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Opportunities For *Cyber Notary* Implementation In A Legal Perspective

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Abstract: The capacity of notaries to provide top-notch services that are quick, strategic, and community-solving is crucial in this age of fast-paced technological, informational, and communicative advancements. The usage of a cyber notary is one strategy for delivering timely and strategic services to the public. To be clear, the power to certify electronically performed transactions is the only one that now exists under the umbrella of "cyber notary," which refers to a system that notaries may employ to carry out their responsibilities and exercise their authority via electronic institutions. In accordance with the explanation of Article 15 paragraph (3) of Law Number 2 of 2014 on Amendments to Law Number 30 of 2004 on the Position of Notary (UUJN), this article aims to shed light on the possible capabilities of cyber notaries. Using a statutory approach, this study applies normative legal theory. Both Article 77 of Law Number 40 of 2007 about Limited Liability Companies and Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) deal with the electronic preservation of notary protocols. The minutes of the annual meeting of shareholders prove that cyber notary prospects really exist. Due to the Notary Position Law's lack of explicit regulation of the chances for creating deeds using electronic media, the implementation of cyber notary currently faces hurdles.

Keyword: *Cyber Notary*, Notary, And Opportunities

INTRODUCTION

In practice, a Notary in Indonesia, as a basis of reference, still uses statutory provisions without changing the preparation of deeds, especially those relating to deeds, reading, signing and using seals. This digital era has all the limitations and things that can trigger restrictions on the movement of information can be seen through meaning and action. (Bungdiana et al., 2023).

In this age of globalization, notaries face new challenges, such as the need to work both manually and digitally to keep up with the ever-evolving field of digital technology and the changes in people's day-to-day lives brought about by these developments. These changes have had an impact on the legal field, particularly notarial law. With the advent of internet-

connected information and communication technologies and the widespread use of electronic media for communication, the paperless age has given way to the digital era.

With the development of this era, people believe that information and communication technology can contribute to improving the welfare of the community as well as legal, economic, social, and cultural development because technological developments outside the law result in changes and alternations. (Faulina, Abdul, and Djoni, 2022).

The government regulates in such a way that the use of information and communication technology can be used properly and safely by the community with the aim of preventing misuse by taking into account the religious, social and cultural values that are widely developed in Indonesian society.

Therefore, the government has issued several regulations relating to the utilization and use of information and communication technology, including the following:

1. Law Number 40 Year 2007 on Limited Liability Companies ("PT Law");
2. Law Number 11 of 2008 on Electronic Information and Transactions ("ITE Law");
3. Law Number 2, the Year 2014, on the Amendment to Law Number 30, the Year 2004, on the Position of Notary ("UUJNP").

Cyber notary is a branch of notarial law that is affected by technological progress. The term "cyber notary" refers to a legal professional who, in accordance with the requirements of the law, may use modern technology to perform their official functions online, including the creation of legally binding documents. Notaries may take advantage of technical advancements in this digital era by using electronic media into the execution of their duties.

The simple concept of a *cyber notary* is to provide a legal frame regarding all actions and actions of the parties or faces carried out before the Notary (especially in making party deeds and deeds of release), and in the process, the Notary no longer has to meet physically or face to face with the parties or faces in a certain place, but the Notary remains in the position of his respective territories, but the parties do not appear directly / physically before the Notary. This can be done by teleconference, using information technology that allows it to be done from the explanation above that the concept of *cyber notary* will allow humans to be able to adapt between law and technology. (Rahmida and Siti, 2020).

The cyber notary was first outlined in the UUJNP, Article 15 paragraph (3) of this document lays out the powers of notaries, comprising the capacities to operate as a cyber notary for financial transactions, create a waqf pledge document, and mortgage airplanes. The phrase "other powers regulated in laws and regulations" is defined in the Explanation of this paragraph. Although it has been explained in one of the explanations of the UUJNP article, the position of the explanation in a law is not included in the material of the body of a law.

The concept of *cyber notary* is closely related to the organization of information technology-based notary institutions. Based on this, there are 2 (two) aspects that are the centre of attention in *cyber notaries*, namely authority or authority and technology. Advances in the economic field have aspects of authority and technology becoming interrelated. Cyber notary is a technique to promote the faster growth of information processing technology, namely IT, which is necessary due to the fact that notaries must speed up the contract process in response to fast and substantial economic developments.

Every legal activity requires a legitimate deed to be detailed, therefore the community's demand for deed-making is very vital. Consequently, the need for legal protections should evolve in tandem with the demands of the community, especially those pertaining to technological and informational developments. In this age of globalization, the creation of cyber notaries represents a significant step forward in meeting the legal demands of society. There is a legislative void between the definition and implementation rules of the cyber notary, which makes its regulation ineffective and inefficient. Now we can see that cyber notaries are subject to regulations, but from a legal standpoint, there is a *rechtsvacuum*

(meaning gap) in their definition. One of the Notary's authority is having trouble being put into practice due to the legal void, which impacts the cyber notary institution.

This interpretation can lead to implications in which legal acts of Notary can be applied through the institution of the cyber notary. The restrictions included in the UUJNP prohibiting cyber notaries are rendered unenforceable in this instance because cyber notaries have not yet established any bounds of interpretation. In other contexts, such as those pertaining to the General Meeting of Shareholders ("GMS"), the situation is different; for instance, the minutes of the GMS are notarial deeds in the form of official deeds (relaas acten). In Article 77 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies ("UUPT"), it is stated: " Teleconferencing, videoconferencing, or other electronic media tools that enable all participants of the GMS to see and hear each other directly and participate in the meeting are also acceptable methods of conducting the GMS, in addition to the methods mentioned in Article 76." This indicates that the use of electronic media to conduct the GMS is regulated. It is a matter of certainty in the law that technical advancements, namely electronic media, may be used to conduct GMS. Teleconferencing, videoconferencing, and other forms of electronic media may so host the GMS. This provision is proof of a legal breakthrough that utilizes technological advances in its implementation.

While the advent of the cyber notary has been a great step forward in meeting the community's legal needs—particularly those of notaries in this age of globalization—the concept still has room for improvement when it comes to the possibilities it provides and the meaning it imparts. This study will analyze the potential uses of cyber notaries in Indonesian law, taking into consideration the intricacy of the issues that arise within this institution.

METHOD

This study employs a statutory approach to normative law research. Cyber notary laws and regulations are examined using the statutory method. The research in this case makes use of primary, secondary, and tertiary sources of legal information. Law No. 11/2008 on Electronic Information and Transactions (ITE Law) constitute the primary legal materials used in this study pertaining to the authority of notaries to execute notarial deeds through cyber notary institutions. The power of notaries to make notarial deeds via cyber notary institutions is the subject of this study's secondary legal sources, which include library materials, books, journals, and expert views. On the other hand, resources like legal dictionaries and other tertiary sources provide assistance on primary and secondary sources.

RESULTS AND DISCUSSION

Opportunities for *Cyber Notary* Implementation in Legal Perspective

The notary is a public official who is needed by the community to assist and serve in relation to being an official who has the authority to make written evidence of circumstances, events, or legal actions. If a Notary official takes action outside of his authority, it can be said to be an act of violation of authority (Hadjon, 1997).

The condition of legal progress in Indonesia from time to time always shows the lagging of the utilization of information technology due to the many laws and regulations resulting from colonial heritage that are still in use, and there has been no renewal from the side of following the times until now the legal products produced in terms of material, and non-material have not been able to keep up with the rapid development of information technology. Law is reflected in the history of technological development, and there are also legitimate efforts to regulate technology (Nurita, 2014). Since no regulations have been put in place to govern the process, applicability, scope, and other aspects necessary for the deployment of cyber notaries in Indonesia, their adoption has been somewhat sluggish. Therefore, the *cyber notary* has no clear order to be implemented by the Notary because there is no legal umbrella or clear order for the Notary to implement the *cyber notary*.

Basically, the definition and meaning of *cyber notary* in Indonesia should not be interpreted biasedly as the making of notarial deeds through electronics because Indonesia is a country adhering to a *civil law* legal system whose deeds must be made in front of a Notary, so it is not possible to make deeds through *cyber notary*.

Cyber notary may mean either the electronic method of exercising a notary's authority or the notary's actions and authority in connection to the structure of the language order. If the grammatical meaning is being used to describe a cyber notary, who is someone authorized to certify electronic transactions, then it is clear that the authority only applies imitatively to that particular authority. A cyber notary is one who exercises their notarial powers using the electronic medium of communication, such as the Internet, private computer networks, or other forms of electronic media such as teleconferencing or video conferencing. In 2020, Optentik. The idea of a cyber notary is still up for discussion in Indonesia, according to Edmon Makarim's perspective. It does not seem to be able to legally serve as a notary public remotely, even if technology permits this. (Makarim, 2011: 468).

According to Herlien Boediono, there are still opportunities to utilize the advances in information technology, among others:

1. Certifying the signature and establishing the certainty of the date of the letter under the hand (legalization Article 15 paragraph 92) letter a of the Notary *Public Law*) as carried out by the *notary public* with *authentication*;
2. Submitting *online* reports by notaries or their proxies in writing certified copies of deed registers and other registers made in the previous month no later than 15 (fifteen) days of the following month to the Regional Supervisory Council (Article 16 paragraph (1) UUJN);
3. Article 16, paragraph 91, letter j of the UUJN mandates the monthly submission of a list of will deeds or a list of zero attendance to the Minister of Law and Human Rights, cq Central Register of Wasiat. This requirement is now being enforced.;
4. Check the testator's will online before the notary issues the Certificate of Inheritance to the Minister of Law and Human Rights cq Central Register of Wills. (Budiono, 1998).

In addition, there are several conveniences and time efficiencies if the Notary utilizes advances in information technology in making deeds, among others:

1. Notaries can change the contents of the deed at any time if there is an error in typing the deed in a way that it can be deleted or corrected before the deed is printed. This can save time because there is already a draft that has been made by the Notary, so it only needs to be added according to existing needs;
2. If there is a change in the wishes of the parties, it can be adjusted immediately before the deed is printed;
3. Can minimize the number of *renvoi* for typing errors that occur.

The opportunity for *cyber notary to be* implemented in Indonesia in the future exists, but it is only related to the storage of Notary protocols, which have become state archives, and this is already protected by state archival regulations. (Harris, 2017). Even if so far there is no specific law governing *cyber notaries*, it does not mean that there have not been laws and regulations governing this issue before. (Nurita, 2014).

Cyber notary, in its implementation process, provides 3 (three) main services, namely:

1. *Certification* services are special services provided to prove the identity of electronic files, for example, when the file was sent, who sent it, and what file was sent.
2. *Repository service* is a service provided to secure electronic documents on a *secure server*.
3. *Sharing service* is a service provided to authorized parties. This service is implemented through electronic document-sharing services and allows electronic exchange. (Kadek and Ena, 2020).

Regarding the introduction of cyber notaries in Indonesia, there are a number of broad factors that can be taken into account. (Ridho Novia, 2021).

1. Law/Regulations

Where there must be laws or rules that clearly and in detail regulate *cyber notary* along with its scope and implementation.

2. Technology Infrastructure

In this case, there are 2 (two) main things that must exist as infrastructure in the application of *cyber notary*, namely data centres, which include *servers*, storage sub-systems, network devices, and special network equipment such as network *firewalls*. The second infrastructure is the internet as a transmission medium, such as fiber optic cables, satellites, antennas, routers and other components that control transmission lines.

3. Human Resources (HR)

It is necessary to conduct seminars or training for Notaries and prospective Notaries regarding the application of *cyber notaries* so that the implementation related to the office of a notary can run well.

4. Data Security

Both client data and Notary data stored electronically fall under this category. While laws exist to govern this, such as Law Number 27 of 2022 concerning Personal Data Protection, there is room for improvement in its implementation to guarantee the safety of Notary products as state archives.

Cyber notary services might be useful from a legal standpoint according to the ITE Law, which is Law No. 11 of 2008 on Electronic Information and Transactions: According to Article 4 of the ITE Law, the following are the goals of using IT and doing business electronically:

- a. To educate the nation's life as part of the information society world;
- b. Develop trade and the national economy in order to improve the welfare of the community;
- c. Improve the effectiveness and efficiency of public services;
- d. Opens up the widest possible opportunity for everyone to advancing thinking and skills in the field of use and utilization of information technology as optimally as possible and responsibly responsibility; and
- e. Providing a sense of security, justice and legal certainty for users and information technology providers.

Another example of *cyber notary* application opportunities can be reviewed, namely in the Company Law that there is an article that regulates the GMS, namely Article 77 paragraph (1), which states:

" All attendees can see and hear one other clearly and take part in the GMS since it may be held over teleconference, video conference, or any other kind of electronic media. "

In the Company Law, changes have been made in relation to the organization of the GMS, which in practice can utilize technological developments. Thus, the GMS can be held through electronic media such as teleconference, video conference, or other electronic media facilities that can be used.

The provision of organizing GMS with electronic media is one of the legal breakthroughs that utilizes technological advances in its implementation. (Putri, 2012).

The mechanism and procedure for making a deed of GMS by teleconference is to start with the process of making a deed from the results of the teleconference made by a Notary, then read out by teleconference so that the parties participating in the GMS can find out the contents of the deed. After the parties agree with the contents of the deed, then the deed is signed electronically using a *digital signature*. The signing parties are the parties participating in the GMS, the witnesses, and the Notary. Everything is done digitally. After signing, the GMS deed is valid and binds the parties as Law. (Dewi, 2015: 111).

Although not from a deed-making standpoint, opportunities related to the idea of a cyber notary might be reevaluated in relation to the storage of Notary protocols. From a normative perspective, the UUPT's GMS and the electronic storage of notarial protocols have opened the door to the possibility of using technological advancements to make deeds. Nevertheless, this introduces the problematic idea of a cyber notary, which is mandated by Article 16, paragraph 1, letter m. This section states that in order for a notary to legally execute a deed, it must be read aloud in the presence of the confronter and at least two witnesses, or four witnesses in the case of a testamentary deed made underhanded, and all parties involved, including the notary, must sign the document at the same time. That the Notary must be there in person and witness the Deed's signing is elaborated upon in the article's Explanation. "Physically" is the inspiration for cyber notary, a way to create deeds using technology. It might be argued that the Notary's duty and power are at odds with one another in this situation (conflict of norm). The execution of deed creation, which is theoretically and practically carried out afar, cannot be burdened with the need to physically attend. Because of this need, the cyber notary idea loses its core features.

Failure to fulfill the Notary's duties as stated in Article 16, paragraph 1, letter m, shall result in the Notarial deed losing its evidential power to that of a handwritten document. So long as one of the requirements mentioned in paragraph (1) letter m and paragraph (7) is not satisfied, the relevant deed will only have the same evidential power as a deed in hand, according to Article 16 paragraph (9).

Therefore, a notary might face legal penalties for failing to carry out their duties. The notary will receive this penalty in the form of compensation, interest, and repayment of expenses if the deed in issue is only valid as an evidence deed or if it is declared null and invalid. (Adjie, 2017: 93-94).

After reading this, it should be clear that the UUJN has introduced the idea of a cyber notary under its Notary authority, but that there are currently no chances for this concept to be used in Indonesia because the UUJN does not have any rules that explicitly govern the electronic creation of deeds.

CONCLUSION

The development of technology, information and communication in the current digital era is quite rapid due to the increasingly sophisticated era, so Notaries are expected to be able to keep pace with changes in relation to carrying out their duties and authority in making authentic deeds. Making deeds with *cyber notaries* can facilitate and accelerate the performance of notaries because there is no need to meet with clients (parties or faces) directly because all activities can be organized *online* through electronic media. Cyber notary services are likely to be implemented due to the Notary Position Law Amendment (Law No. 2 of 2014), according to the Notary Position Law, which permits the electronic execution of notarial responsibilities under Article 15, paragraph 3. Cyber notary practices have been created in Indonesia through the electronic storage of Notary protocols and the deed of the results of the general meeting of shareholders ("GMS"). However, there are conflicts with the responsibilities of notaries, as stated in Article 16, paragraph 1, letter m, and thus no clear opportunities for their application in the Notary Position Law at this time. Therefore, in the future, it is hoped that the government will immediately make new rules in connection with the implementation of electronic Notary activities with *cyber notaries* so that it can improve the performance, effectiveness and efficiency of Notaries in terms of public services and can minimize the potential for damage or loss of deeds, because the loss or damage of deeds is very likely to occur along with the transfer or transfer of the Notary protocol to the recipient Notary, besides that damage that occurs due to *force majeure* such as fire, termites, natural disasters is also something that is difficult to avoid.

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