<sup>36</sup> Articles 26, 27, 28, and 29 of Law no. 25 of 1992 concerning Cooperatives

<sup>37</sup> Khairandy R and Malik C, Good Corporate Governance, Thought Development and its Implementation in Indonesia in Legal Perspective, Yogyakarta: Total Media, 2007, as quoted in Tuti Rastuti, et. al., Legal Aspects of Company Management, Bandung: PT. Refika Aditama, 2018, p. 73-74.

<sup>38</sup> The principle of good corporate governance consists of transparency, accountability, responsibility, independence, and fairness, known as the Tariff. See also KEPMEN-117/M-BUM/2002 regarding the Implementation of Good Corporate Governance Practices in BUMN.

<sup>39</sup> *Ibid.*, p. 86

company for the benefit of stakeholders and shareholders. Although this principle is mostly implemented in corporate business, the development of every organization requires the implementation of this principle. Because through the application of these principles can protect the goals and interests of the organization, business owners and stakeholders (society, government). Through the authority given at organ meetings, a system of checks and balances will be implemented. Because the authority of the legal entity organs at the GMS, Cooperative Member Meetings and Trustees is to evaluate the management and management as well as the implementation of the tasks of the organizational apparatus as well as the achievement of the goals, objectives and interests of the legal entity.

### **Mechanism of Organizing Foundation Trustees Meetings Through Virtual Meetings**

The implementation of meetings of legal entities, especially in limited liability companies, including the need for an electronic GMS, has become an in-depth study in European countries in 2006. In the Netherlands the Frinjs Committee 2005-2006, reported on the presence/participation of shareholders in a GMS (Algemene Vergadering). van Aandhouders (abbreviated as AVA – Annual General Meeting Shareholders) which continues to decline, the reason is that there is a mechanism for delivering information that is not comprehensive when a conventional GMS will be held. In general, shareholders come from investment companies. The local government is well aware that the implementation of GCG will be carried out well, if the participation of the shareholders in the GMS<sup>40</sup>. The function of checks and balances will of course be used by shareholders, especially the role of "supervision" on the performance of the company and the directors. Based on this, the Committee provides a proposal so that electronic communication media/tools can be used.<sup>41</sup> It is expected that this mechanism is able to facilitate accessibility to AVA, especially for foreign investors to be involved and attend the GMS. Then through the proposal of the Tabaksblat Committee, the Dutch legislature adopted the Wet Elektronische Communicatiemiddelen (Electronic Means of Communication Act) and came into force on January 1, 2007.<sup>42</sup> The use of Virtual General Meetings (VGM) in the state of Delaware is a convenience offered to ± 800,000 official companies of which more than 50% of them are US public companies. State revenues from companies are also quite large. So that the corporate climate is also dominant in setting progressive, low-tax policies and regulations and special courts<sup>43</sup>. In 1996, the use of VGM through the Web Cast Annual by the Bell & Howell company, but the validity of the meeting was questioned due to the absence of participants and their participation in decision making. State arrangements regarding the implementation of GM were allowed at places inside and outside the territory of the country or places specified in the articles of association. Then there was a change in the legal provisions in the 2001 Delaware Code so that companies could use information technology tools<sup>44</sup>. This is different from the implementation of virtual media meetings in Denmark. In 2002, amendments were made to the provisions of the company law, the law of limited liability companies (as a form of freedom of responsibility) in the LOV. 303 af 30-04-2003). This provision aims to increase the participation of company owners, especially in general meetings<sup>45</sup>.

In principle, the amendment of these provisions is to enable the use of modernization of information technology in holding general meetings of shareholders in the company's companies. The regulated provisions allow the holding of the GMS, in the form of, namely the participation of shareholders in a delviselectronisk Generalforsamlingen (partial electronic General Meeting) without direct attendance. Second, a full electronic General forsamlingen (complete electronic General Meeting) does not require physical presence (this type requires the mechanism for using the e-system to be set out in the articles of association). The provisions also regulate the mechanism for determining the electronic system to be used and must comply with statutory provisions. So that these conditions

<sup>40</sup> the reports on the application of the corporate governance Code in 2005 and 2006 by the Frijns Committee (Commissie Frijns Rapport over de naleving van de Nederlandse corporate governance code. Rapport, The Hague: Monitoring Commissie Corporate Governance Code, 2005 and Commissie Frijns, supra note 14) in Wanne M. Pemmelaar, Towards a Virtual General Meeting: 'I accept' or 'I decline'? Utrecht law Review, Volume 4, Issue 3 (December) 2008, p. 165

<sup>41</sup> *Ibid.*, p. 166

<sup>42</sup> *Ibid.*, p. 167

<sup>43</sup> *Ibid.* p. 170

<sup>44</sup> *To the Del. Code Ann. Tit. 8 §211(a) was added: 'the board of directors is authorized to determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication (...)'.* §211(a)(2) ensures that the VGM and the AGM are equal by stating subsequently that a shareholder can participate in the meeting by means of remote communication and should be deemed present in person. *Ibid.* hlm. 171

<sup>45</sup> Lovforslag som fremsat (29 January 2003) – L 145 (Comments on draft law), 2.1.1, *Ibid.*, p. 173

are able to provide reliability and legal certainty if used<sup>46</sup>.

Indonesia's positive law, has regulated the use of teleconferencing media in meetings of legal entities, namely the implementation of the e-GMS for Limited Liability Companies contained in Article 77 of Law no. 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UU PT) "GMS can also be held through teleconference media, video conferences, or other electronic media facilities that allow all GMS participants to see and hear each other directly and participate in meetings". Likewise, the electronic cooperative member meeting (e-RAK) is contained in PERMENKOP and UKM No. 19/Per/M.KUKM/IX/2015 Regarding the Organization of Cooperative Member Meetings, Article 16 stipulates that member meetings can be held through teleconference media, video conferences, or other electronic media facilities that allow all participants to see and hear each other and participate directly in the Meeting. Member<sup>47</sup>.

Organizing meetings of legal entities always requires quorum requirements and decision-making requirements as stipulated in the law and/or in the articles of association. This relates to the authority to be carried out by the organs and meetings of legal entities. Prerequisites are regulated, for example, the quorum requirement is calculated based on the participation of the GMS participants and each GMS must have minutes of meeting approved and signed by all GMS participants. The meaning of the word "approved and signed" is agreed and signed physically or electronically. Regarding the use of e-GMS and electronic signatures,<sup>48</sup> will also pay attention to the provisions of Article 1 number 12 of Law no. 11 of 2008 jo. Law No. 19 of 2016 concerning ITE defines "Electronic Signature" as a signature consisting of Electronic Information attached, associated or related to other Electronic Information used as a means of verification and authentication. The results of the study show that the implementation of the e-GMS causes problems in its implementation due to the conflicting norms of the provisions in Article 77 and Article 90 of the PT Law which regulates the legitimacy of the e-GMS does not require the signing of all shareholders with Law no. 30 of 2004 concerning the Position of Notary Jo Law no. 2 of 2014 Article 16 paragraph (1) still requires the presence of the parties meet in person with a notary<sup>49</sup>.

Another obstacle faced is that e-GMS and e-RAK are still not in line between the laws governing virtual meetings and the regulations governing the use of electronic data and the absence of more concrete provisions in the implementing regulations. As a result, legal uncertainty arises in the regulation. Also presented in the research results,<sup>50</sup> that the implementation of e-RAK is declared invalid because the legal requirements for the meeting are not met and the meeting quorum is fulfilled. The participants of the cooperative virtual meeting cannot sign the attendance list, because there is no regulation regarding the electronic signature. So that the members' meeting does not meet the quorum of the members' meeting in general, the members' meeting is + 1 so that it cannot be done by teleconference. This study also reveals that in practice the implementation of e-RAT or e-RAK is not as effective as the purpose of the provision for member meetings by teleconference. There are cooperatives which then carry out the mechanism of conducting member meetings electronically, namely with a representative system and combined with teleconferencing.<sup>51</sup>

Government policy to impose restrictions on community activities during the COVID-19 pandemic. Provide space for the implementation of virtual general meetings. For handling problems with financial system stability, OJK is given the authority to determine provisions regarding the use of information technology in holding the GMS<sup>52</sup> or other meetings that must be held by financial services industry players. To anticipate delays in holding the GMS, OJK issued POJK No. 15/POJK.04/2020 Regarding the Plan and Implementation of the General Meeting of Shareholders of a Public Company, Financial Services Authority Regulation No. 16 / POJK.4/2020 concerning the Electronic

<sup>46</sup> *Ibid.*, p. 174

<sup>47</sup> Article 3 paragraph (2) Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 10/Per/M.Kukm/lx/2015 concerning Cooperative Institutions

<sup>48</sup> Article 77 of Law No. 40 Year 2007 concerning Limited Liability Companies

<sup>49</sup> M. Ghalil Gibran, "Electronic Implementation of the GMS Based on Law no. 40 of 2007 concerning Limited Liability Companies in relation to Law no. 2 of 2014 concerning the Position of Notary and Law no. 19 of 2016 concerning ITE," *Journal of Law of Deli Sumatra: Scientific Journal of Law*, Volume 1 No. 1, May 2022, p. 9

<sup>50</sup> Yulia Randi Prananto, "Implementation of the Electronic Annual General Meeting (AGM) in Review of the Regulation of the Minister of Cooperatives and Medium Enterprises Number 19/Per/M.KUKM/IX/2015 concerning the Organization of Cooperative Member Meetings," *Authentic: Journal of Notary Law*, Volume 2, No. 1, 2020, p. 97

<sup>51</sup> *Ibid.*, p. 98

<sup>52</sup> Bagus Rahmanda, Yuli Prasetyo Adhi, and Herni Widanarti, "The Urgency of The Organization and Legitimacy of The Digitalization of The General Meetings of Shareholders of The Limited Liability Company During The Covid-19 Time In Review of The Ius Constitutum," *Journal of Private and Commercial Law*, Volume 6 No. 1, 2022, p. 41

Implementation of the General Meeting of Shareholders of Public Companies. The mechanism for organizing the RUP has been technically regulated, namely using the e-GMS provided by the e-GMS provider; or systems provided by the Public Company. Organizing with e-GMS providers,<sup>53</sup> the operator of the electronic system must be registered from the agency. In addition, in the e-GMS, power of attorney is used electronically to represent the participation of shareholders, which is regulated in the Decree of the Board of Directors of PT. Indonesian Central Securities Depository No. KEP-0016/DIR/KSEI concerning the application of the KSEI Electronic General Meeting System (eASY.KSEI) facility as a mechanism for granting power of attorney Electronically in the Process of Holding a GMS for Securities Issuers That Are Public Companies and whose Shares Are Kept in KSEI's Collective Custody.

Implementation of the supervisory meeting in the Foundation Law<sup>54</sup> still limited to conventional methods. By bringing together meeting participants (the coaches) with other participants in the meeting room. Notary put forward,<sup>55</sup> related to whether or not the implementation of a teleconference meeting in the foundation builder meeting. Notaries have different views considering that the implementation of the E-GMS as intended by Article 77 has not provided uniformity in implementation and legal certainty. It is necessary to clarify the use of digital signatures to authenticate their validity. Even though the minutes of the GMS are allowed not to be signed, they are replaced with statements written by a notary in the minutes. However, the absence of participant signatures will reduce the certainty of the implementation and decision making of the GMS. So that the notary after the e-GMS will re-run the use of decision-making through circular resolution, to ask for the approval of each shareholder and to sign the results of the meeting decisions in the circular letter sent. In addition, the deed of the minutes of the e-GMS meeting made by a notary with the procedural provisions for making a notarial deed as stipulated in the Law on Notary Positions. Having a different interpretation in the JN Law in the notary deed contains a statement that "confronts" or "faces me Notary", the editorial context requires the presence of a notary and meeting participants to meet face to face (face to face). The lack of facilities, infrastructure or supporting facilities to support the use of e-GMS. Both in terms of the provisions of laws and regulations that require evaluation with current developments and also legal certainty regarding electronic data storage systems, socialization and protection of personal data. If then the e-GMS is carried out and a deed of minutes is made based on the e-notary. The question is how then what form of storage is the electronic minutes stored in the Notary in what form and where is the notary provided? What is also important is the position of the output of the results of the e-GMS or e-RAK according to law and as evidence.

More statements,<sup>56</sup> Currently, the supervisor's meeting does not require a teleconference meeting. Because it requires changes in the arrangement of the Foundation Law and the readiness of supporting facilities and facilities for it. Solutions that can be used in the implementation of the supervisor's meeting, such as making decisions through the presence of the advisor's representative at the meeting and/or by making a deed of statement of the meeting decision under the hand. It can also be done through a mechanism like decision making through circular resolution. This mechanism has actually been accommodated in the Limited Liability Company Law, namely Article 91 that this kind of decision-making is carried out without a physical GMS being held, but the decision is taken by sending a written proposal to be decided on to all shareholders and the proposal is approved in writing by all shareholders. Proposals sent in writing<sup>57</sup> to all Shareholders and approved in writing (signed) in the form of minutes by all shareholders without exception. Externally, circular decisions must be implemented in accordance with Article 91 of the Company Law and 1320 of the Civil Code, must be reaffirmed with an authentic deed by a Notary then the notification has been approved or received by the Minister of Law and Human Rights of the Republic of Indonesia.

It was also stated by the Notary that<sup>58</sup> in the Foundation, internal meetings by teleconference between the management or supervisors or supervisors with a meeting agenda other than those specified in the Foundation Law and/or the articles of association may be conducted. However, it is different when changes are made to the articles of association as the supervisor's authority to make decisions or implement the authority of organs related to the duties of a notary. The board of directors

<sup>53</sup> Financial Services Authority Regulation No. 16/POJK.4/2020 concerning the Electronic Implementation of the General Meeting of Shareholders of Public Companies

<sup>54</sup> See Article 18 of Law No. 16 Year 2001 concerning Foundations

<sup>55</sup> Interview with Mrs. A. Lola Rosalina, Notary in Makassar City, August 26, 2022.

<sup>56</sup> *Ibid.*

<sup>57</sup> Dewi, Legal Aspects of Decision Making of Shareholders Outside the General Meeting of Shareholders (Circular Resolutions) in Limited Liability Companies, Thesis, Notary Masters Program, University of North Sumatra, 2020.

<sup>58</sup> Interview with Mrs. Ria Trisnomurti, Notary in Makassar City, 23 August 2022.

meeting has not been arranged to be conducted electronically. If the problem is during a pandemic, then there are other options or mechanisms. It is possible for one of the supervisors to become a representative and receive special power from other supervisors to make a deed of amendment to the AD to a notary. Article 10 of the Foundation Law allows the founder to be represented to make a deed of establishment, provided that the representation is proven through a power of attorney. In addition, without the presence of a supervisor, the notary will ask for supporting documents, such as minutes of the meeting (not a virtual meeting), meeting invitations (which contain the agenda, meeting participants, attendance of participants, power of attorney for meeting participants, decisions taken).

In the end, the implementation of the e-GMS and e-RAT is not as effective as the purpose of setting these provisions, because proving the occurrence of meetings and the legitimacy of the use of electronic data was very risky so that it required regulation of the implementation of the teleconferencing system in the regulations and articles of association. The legal umbrella and the existing infrastructure are not yet adequate. However, the direction of development and activities of human life and legal entities will certainly require facilities and electronic media. In today's digital era, crossing national borders is increasingly meaningless. Meanwhile, legal subjects will continue to establish and expand partnership networks for the realization of the goals, objectives and interests of the organization or company.

The influence of digitalization and advances in technology, information and communication in the 4.0 era in aspects of human life and law. Langdon has also said about technology,<sup>59</sup> that technology and law have become part of the background for the activities of human life every day. Humans, law and technology are complexities so that they become cybernetic things.<sup>60</sup> The development of ICT has also been reflected as the government's development goals contained in the National Long-term Development Plan 2005-2025 (RPJP). In the plan, the state seeks to increase its positive role and anticipate the implications of the rapid development of ICT.<sup>61</sup> For this reason, the legal position takes a strategic role, as stated by Mochtar Kusumaatmadja in 1976, that problems in a developing society that must be regulated by law are problems that are directly related to the personal and cultural life as well as the spiritual community. Furthermore, issues relating to society and progress in general are neutral. For this reason, the process of forming a law or law must be able to accommodate all matters that are closely related to the field or problem to be regulated by law. If the law is an effective regulation. For this reason, the application of legal products requires supervision of the institution and its implementation procedures. So that the law is seen not only in terms of the provisions that regulate human life, but includes the institutions and processes needed to realize the law in reality.<sup>62</sup>

Romli Atmasasmita put forward the Integrative Legal Theory, that to provide enlightenment regarding the relevance and importance of law in Indonesian human life and to reflect that law as a system to regulate people's lives cannot be separated from the culture and character of the people and the geographical location of the environment including the people's view of life. Understand the law that has a mobility function and its role actively in accordance with the development of national and international community conditions from time to time.<sup>63</sup> With the development of the digital space in ICT, we also need to know the futuristic approach and digitalization approach in studying legal phenomena that will occur in the future and the changing factors of digitalization technology. Where digitization is a transition process from analog technology to digital technology and the delivery of information in analog format to binary format, which has allowed all forms of information (voice, data and video) to be conveyed across types of networks. Innovation will continue to move forward and bring about radical changes, such as the implementation of vertical networking and horizontal integration as a concrete form of collaboration. Then brought the emergence of the concept of sharing economy, internet of things, artificial intelligence, e-commerce and financial technology.<sup>64</sup>

## CONCLUSION

The position of the board of directors in the Foundation is a vital part of the organization and management of the Foundation. The regulation regarding the position of the meeting as an organ in

<sup>59</sup> Langdon Winner, *The Whale and Reactor: A Search for limits In an Age of High Technology*, as quoted in Danrivanto Budhijanto, *Theory of Convergence Law*, Bandung: PT. Revidika Aditama, 2014, p. 51

<sup>60</sup> Kieran Tranter, "Mad max: The Car and Australian Government," 5 *National Identities* 61, 2003, as quoted in *Ibid.*

<sup>61</sup> *Ibid.*, p. 64

<sup>62</sup> Mochtar Kusumaatmadja, *Legal Concepts in Development*, Center for Archipelago Studies, Law and Development, as quoted in Danrivanto Budhijanto *Op. Cit.*, p. 100

<sup>63</sup> *Ibid.*

<sup>64</sup> Enny Soerjati P, *Indonesian Economic Law: An Introduction*, Bandung: Now Media, 2021, p. 73-74

the Foundation is not an organ, but a mechanism that must be carried out by the supervisor in making decisions in accordance with and within the limits of authority that have been stipulated in the law and/or the articles of association. The need for virtual meetings for the Foundation is a provision that should also be accommodated by the relevant law. In line with the digital transition and disruptive technology, of course, the need for a mechanism for implementing the authority of the supervisor can be carried out by using teleconferencing media. A futuristic approach and digitalization in legal arrangements are needed to create laws that are able to harmonize with changes in aspects of human life.

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