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A Cyber Notary Based Notarial Deed Relating To The Obligation To Make An Authentic Deed

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Abstract: The purpose of this research is to find out the regulations regarding cybernotaries in Indonesia and the validity of notarial deeds made through cyber notaries in relation to the obligation to make authentic deeds. This research uses a normative legal approach because of conflict norms, by analyzing legal concepts and legislative approaches, and using qualitative methods whose results are presented descriptively. Based on the analysis, it is known that regulations regarding cyber notaries in Indonesia are regulated in the UUJN. The validity of a cyber notary's notarial deed in issuing an authentic deed is considered valid if it complies with Article 16 paragraph (1) letter m and Article 38 UUJN and Article 1868 of the Civil Code.

Keyword: Notary, Notarial Deed, Cyber notary.

INTRODUCTION

Background of the problem

Global development is so rapid along with globalization and technological advances. This development is mainly reflected in the ever-increasing progress of communication media, enabling communication services and functions to become more effective. The use of computers, gadgets and other devices has changed the way humans access and use the internet more easily. As a result of the development of this technology, all aspects of human life are also developing towards modernity. Today, technology has a significant impact on every aspect of human life. Technology has changed the way humans interact and work. For example, in the field of communications, social media and instant messaging applications allow people to connect with each other quickly and efficiently, without being limited by geographic distance. It also affects how businesses operate, with e-commerce and digital platforms enabling global transactions more easily. In the field of education, technology allows access to information and distance learning. Today, students can access educational resources from all over the world, significantly expanding the scope of their knowledge. Additionally, technology is also changing the way health and medical care is managed, with innovations such as telemedicine enabling remote doctor consultations and more effective monitoring of patient conditions. The growth of technology also influences human culture

and lifestyle. Everyday life is now heavily influenced by technology, from digital entertainment such as streaming music and movies, to the way we shop and carry out daily activities. However, with all its benefits, technological developments also pose new challenges. For example, issues of data privacy and security have become more complex with the increasing use of digital technology. Additionally, there are also questions about the social impact of technology on the balance between online and real life, as well as challenges related to unequal access to technology in different parts of the world . Thus, while technology brings significant advances in various aspects of human life, it is important to continue to manage its impact wisely to ensure its benefits can be widely enjoyed without compromising fundamental values such as security, privacy and social justice.

Today's increasingly competitive technological developments have penetrated every aspect of human life. Technology is no longer only used for daily needs or entertainment, but has also changed the way we communicate, work, learn, and even interact in the legal realm. One clear example of the influence of technology in the legal field is the birth of the Information and Electronic Transactions Law (UU ITE). The ITE Law is designed to regulate various aspects related to electronic transactions and the use of information technology. The main aim is to provide legal protection and certainty in electronic transactions. Through the ITE Law, the government and society strive to ensure that electronic transactions can run safely, reliably and in accordance with applicable laws. This law also regulates procedures for using information technology, including aspects of privacy, data security and misuse of electronic information. With the ITE Law, business actors and individuals are expected to be able to utilize information technology productively and safely, without worrying about legal problems that may arise. Apart from that, the ITE Law also plays an important role in maintaining justice and security in the digital sphere, considering the increasing number of transactions and interactions carried out via technology platforms. Apart from the legal sector, technology also has a positive impact in various other sectors, such as education and public services. In the field of education, technology enables distance learning, access to global learning resources, as well as interactive and fun learning platforms. Meanwhile, in the public service sector, technology helps increase the efficiency of public services through the use of digital-based applications and information systems. Thus, the influence of technology in the legal field, as regulated in the ITE Law, is part of a broader transformation in the way of living and interacting in this digital era. It is important for everyone to continue to follow technological developments wisely, while still paying attention to legal and security aspects in every action taken in the digital world.

In public services, technological developments also influence the way notaries carry out their duties. A notary is a figure who has the authority to prepare legal documents in the form of authentic deeds, a process that is clearly regulated in the Notary Position Law (UUJN) Article 1 paragraph (1). UUJN stipulates that a notary is a public official whose job is to provide services in making legally valid legal documents. The main duties of a notary include verifying identity, authenticity of documents, and ensuring that the process of making deeds is carried out in accordance with applicable legal provisions. Apart from that, notaries also play a role as guardians of justice and the validity of the legal documents they create, thus playing an important role in legal certainty in society. With advances in technology, notaries have also begun to adopt various electronic tools and systems to simplify the service process to the public. For example, the use of digital signatures and online platforms to facilitate consultation processes and document creation more efficiently. This not only increases accessibility to notary services, but also speeds up the administration process and reduces the potential for errors. However, even though technology provides new conveniences in notary duties, traditional values such as integrity, trust, and reliability remain the main foundation in their practice. Notaries are still expected to carry out their oath of office with full responsibility and ensure that every document issued meets applicable legal requirements.

Thus, the role of a notary is not only limited to creating legal documents, but also includes public trust and maintaining legal stability in the current digital era .

The notary's oath of office is a serious commitment that must be carried out with full integrity and compliance with the law. According to the provisions of the Law on the Position of Notaries (UUJN), if a notary does not comply with the obligation to take the oath of office, the Minister has the authority to cancel the decision to appoint him. This shows how important the oath of office is in maintaining professionalism and public trust in notaries. The oath of office is not just a formality, but is also a moral foundation that underlies every action and decision taken by a notary in carrying out his duties .

Notary services to the general public are generally carried out conventionally through direct interaction at the notary's office or a predetermined location. This process involves direct meetings between the notary and the client to prepare legal documents such as authentic deeds. However, with the rapid advances in technology and changes in society's needs which are increasingly electronic, the practice of notary services has evolved into what is known as cyber-notary or online notary. This concept allows transaction processes and legal document creation to be carried out electronically via an online platform.

Article 15 paragraph (3) of the Notary Position Law (UUJN) provides a legal basis for notaries to certify electronic transactions by making authentic deeds. This recognizes that a notary has the authority to create valid legal documents electronically in order to certify such transactions.

However, UUPJ Article 1 point 7 emphasizes that making authentic deeds must still comply with the procedures regulated in this law. This implies that, even though technology makes it possible to create deeds electronically via cyber-notary, conventional principles such as direct presence in front of a notary are still upheld to ensure the validity and reliability of legal documents.

Questions regarding the validity and legality of cyber-notaries in authentic deed certification are being debated in law. Although technology offers convenience and efficiency in the notarization process, it is important to ensure that every transaction and resulting document still meets applicable legal standards and is guaranteed security.

In facing this challenge, the government and related legal bodies continue to develop relevant regulations to ensure that the use of technology in notarial practice remains in line with the principles of legality and legal certainty. This change not only reflects adaptation to technological developments, but also maintains the integrity and public trust in notary services in the digital era.

Formulation of the problem

1. What are the regulations regarding cyber notaries in Indonesia?
2. What is the validity of a notarial deed that uses a cyber notary in the obligation to make an authentic deed?

Research purposes

1. To gain a comprehensive understanding of the concepts and regulations of cyber notary in Indonesia.
2. To explore and assess the validity of notarial deeds made using cyber notary , especially in relation to the obligation to make authentic deeds.

METHOD

This research uses a type of normative law because there are conflicting norms that need to be analyzed. This research method involves analysis of legal concepts and statutory approaches . This research uses primary, secondary and tertiary legal materials as the main data sources. Primary legal materials include statutory regulations and court decisions that are relevant to the conflict of norms studied. Secondary legal materials include literature, journals, and legal texts that provide a deeper understanding of the legal concepts involved.

Meanwhile, tertiary legal materials consist of the views of legal experts or comments from legal practitioners who can provide additional perspectives in the analysis.

The analytical method used in this research is a qualitative approach. This approach is used to explore the meaning of the legal concepts involved in the observed norm conflict. The data obtained from the legal materials is then analyzed in depth to identify patterns, causal relationships and implications of the norm conflicts that occur.

By using this approach, this research aims to provide a better understanding of norm conflicts in normative law, as well as to develop recommendations or solutions that can resolve these conflicts in accordance with the applicable legal framework.

RESULTS AND DISCUSSION

Cyber notary regulations in Indonesia

The term "cyber-notary" comes from the views of several scholars who adhere to the common law legal system. This term refers to the concept of a notary who carries out his duties digitally or online. As part of the evolution in legal services, cyber-notary represents the notary's adaptation to modern information and communications technology. This includes the process of creating authentic deeds and certifying electronic transactions carried out by notaries via online platforms .

The common law legal system, which is widely applied in countries such as the United States, England and most Commonwealth countries, recognizes the important role of notaries in preparing legal documents that are valid and accountable . The cyber-notary concept shows the adaptation of the common law legal system to technology to increase the efficiency and accessibility of legal services to the public.

This approach also reflects how technological innovations are influencing traditional legal practice, maintaining essential legal principles such as the validity of documents and the protection of the public interest. However, the implementation of cyber-notary also presents new challenges related to data security, legal validity and consumer protection, which need to be addressed through appropriate regulations and adjustments in existing legal practices.

Based on the opinions of several scholars, the meaning of cyber notary can be explained as follows:

a. Stephen Mason

Stephen Mason notes that the idea of a cyber notary was first introduced by the Information Security Committee of the American Bar Association (ABA) in 1994. The concept is rooted in the need to ensure trust between parties conducting transactions over the internet, the security of data transmission, the integrity of the content of the communications exchanged, as well as the legal recognition of the contracts formed through these transactions.

b. Lawrence Leff

According to Lawrence Leff, a cyber notary is an individual who has special expertise in the fields of law and computer technology. This emphasizes that cyber notaries not only understand traditional legal aspects related to deed making, but also have knowledge of the information technology used in the process.

c. Emma

Emma believes that a cyber notary is a notary who carries out his duties by relying on information technology related to notarial functions, especially in making deeds. This opinion highlights the role of information technology as a tool in carrying out notary duties efficiently and effectively.

d. Makarim

According to Makarim, cyber notary is a method that allows notaries to facilitate the implementation of their main duties, including storing legal documents such as deeds, by

using information technology. This reflects efforts to increase efficiency in notary practice through the use of technology.

Based on the views of these scholars, cyber notary can be interpreted as a notary who carries out his duties or authority by utilizing information technology related to making deeds and other notarial functions. This concept is regulated in Article 15 paragraph (3) of the Law on Notary Positions (UUJN), which gives notaries additional authority to use technology in their work processes in accordance with applicable regulations.

Based on the explanation of this paragraph, the additional authority given to notaries covers several important things, including electronic transaction certification, making waqf pledge deeds, and also aircraft mortgages. Consequently, the role of a cyber notary is equivalent to electronic transaction certification, where the main focus is to carry out certification and authentication in electronic transactions. As a Certification Authority (CA) or trusted third party, the cyber notary is responsible for providing digital certificates to the parties involved in the transaction. This digital certificate is proof of the certification process carried out by a notary, validating the validity and integrity of electronic transactions carried out by the parties. Thus, the cyber notary not only acts as an electronic legal document certifier, but also as a party that ensures trust and security in online transactions. Its role as a Certification Authority makes it key in facilitating e-commerce and other digital transactions by providing assurance that these transactions are carried out in accordance with applicable legal standards .

The term " cyber notary " refers to a notary who is officially appointed based on the law to carry out his authority in accordance with Article 15 paragraph (3) of the Notary Position Law (UUJN). This concept differentiates cyber notaries from certification authorities, which are non-legal technical institutions but have similar principles in the use of information technology.

Cyber notary is closely related to bureaucratic reform, a strategy to face the challenges of the Industrial Revolution 4.0 which is being implemented by the government. This reform aims to produce innovation, collaboration and utilize information and communication technology (ICT) in carrying out notary duties, as a response to technological developments and the demands of the times.

Cyber notary practices have been adopted by notaries in Indonesia as part of adaptation to technological developments. For example, in holding a General Meeting of Shareholders (GMS) of PT, the notary uses technology to hold a virtual meeting which produces a reel type deed. This is made possible by the provisions of the Limited Liability Company Law (UU PT), especially Article 77 which allows the implementation of GMS via teleconference, video conference or other electronic media that allows direct participation from all participants.

Apart from that, the use of computers in the process of making deeds and registering legal entities through the Legal Entity Administration System (SABH) shows that notaries in Indonesia have adopted computer and internet systems in carrying out their duties. However, this process still requires the direct presence of the notary and the parties involved, as regulated in Article 16 paragraph (1) letter m UUJN, which requires the notary to directly see, hear and participate in the reading and signing of the deed.

However, there are exceptions where the making of a partij deed cannot be done via a cyber notary due to the strict requirements regulated by the UUJN. For example, for a partij deed, the notary must directly supervise the process of reading and signing the deed by all parties involved, both the party declaring, the witness, and the notary himself.

However, if possible, making a partij deed using cyber notary means can be realized by including a clause explaining that the process of reading and signing the deed is carried out in more than one location via teleconference or video call, as has been successfully done in holding the GMS. The cyber notary concept is a new innovation that integrates information

technology in notarial practice to facilitate digitalization, authentication and legalization of documents.

Cyber notary is an innovation aimed at increasing the efficiency of daily public services in the notarial field. Its implementation in Indonesia is seen as an integral part of bureaucratic reform efforts in the Industrial Revolution 4.0 era. This process involves collaboration between the government and the Indonesian Notary Association (INI) with the main aim of utilizing the role of information technology and knowledge (IPTEK) to improve the quality of notarial services.

Thus, cyber notary not only reflects adaptation to technology in the legal field, but also confirms a commitment to updating and improving efficiency, speed and accuracy in public services. By understanding and implementing cyber notary principles, it is hoped that notarial practice can continue to adapt to current developments to provide better services and be more responsive to the needs of the community and parties involved in legal transactions.

Cyber Notary-Based Notarial Deeds Relates to the Obligation to Make Authentic Deeds

Notaries have a crucial role in the process of creating and certifying legal documents, including electronic transactions. This is clearly regulated in the Law on the Position of Notaries (UUJN), especially Article 15 paragraph (3), which gives notaries the authority to certify electronic transactions and other legal documents. Certifying an electronic transaction means that the notary certifies that the transaction carried out electronically meets applicable legal requirements, including aspects of validity, integrity and security.

However, the UUJN also regulates that in carrying out their duties, notaries have an obligation to ensure that the reading and signing of the deed is carried out directly in the presence of the notary and the witness concerned. Article 16 paragraph (1) letter m UUJN emphasizes that direct presence and physical signing by the parties is an absolute requirement for making a notarial deed. This aims to ensure that all parties involved in legal transactions fully understand the contents of the documents they are signing and ensure the validity and clarity of the agreements made.

The incongruity arises when considering the use of technology in the process of notarial deed creation, known as cyber notary. Cyber notary allows certification of electronic transactions carried out remotely or digitally, without the physical presence of all parties in the same location. This becomes especially relevant in globalization and the development of information technology that allows cross-border transactions without physical boundaries.

However, the current UUJN still emphasizes direct presence and physical signing as the main requirements for making a notarial deed. This creates challenges in adapting cyber notary practices to existing legal requirements. However, with the broad definition of electronic documents in the Information and Electronic Transactions Law (UU ITE), documents resulting from electronic transaction certification by a cyber notary can be recognized as valid legal documents.

Normative conflicts occur when UUJN requirements that emphasize face-to-face encounters conflict with the possibility of electronic certification offered by cyber notaries. Article 15 paragraph (3) UUJN gives notaries the authority to certify electronic transactions, but Article 16 paragraph (1) letter m UUJN requires physical presence in the process of making notarial deeds. This difference shows that there is a mismatch between existing arrangements and the reality of increasingly developing cyber notary practices.

To address this misalignment, there are several approaches that can be considered. First, expanding the interpretation of Article 16 paragraph (1) UUJN to allow virtual or remote presence in the presence and signing of notarial deeds, in line with developments in information technology. Second, improving legal regulations that accommodate cyber notary practices without reducing the security and legitimacy of existing legal processes.

The role of cyber notaries as an innovation in notarial practice to certify electronic transactions provides its own challenges and opportunities in Indonesian law. Notaries must be able to integrate information technology in the legal process without compromising the security and validity of the resulting legal documents. By considering existing legal provisions and adapting them to technological developments, cyber notary practices can be a solution to facilitate electronic transactions effectively and efficiently in the current digital era.

Article 15 paragraph (3) UUJN gives notaries additional authority to certify electronic transactions, make Waqf Pledge Deeds, and airplane mortgages. This marks an evolution in notary practices that are adopting information technology to facilitate legal processes in an efficient and modern manner. The concept of cyber notary in this case refers to the application of technology in the process of creating and certifying legal documents, including transactions carried out electronically.

On the other hand, Article 16 paragraph (1) letter m UUJN regulates that in carrying out conventional deeds, the notary has the obligation to read the deed in front of witnesses and parties appearing, and ensure that all parties involved sign directly. This emphasizes the importance of the notary's physical presence and direct supervision of the process of making legal documents to ensure the validity and clarity of the contents of the deed being made.

In electronic transaction certification by a notary, the printed document from the certification is considered an e-document which must meet the requirements regulated in Article 1868 of the Civil Code. Some conditions that must be met include:

a. Making a Deed in accordance with the Law

Electronic documents certified by a notary must be made in accordance with the provisions of the applicable law. The notary is responsible for ensuring that the electronic deed creation process complies with applicable legal standards to ensure the validity and clarity of the document.

b. Notary's Authority

The resulting deed must be made by a legal notary and has authority in accordance with the law. This shows the importance of notaries as public officials who have legal legitimacy to carry out valid and binding legal processes.

c. Place of Making the Deed

The deed must be made in the domicile or work area of the notary concerned. This ensures that legal documents have a clear legal basis and are under the appropriate jurisdiction.

Normative conflicts arise when there is a difference between the physical presence requirements in making conventional deeds and the possibility of certifying electronic transactions carried out remotely via technology. Notaries as guardians of the integrity of the legal process are expected to be able to balance the need for technological innovation and complying with existing legal provisions.

To overcome this conflict, it is important to continue to revise and adapt the legal regulations governing notarial practices, especially in the use of information technology. Expanding the interpretation of existing provisions and improving regulations that accommodate cyber notary practices can be necessary steps to maintain the relevance of notaries in the current digital era.

Thus, the role of notaries in certifying electronic transactions and creating other legal documents is an integral part of the evolution of the Indonesian legal system towards digitalization. The cyber notary concept opens up new opportunities to increase efficiency, accessibility and security in the provision of notary services. The importance of ensuring that notary cyber practices remain compliant with required legal standards of validity and security will help strengthen public trust and legal certainty in electronic transactions in the future.

To understand the validity and process of making a notarial deed via cyber notary, it is important to analyze the various components regulated in Article 38 UUJN. This article provides clear guidelines regarding the procedures for validating a notarial deed, whether prepared conventionally or through increasingly developing cyber notary technology.

The beginning of a notarial deed is very important to define the identity and document. A clear title and unique identification number must be included to identify the type of deed being executed, such as "Land Sale and Purchase Deed", which provides a clear understanding of the substance of the transaction being recorded. The time when the deed was made must also be recorded precisely to show when the document was made, along with the complete identity and location of the notary who ratified the document (Article 38 UUJN).

The next part of a notarial deed is the body of the deed, which details information regarding the parties involved in the transaction or event being recorded. This includes the identities of the parties such as their full names, place and date of birth, nationality, occupation, position and place of residence. Information about the position of the parties in the transaction must be clearly conveyed to ensure that they have the legal capacity to act in the relevant manner. In addition, the contents of the notarial deed must clearly reflect the wishes and agreements stipulated by the parties involved in the transaction or event (Article 38 UUJN).

The final or closing part of the deed highlights the final stage of the notary's deed-making process. Here, it is important to note that the reading of the deed must be done clearly in the presence of all parties involved, which includes the witnesses authorizing the process. The signing of the deed must be carried out directly in the presence of a notary and witnesses to ensure the validity of the document. Additional information such as the place where the signing took place or whether there was a translation of the deed must also be completely documented. In addition, any changes that occur in the contents of the deed, whether additions, deletions or replacements, must be stated clearly in this final section to maintain the integrity of the legal document (Article 38 UUJN).

Article 38 UUJN also includes provisions regarding substitute notarial deeds, which include the number and date of determination of the notary's appointment as well as the identity of the official who made the appointment. This ensures that the resulting notarial deed meets the legal standards regulated by law, including the requirements in the Civil Code. Documents produced via cyber notary, even though they are done digitally, must still comply with all the provisions regulated in Article 38 UUJN to be considered valid and meet the requirements of applicable law in Indonesia.

Thus, the use of technology in notarial practice, such as cyber notary, must ensure that the process of making notarial deeds continues to meet the standards of validity and accuracy required by law. Clear regulations and the implementation of appropriate technology will help ensure that legal documents produced through cyber notaries are reliable and legally valid, in line with current developments and demands for efficiency in public services.

CONCLUSION

- a. Regulations regarding cyber notaries have been recognized and regulated in various parts of the world and internationally. In Indonesia, the concept of cyber notary has been formalized through the Notary Position Law (UUJN) and there are also several other positive legal provisions that regulate this matter. Recognition of cyber notaries not only reflects adaptation to global technological developments, but also efforts to ensure the validity of the notarization process in the digital sphere.
- b. The validity of a notary's actions in issuing an authentic deed via a cyber notary is recognized as valid if all the requirements stated in the applicable regulations are met. This includes the provisions regulated in Article 6 paragraph (1) letter m UUJN which regulates

notarization procedures, Article 38 UUJN which determines the authority of notaries, as well as Article 1868 of the Civil Code which regulates authentic deeds. Thus, the use of a cyber notary not only facilitates easy access to notarization services, but also ensures the validity and trust in legal documents produced in this digital era.

REFERENSI

Law Number 30 of 2004 concerning the Position of Notary (State Gazette of the Republic of Indonesia of 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4379)

Constitution Number 2 Year 2014 About Change On Constitution Number 30 of 2004 concerning the Position of Notary (State Gazette of the Republic of Indonesia of 2004 Number 3, Supplement to the State Gazette of the Republic Indonesia Year 2014 Number 5491)

Law Number 11 of 2008 concerning Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2008 Number 58, Supplement to the State Gazette of the Republic of Indonesia Number 4843)

Book

Makarim, Edmon. 2018. Notaries and Electronic Transactions, Jakarta: PT. Raja Grafindo Persada.

Marzuki, Peter Mahmud, 2010, Research Law , Jakarta: Kencana Prenada Media Group.

Pramudya, Kelik. Dan Ananto, Widiatmoko., 2022. Guidelines for Professional Ethics for Legal Officials . Yogyakarta: Pustaka Yustisia.

Journal

Dewa Gede Prawira Buwana, 2022, Validity of Notarial Deeds Based on Cyber Notary Via Teleconference , Jurnal Kertha Semaya, 11 (1) .

Ni Nyoman, Devi Kartikasari., 2022. The Validity of Virtual Gold Buying and Selling Practices in Digital Pawnshop Applications from a Civil Law Perspective. Kertha Negara Journal . 10 (11).

Yoni Agung, Setyono., 2022. Civil Responsibilities of the Notary Profession in Implementing the Principle of Confidentiality. Kertha Semaya Journal . 10(5).