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Implementation Of The Cyber Notary Concept In Indonesia

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Implementation Of The Cyber Notary Concept In Indonesia

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Abstract
In the current era of globalization, the world of notary has developed towards electronic-based services known as "cyber notary". Many countries have implemented the concept of Cyber Notary, including countries that inherit the Common Law and Civil Law legal systems. Unfortunately in Indonesia, there are no further regulations regarding Cyber Notary, as stated in the Explanation of Article 15 Paragraph (3) of the Notary Law Number 2 of 2014. This study was conducted to understand the legal certainty of Authentic Deeds made by Cyber Notary in accordance with the Notary Law and to find out how the legal regulations for Cyber Notary in Indonesia will develop in the future. The results of this study indicate that there is no specific law regulating Cyber Notary and to provide legal certainty, the Notary Law must have a Special Chapter regulating Cyber Notary, and/or create Special Regulations regarding Cyber Notary in Indonesia.

***Keywords: Cyber Notary, Legal Certainty*.**

A. Introduction

Every action, event, and legal relationship (rights and obligations) carried out and carried out by Indonesian citizens are legally guaranteed. This is what is called the implementation of the rule of law in Indonesia. Order will only exist if there is certainty and for there to be legal certainty it must be made in a definite form (written).[1] The Notary profession plays a very important role in encouraging the realization of legal certainty and protection for the community. This is because the role, function, and existence of Notaries are regulated in laws and regulations because the Notary profession has strategic power to prove and defend rights. This regulation was made to provide legal certainty and protect Notaries in carrying out their duties and responsibilities. Law Number 30 of 2004 concerning the Position of Notary (UUJN 30/2004) and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN 2/2014) regulate the work of notaries.

The authority of a Notary is specifically regulated in Article 15 UUJN 2/2014. Based on Article 15 paragraph (1) UUJN 2/2014, it is explained that a Notary has the authority to make authentic deeds regarding all acts, agreements and determinations required by laws and/or which are desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosse, copies and extracts of the deed, all of which as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law. Other more detailed authorities of a Notary are also regulated in Article 15 paragraph (2) UU JN 2/2014.

With the increasing digitalization and development of information and communication technology, communication and information acquisition between people have become easier and faster. As a result, a large number of interactions and communications carried out manually or face to face have decreased. Notaries in carrying out their profession and duties have also been affected by this globalization. One of the challenges faced in the era of the 4.0 revolution is cyber-

[1] Rasjidi. *Hukum Sebagai Suatu Sistem.* Bandung: Mandar Maju, (2003), p. 32.

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crime which can disrupt national and world security. Notaries are responsible for protecting the law and state security by preventing and eradicating criminal acts of terrorism financing and money laundering. According to Presidential Regulation of the Republic of Indonesia Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Framework of Preventing and Eradicating Criminal Acts of Money Laundering and Criminal Acts of Terrorism Financing, notaries must make mandatory reports regarding the implementation of the principle of recognizing beneficial owners of corporations. The rapid development of telecommunications technology and computer technology has resulted in a multifunctional internet. The internet is a medium that is used for various activities, including browsing, searching for data and news, sending messages to each other via email, and trading. The high needs of the world community make the internet always become one of the choices for shopping online. One thing that can be seen from the very rapid development of internet media is trading activities by utilizing internet media known as electronic commerce, or abbreviated as e-commerce.[2]

With the widespread use of e-commerce throughout the world through the internet network, someone can easily access products at any time without any direct interaction between buyers, buyers, or customers with sellers. Even direct payments by credit card can be made quickly, because all information about the product and its quantity is available. Before the enactment of the ITE Law, e-commerce was regulated in general in the Civil Code, and the Commercial Code. And other regulations are regulated in Law Number 8 of 1999 concerning Consumer Protection, Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE). An agreement has been declared born when an agreement or agreement is reached between two parties regarding a main matter that is the object of the agreement. Agreement here means a conformity of understanding (will) and desire between the two parties. In that context, there is a meeting of wills between the two parties to make or not make an agreement. An agreement will give birth to an agreement, and in this case there are several theories. In terms of legal relations related to e-commerce, the provisions contained in Book III of the Civil Code are applied to legal relations related to agreements made conventionally. An agreement is not only binding on what is expressly stipulated in it, but also on everything that by its nature is required by agreement based on justice, custom or law (Article 1339 BW). Conditions that are always agreed upon according to custom must be considered to be included in an agreement, even if they are not expressly included in it (Article 1347 BW). Based on this description, the legal relationship in e-commerce is a civil legal relationship, and the provisions of Book III of the Civil Code apply to it.[3]

Di Indonesia pengaturan e-commerce selain diatur dalam Kitab Undang-Undang Hukum Perdata dan Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen. Diatur juga dalam dalam Undang-Undang Nomor 19 Tahun 2016 tentang Informasi dan Transaksi Elektronik (ITE). Dua hal penting pengaturan e-commerce dalam undang-undang tersebut.[4]

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[2] Dianari, R. G. *Pengaruh E-Commerce Terhadap Pertumbuhan Ekonomi Indonesia*. Jakarta: PT. Telekomunikasi Selular Tbk, (2018), p. 1.
[3] Mulyani, S. Perlindungan Hukum Bagi Konsumen Dalam Transaksi Elektronik Commerce. *Jurnal Hukum dan Dinamika Masyarakat*, 4, (5), (2003): p. 21.
[4] Rohendi, A. Perlindungan Konsumen Dalam Transaksi E-Commerce Persfektif Hukum Nasional dan Internasional. *Jurnal Ecodomica*, 2 (1), (2015): p. 474.

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On August 27, 2018, the Minister of Communication and Information of the Republic of Indonesia stipulated the Regulation of the Minister of Communication and Information Number 11 of 2018 concerning the Implementation of Electronic Certification (Permenkominfo 11/2018), which relates to the issue of electronic certification. In this regulation, electronic certification organizers can appoint a Notary as a registration authority if the applicant requests the issuance of an electronic certificate. This is explained in Article 25 in conjunction with Article 27 letter c of Permenkominfo 11/2018. Article 30 further stipulates that if the notary's examination shows that all requirements are met, the notary can ask the electronic certification organizer to issue an electronic certificate. Cyber notaries play an important role in ensuring legal security by verifying that all requirements are met for electronic transactions before issuing electronic certificates. The authority of Notaries to certify transactions carried out electronically (cyber notary) has caused polemics in society, especially among Notaries. This is also supported by the opinion of Edmon Makarim, who stated that the concept of cyber notary in Indonesia seems to be still under debate and is felt as just a discourse, not yet felt as a need. Even though technology makes it possible for Notaries to play a role online and remotely, legally this seems to be impossible because the paradigm underlying the Notary Law is built on conventional mechanisms.[5]

A research cannot be said to be research if it does not have a research method.[6] Research methods are one of the factors of a problem that will be discussed.[7] The type of research used in this research is normative legal research. This research was conducted using a statutory approach. The statutory approach is carried out by reviewing all laws and regulations that are related to the legal issue being handled.[8] Analysis of legal materials is carried out using qualitative analysis methods which are used to explain legal events, legal materials or legal products in detail to facilitate legal interpretation.[9] Analysis of legal materials is carried out using the content analysis method (centent analysis method) which is carried out by describing the material of legal events or legal products in detail to facilitate interpretation in discussions.[10] This research was conducted using a problem approach, namely by approaching the results of theoretical empirical studies by looking at various opinions of experts, writers and legal and regulatory studies relating to problems based on legal principles and formulating legal definitions.[11]

The data used in this research comes from secondary data. Secondary data or library data includes:

1) Primary legal materials are binding legal materials.
2) Secondary Legal Materials

[5] Makarim, E. Modernisasi Hukum Notaris Masa Depan. *Jurnal Hukum dan Pembangunan*, 2 (1), (2011): p. 468.
[6] Ismail Koto, "Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme", *Proceding Seminar Nasional Kewirausahaan*, 2 No. 1, (2021): p.1052-1059.
[7] Ida Hanifah, Ismail Koto, "Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19", *Jurnal Yuridis* 8 No. 1, (2021): p.23-42.
[8] Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi).* Jakarta: Kencana, (2017), p. 133.
[9] Zainuddin, Rahmat Ramadhani, "The Legal Force Of Electronic Signaturesin Online Mortgage Registration", Jurnal Penelitian Hukum De Jure 21, No. 2, (2021): p. 244
[10] Rahmat Ramadhani, ":Legal Consequences of Transfer of Home Ownership Loans without Creditors' Permission", *IJRS:International Journal Reglement & Society* 1, No. 2, (2020): 33.
[11] Rahmat Ramadhani, "Legal Protection for Land Rights Holders Who Are Victims of the Land Mafia", *IJRS:International Journal Reglement & Society* 2, No. 2, (2021): 89.

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Secondary legal materials are materials that provide an explanation of primary legal materials.[12] Secondary legal materials include explanations of primary legal materials in the form of expert doctrine contained in books, journals and websites.[13]

3) Tertiary Legal Materials

Tertiary legal materials are materials that provide meaningful instructions and explanations for primary and secondary legal materials such as legal dictionaries, articles, etc.

B. Discussion

In addition, the legal regulations governing the signing of Notarial Deeds must be adjusted to meet the demands of modern progress, Law Number 30 of 2004 concerning the Position of Notary (UUJN) in conjunction with Law No. 2 of 2014 makes Notaries as Public Officials afraid to transform themselves to be able to provide their services electronically because it has become a standard that notaries must be physically present when making authentic deeds, which cannot be done electronically because they must be made on paper. Cyber Notary has indeed been mentioned in the Explanation of Article 15 Paragraph (3) of Law No. 2 of 2014 (UUJN) but is not included in the Article regulations. Although Law No. 2 of 2014 stipulates the concept of Cyber Notary, the regulation does not guarantee that the concept can be applied in practice and provide legal certainty. Therefore, notaries are hesitant to use the concept, thus hampering the progress of the notary profession in meeting the needs of the community. In the Explanation of Article 15 Paragraph (3) of Law No. 2 of 2014, it is stated regarding the authority of a Notary in certifying transactions carried out electronically (Cyber Notary), but the Explanation of the Article conflicts with the norms of other Articles, namely Article 1 Number 7 of the new UUJN which states that a Notarial Deed is an authentic Deed made by or before a Notary according to the form and procedures stipulated in the Notary Law. This means that legally the use of the words facing, facing, facing, and in front of in Article 1 Number 7 of the new UUJN is a real presence.

The use of online technology (connected to the internet) does have benefits that benefit Notaries because the process of making Deeds becomes faster, easier and more efficient. Entering the era of free trade and the development of the community environment that demands that everything must be completed quickly and accurately, causing the Notary profession to be increasingly needed by the community. Therefore, the demand to complete the making of Deeds quickly and accurately becomes an obligation for the sustainability of the profession. The essence of Cyber Notary is a general concept that is often used in various scientific writings that mention the function of Notaries that are applied in electronic transactions or relationships, through the internet media.

In the Explanation of Article 15 Paragraph (3) of UUJN No. 2 of 2014, it is stated regarding the authority of a Notary in certifying transactions carried out electronically (Cyber Notary), however the Explanation of this Article conflicts with the norms of other Articles, namely Article 1 Number 7 of the new UUJN which states that a Notarial Deed is an authentic Deed made by or before a Notary according to the form and procedures stipulated in the Notary Law. This means that legally the use of the words facing, facing, facing, and in front of in Article 1 Number 7 of the new UUJN is a real presence.

The Anglo-Saxon legal system is a legal system where the priority is unwritten law that develops in the midst of community life and is used by judges in resolving cases addressed to

[12]*Ibid*, p. 114.
[13] Erwin Asmadi, "Procedure for Destruction of Evidence of the Crime of Narcotics Abuse Based on Formal Law in Indonesia", *IJRS:International Journal Reglement & Society* 1, No. 2, (2020): p.79.

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them, which generally uses a jury system in its trials and evidence is prioritized on the presence of witnesses and written evidence is only a support for witness statements, while in the Continental European legal system is a legal system where the law is made in written and codified form where in terms of evidence, written evidence is prioritized.

Notaries in countries that adopt the Anglo-Saxon legal system usually only have the authority to record letters, which for notaries in Indonesia who adopt the Continental European legal system is called waarmerking (registration of letters under hand). However, notaries in the Anglo-Saxon legal system are not involved in making or determining the contents of deeds or letters. In addition, in countries that adopt the Anglo-Saxon system, becoming a notary usually requires a certain amount of time to learn to become a legal expert (jurist) and hold office. Deeds, which are products of Latin Notaries, can be used as formal and material evidence, and in some cases, can be used for executorial actions. In the Continental European legal system, written evidence, namely authentic Deeds, has the highest, strongest, and complete position. This makes the position of Notaries in the Continental European legal system very important considering their duties and authority in making authentic Deeds.

Therefore, if the Cyber Notary concept is applied to the Common Law system, it will not affect the power of the deed; notaries in Indonesia who use the Civil system consider that a deed made by and in front of a notary is a valid deed.[14] Indonesia as a modern legal state certainly cannot escape from developments outside the law. This can be seen from the existence of the word Cyber Notary in the Explanation of Article 15 Paragraph (3) of Law No. 2 of 2014. However, the concept of Cyber Notary must be adjusted to the national legal culture so that legal changes run well, where legal changes must be in accordance with legal culture. Therefore, the author is of the opinion that the Explanation of Article 15 Paragraph (3) of Law No. 2 of 2014 with Article 1 Number 7 of Law No. 2 of 2014 must be adjusted. If there is no harmonization, notaries will be afraid to provide their services because they must use technological advances to create authentic deeds in cyberspace and carry out their duties every day. In fact, society really needs the function and role of an active and dynamic notary, which according to a Legal Expert from the Faculty of Law, University of Indonesia (FH UI), Edmon Makarim, Notaries should be able to provide their services online (online, connected via computer networks, the internet, and so on).

There are no further provisions that give notaries the authority to verify transactions conducted electronically (also known as Cyber Notary). Therefore, the authority of notaries to verify transactions conducted electronically is still being debated by the government. According to a Legal Expert from the Faculty of Law, University of Indonesia (FH UI), Edmon Makarim, In Indonesia, the concept of Cyber Notary is still being debated. Although currently, the role of a notary can be done online (with the internet) and remotely, it seems legally impossible.[15]

In the ITE Law No. 11 of 2008, According to Article 6 of the ITE Law, the requirements or components required for information to be functionally equivalent to information written on paper are that the information contained in the Electronic can be accessed, displayed, guaranteed authenticity, and can be accounted for to explain the situation. In relation to Article 5 Paragraph (4) of the ITE Law, the provisions regarding electronic information and/or electronic documents as referred to in paragraph (1) do not apply to letters which according to the Law must be made

[14] Nurita, E. *Cyber Notary : Pemahaman Awal dalam Konsep Pemikiran.* Bandung: Refika Aditama, (2012), p. 87.
[15] Makarim, E. *Notaris dan Transaksi Elektronik : Kajian Hukum Tentang Cyber Notary atau Electronic Notary.* Jakarta: Raja Grafindo Persada, (2016), p. 43.

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in written form. Thus, the three principles of the equality of electronic information are the same as written evidence, and letters and documents which according to the Law must be made in the form of a Notarial Deed or a Deed made by a Deed Making Officer, Based on the provisions of Article 5 Paragraph (4) of the ITE Law, it can be said that the ITE Law limits the case that electronic documents do not apply to documents or Notarial Deeds or Deeds made by Land Deed Making Officers (hereinafter referred to as PPAT), meaning that Notarial Deeds made electronically do not have legal force as valid evidence according to the provisions of the ITE Law. Considering that the meaning of electronic documents and information mentioned in Article 5 Paragraph (4) of the ITE Law is limited, deeds made electronically by notaries cannot be considered as valid evidence. Therefore, the author is of the opinion that the regulations related to the ability of notaries to make deeds electronically must be adjusted, especially those related to the function of notaries to make deeds electronically, as mentioned above. In addition to paying attention to the legal aspects of proof, the security system of the Cyber Notary concept also needs to be considered. This is intended to protect the confidentiality and security of electronic data related to Notarial Deeds from cybercrime or information and communication space crimes on the internet (Cyber Crime). The security of the identities of the parties involved in Notarial Deeds made electronically (Cyber Notary) is another thing that needs to be considered in addition to the Cyber Notary security system. This is because in making Notarial Deeds electronically, the parties do not meet physically so that there must be a certain mechanism that is able to guarantee the identities of the parties involved in order to avoid fraud or cybercrime or other information and communication space crimes on the internet (Cyber Crime). Therefore, to ensure the security of the identity of the parties in the Cyber Notary concept, there must be a third party or special authority that is authorized to check the accuracy of the data, is independent, and can be trusted (trusted third party), which in this case is known as the Certification Authority (hereinafter referred to as C.A.). C.A. functions as a third party that can be trusted to provide certainty or validation of a person's identity and provide a digital certificate to someone who meets the requirements. With this digital certificate, the certificate owner can transact with the person interacting with him with trust.[16]

C. Conclusion

Based on the Explanation of Article 15 Paragraph (3) of Law No. 2 of 2014, notaries in Indonesia can now perform notarial services that use technological advances to create authentic deeds in cyberspace (also known as "Cyber Notary"). However, there is no law that provides a guarantee of legal certainty because many of them conflict with the implementation of cyber Notary. Legal security can be achieved if there are no conflicting provisions of law. Because there are no regulations that are in harmony regarding the ability of notaries to create deeds electronically, Notarial Deeds made electronically, also known as Cyber Notary, do not have sufficient legal force, this is stated in Law No. 30 of 2004 in conjunction with Law No. 2 of 2014 and the ITE Law. This is what makes notaries afraid to provide their services by using technological advances to create authentic deeds in cyberspace (Cyber Notary). Law JN 2/2014 presents the concept of cyber notary but has not provided broad opportunities for the implementation of cyber notary. For example, regarding the authority of a Notary in making an authentic deed, a Notary is limited by the form and procedures stipulated by UUJN, such as Article

[16] Ananingdyah, R. *Peran Notaris Selaku Registration Authority dalam Penyelenggaraan Sertifikat Elektronik.* Universitas Indonesia, Jakarta: Magister kenotariatan, (2017), p. 23.

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38 UUJN 2/2014. Although Article 77 UU PT 40/2007 in conjunction with Article 46 UUJN 30/2004 allows the making of a deed of minutes of a GMS through electronic media, there are no technical regulations for organizing an e-GMS. On the other hand, the obligation of a Notary to recognize the person appearing as mandated in Article 39 UU JN 2/2014 has also not opened up the opportunity for electronic introduction or through electronic devices. The obligation of a Notary to read the deed and sign the deed has also not been accommodated in UUJN, which may be done electronically. On the other hand, the Explanation of Article 16 paragraph (1) letter m UUJN No. 2/2014 emphasizes the requirement for a physical meeting between the Notary, the person appearing and the witnesses. Another obligation that is not yet supported by UUJN and UU ITE for the implementation of cyber notary is the obligation of Notaries to make minutes of deeds and store them as part of the Notary protocol. UUJN has not provided the possibility of making minutes of deeds and other Notary protocols in other forms. Moreover, Article 5 paragraph (4) letter b of UU ITE 11/2008 has regulated and limited that letters and documents that according to the law must be made in the form of a notary deed or a deed made by an official making a deed, must still be made in the form of a notary deed or a deed made by an official making a deed.

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