

Legal Study of Making an Electronic Notary Deed

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Abstract. The Research Objectives Are: 1) Describe the Legal Study of Electronic Notary Deed issued by the Directorate General of the Ministry of Law and Human Rights. 2) Describe the Implementation, and Constraints of Electronic Notary Deed issued by the Directorate General of the Ministry of Law and Human Rights, while the data used in this study are Secondary data consisting of Primary Legal Materials and Secondary Legal Materials which are then analysed by descriptive analysis methods.

Based on the results of data analysis concluded that: 1) Notaries as Officials who carry out part of the State Function are required to provide maximum Public Services in Legal Services. Through the role of the Directorate General of General Law Administration, the Notary was given the convenience of carrying out his duties related to the Making of Electronic Deed through the AHU Online Application and in carrying out the making of the Electronic Notary Deed not in violation of Act No. 25 of 2009 On Public Services. 2.) Despite the ease in providing public services, there are still obstacles in the implementation of the making of electronic deeds, which include server problems that are often down and human resources who are not yet competent to run them.

Keywords: Electronic Notary Deed; Notary Public; Public service.

1. Introduction

Knowledge (Science) and Technology has become an inseparable thing in human life in this Globalization Era. Technology has even supported various aspects of human life in various fields because of the sophistication of technology that is considered capable of facilitating human work, so that what is desired by everyone can be fulfilled only with technology. The development of technology has an impact on developments in the scientific field that are no exception in the field of law.

As the population grows and the Social Development that is in it then began to grow also a variety of new problems in the Legal Sector which of course must be addressed immediately by the issuance of the Legal Umbrella in order to maintain security and public order. The development of Law is marked by the development of the Legal Component itself, both in terms of the Legal Instrument accompanied by the birth of various new Legal Products that are expected to be able to overcome the problems that arose in society.

As is the case with advances in technology, the law is also expected to provide facilities for new paradigms along with advances in information technology.¹ This development is important along with Communication in the Field of Electronics relating to Business

¹ Budiono, Herlien. (2015). *Kumpulan Tulisan Hukum Perdata Dibidang Kenotariatan Buku Ke-III*, Bandung: Citra Aditya Bhakti, p. 89.

including licensing or agreements relating to public services performed by Notaries, in providing services to the public both in the Land Sector and in other fields relating to Notary services.

Notary Public Officials who are authorized to make Deed in general have a very important role in making Deed relating to Business Trade. Notary Public is a Public Official to make a Document in the form of Authentic Deed in the Field of Civil Law. Notary public plays the role of the State in making Deed, this means that the Notary carries out a portion of the Possession of the State.²The role of the Notary Public in carrying out State Power is inseparable from the Duties and Authorities of the Notary contained in the Notary Position Law. This position of public authority is the basis of the work of a notary whose field is in the context of private law.

The state as the organizer of public welfare³ must guarantee all matters relating to People's Welfare. This includes the efforts of the State to accelerate services through the Organs organizing Public Services. To achieve the goal of accelerating public services, Act No. 25 of 2009 On Public Services was drafted.

Through the Law on Public Services, each Government Agency is required to be able to provide services in an efficient, concise and concise manner. Notaries as a Public Official certainly act as representatives of the State in giving. Public services that deal directly with the community. Therefore, the Notary Public must also provide public services that are concise and efficient in an effort to improve the quality and guarantee the provision of public services in accordance with the General Principles of Good Governance and Corporations. And to provide protection for every citizen and resident from abuse of authority in the administration of public services. Therefore we need a Legal Regulation that supports the acceleration of this Public Service.

The Ministry of Law and Human Rights (*KEMENKUMHAM*) is also the main pillar of the creation of fast, short and efficient legal services. This form of real work of the Ministry of Law and Human Rights is realized by the creation of an integrated system for managing business licensing, which is known as the Online Single Submission (OSS). The use of OSS is in line with the mandate set out in Government Regulation Number 24 of 2018 On Electronic Business Licensing Services.

The Ministry of Law and Human Rights has also published a system used in Notary Public Services called AHU ONLINE. This application was created as a Notary Support Facility for several Notary services to accommodate all Notary activities from Notary Appointment, Notary Quality Improvement Training, Notary Appointment Registration. Appointment of Notaries and others related to Notary Activities.

From the description of the Problems, it is interesting for us to study about, How to Study the Legal Notary Deed electronically based on the Perspective of Act No. 25 of 2009 On Public Services, and How the Constraints for Notarial Deed Electronic Reporting issued by the Director General of General Law Administration (AHU) Ministry of Law and Human Rights for Notaries.

² Ibid p.243

³ Suseno, Franz Magni. in Huda, Ni'Matul. (2013). *Ilmu Negara*, Jakarta: Rajawali Press, p.53

2. Research methods

The method used in this writing is the Normative Juridical Approach, which is the procedure used to solve the Research Problem by Researching Secondary Data first and then proceeding with conducting Research on Primary Data. The type of data used is Primary Data and Secondary Data.

3. Results and Discussion

3.1. Legal Review of Electronic Notary Deed Reporting

Reviewing the Law on the Notary Deed Reporting process electronically is certainly inseparable from the Laws and Regulations used as the Legal Umbrella for the implementation of the Deed Making process. To know the right or wrong action is done. In addition to knowing the truth, of course, to see the extent to which the law can work within the fabric of society. Law is a symptom of society that has various aspects of a broad and diverse dimension, therefore, Scientific Law can be studied from several perspectives. Following Gustaf Radburch's opinion that every application of the Law in society rests on 3 (three) Basic Legal Values namely Legal Certainty, Justice and Utilization. All three contain different demands from each other,⁴ Legal certainty, according to E. Fernando M. Manulang, is a value which in principle gives legal protection to every citizen of arbitrary power, so that the law gives the state responsibility to run it.⁵ In this case it can be seen that there is a correlation between Legal Certainty and the State where the State is obliged to carry out Legal Certainty so that it is not Arbitrary to its people.

The notary as a legal service provider maintains that legal certainty can be achieved. The notary plays a central role related to Legal Certainty, because before the Notary Parties, the Confronting Parties find Legal Certainty through the Deed issued. The notary deeds as a Public Official authorized to load an Authentic Deed on all deeds, Agreements and Stipulations required by a Legislation and / or as desired by the interested parties to be stated in an Authentic Deed, guaranteeing the Certainty of Deed making date, keeping the Deed, give Grosse Copies and Excerpts, all during the making of the Deed, they are also not assigned or excluded to other Officials or other people stipulated by the Law.

Running a Notary Profession is a unique job. The law gives authority to the Notary Public General to make a document in the form of an Authentic Deed in the Field of Civil Law. Notary is running part of the State Power, Notary is considered as part of the Ruler. This is regulated in Act Number 2 of 2014 On Amendments to Act No. 30 of 2004 On Notary Position (UUJN). The Notary Position Law includes the rubric of the Organic Law, the material it regulates is included in Public Law, the provisions contained therein are Regulatory Regulations (*Dwingend Recht*). This position of public authority is the basis of the work of a notary whose field is in the context of private law.⁶

The work and functions of a Notary Public are 1 (one) arrangement which at first glance

⁴ Raharjo, Satjipto. (2006). *Ilmu Hukum*, Bandung: PT Citra Bakti, p.19.

⁵ Manulang, E. Fernando M. (2016). *Legalitas Dan Kepastian Hukum*, Matter I, Kencana, p.94.

⁶ Budiono, Herlien. (2018). *Kumpulan Tulisan Hukum Perdata*, Bandung: Citra Aditya Bakti, p.243

shows a dual role. The position as a public official places a pressure on a public service that, with the development and changing times, the position of the notary has changed, both in terms of the authority and extent of his work and responsibilities. With the existence of Global Problems such as the Technological-Economic Revolution, Trade, Investment, Competition, and E-commerce (Electronic Commerce)⁷ bring the impact of Legal Services to the Community, including the Functions and Position of the Notary. Automatically the demand for Notary Services will change.

Today's notary is demanded to be able to provide efficient and fast legal services, in line with technological developments that demand all aspects of life to be able to provide excellent service. Notaries as Public Officials of course must provide maximum service in the Legal Field. In line with the demands of the times, the Government has issued Act No. 25 of 2009 On Public Services. Bearing in mind that the State is obliged to serve Citizens and Residents to fulfill the Basic Rights and Needs of Their Citizens in the framework of Public Services contained in the Mandate of the 1945 Constitution of the Republic of Indonesia. Notaries as Officials who carry out part of the State Function are required to provide maximum Public Services in Services in the Field of Law for the achievement of Legal Certainty in the Community.

Notaries in improving public services must have problems to provide services in accordance with the evolving needs of the community. Technological advances encourage all Agencies to compete in providing services that are able to compete with the Development of the Age in an effort to improve quality and guarantee the Provision of Public Services in accordance with the General Principles of Good Governance (AUPB). In Article 9 of Act No. 25 of 2009 On Public Services. It was explained that: 1) In order to facilitate the implementation of various forms of public services, the Integrated Service System can be carried out; and 2.) Arrangements on integrated service systems as referred to in paragraph (1) shall be regulated further in a Government Regulation.

The Ministry of Law and Human Rights through the Directorate General of General Law Administration as an Institution that houses the Notary in the Drafting and Reporting of the Act No. 25 of 2009 certainly has a large homework to create ease of implementation of Integrated Public Services to support the Improvement of Services by Notaries. As a State Institution that has a Central Role in the Aspects of Legal Services, the Ministry of Law and Human Rights must go down and find a solution for the achievement of Public Welfare. Welfare state is a top-down policy solution to social problems that develop in society. This certainly cannot be separated from the concept of Welfare. Referring to the opinion of Suharto⁸the notion of well-being contains 4 meanings, namely: as a prosperous condition (wellbeing); as Social Services; as Social Benefits; and as a planned process carried out by Individuals, Social Institutions, Communities, and Government Agencies to improve the quality of life through the provision of Social Services and Social Benefits.

The Ministry of Law and Human Rights of the Republic of Indonesia is making efforts to

⁷ https://id.wikipedia.org/wiki/Electronics_trade accessed on January 27, 2020 at 23.30 WIB

⁸ Edi, Suharto "Peta dan Dinamika Welfare State di Beberapa Negara" Seminar Paper, "Mengkaji Ulang Relevansi Welfare State dan Trobosan Melalui Desentralisasi-Otonomi di Indonesia", Yogyakarta, July 25, 2006.

create facilities in the provision of public services as well as supporting the facilities of Notaries to improve services to provide legal services through the Notary Reporting Application (APN). Electronic Notary Deed Making does not violate the Regulations and in accordance with applicable Laws based on Act No. 25 Of 2009 and other Laws.

3.2. Implementation and Constraints to the Making of Electronic Notary Deeds

The use of AHU Online began in the of 20013, with the issuance of a 1 (one) door system by the Directorate General of General Law Administration (DG AHU) called AHU Online. AHU Online can be accessed via <http://ahu.go.id>. Through this application, the Directorate General of General Law Administration makes it easy for Notaries to obtain Notary Services, namely: Notary Appointment Test; Improvement of Notary Position Quality Improvement; Registration for Appointment of a Notary Public; Appointment of Notary Public; Waiting List for Notary Appointment; Application for Leave Certificate; Application for Moving Notary Territory; Waiting list for Moving Notary Region; Application for Extension of Notary Office; Application for Name Change; Application for an Additional Title; Application for Abbreviation of Name; Application for Change of Address; Change of Non Academic Application; Application for Termination of Notary; and Notary Profile Update.⁹

In addition to providing convenience in the notary field, this service has a feature on Online Services for Legal Entity Unit (OSBH). Which includes the management of Limited Liability Companies; Foundation; and Improvement of Legal Entity Data. There are also services related to Notarial Deed which covers the process of registering wills and fiduciary registrations. It also issued a system relating to the Business Entity Administration System which includes the Alliance of Commanders; Firm Fellowship; and the Civil Alliance. In addition to the services above, AHU) online also makes it easy for notaries to request the establishment.

Every new policy issued by the Government must experience obstacles in its initial implementation, of course, this problem is an evaluation that needs to be searched for the causes and solutions. As for the obstacles found in the Implementation of Electronic Deed Making Online "Constraints that are often experienced by Notaries are usually during Data Upload, this happens at certain hours including at 08.00 to 17.00 (during office hours), in addition to that it is necessary to conduct socialization and training to the Notary Public in order to utilize the AHU Online system. From the information obtained, we obtain the existence of obstacles caused by disruptions to the Internet System and Human Resources Readiness to operate the existing System. therefore, improvements are needed to the AHU Online System and training of Notaries is also needed to be able to operate the AHU Online System.

4. Closing

Based on the results of the study conclusions can be drawn as follows: Today's notary

⁹ Anggiat Ferdian in the Technical Discussion and Consultation on the General Law Administration of Belitung 2019 accessed at <https://portal.ahu.go.id/en/detail/75-berita-more/2265-ditjen-ahu-sain-layanan-ahu-online-the-easy-and-fast>.

public is demanded to be able to provide efficient and fast legal services, in line with technological developments that require all aspects of life to be able to provide services in a uniform manner. Notaries as Public Officials of course must provide maximum service in the Legal Field. In line with Act No. 25 of 2009 On Public Services. Article 16 Paragraph 5 of the UUJN states that the Notary is obliged to provide services in accordance with the provisions of the Act, unless there is a reason to reject it. From this article we can know that the Notary Profession as a legal service provider. In Article 9 of Act No. 25 Of 2009 On Public Services. It was explained that a) In order to facilitate the implementation of various forms of public services, the Integrated Service System can be carried out; The Ministry of Law and Human Rights of the Republic of Indonesia is making efforts to create facilities in the provision of public services as well as supporting the facilities of Notaries to improve services to provide legal services through the Notary Reporting Application (APN). Electronic Notary Deed Making does not violate the Regulations and in accordance with applicable Laws based on Act No. 25 Of 2009 and other Laws. The Electronic Notary Deed Making is implemented in order to improve public services. In the process of implementation there are some obstacles that are obtained, namely Constraints on the Server that often experiences Down so the system becomes slow and even jams at certain hours; and HR constraints that have not been maximized in order to create a series of good systems to avoid the website server down and create system security so that it is not easy to hack.

Electronic Notary Deed Reporting still does not work optimally, there are still many obstacles in its implementation so that improvements are needed in various aspects including: Improving the Security System on the Network System so it is not easily hacked by Hackers; Improved Human Resources (HR) for AHU Online system service providers, so that they can provide maximum service during the Data Input process; and Repair and improvement of the Server System so that the server does not occur during office hours.

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