

The Notary's Responsibilities for the Making of Deeds and the Electronic Storage of Minutes of Deeds

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Abstract. *This study aims to determine and analyze the process and responsibilities of a notary in the manufacture and storage of minutes of deed electronically and to find out examples of deeds that contain electronic elements. The research approach method used in this thesis is a sociological juridical legal research method. This research specification uses descriptive analysis. The type of data used in this research is primary data which includes the 1945 Constitution; Act No. 2 of 2014; Code of Civil law; the Criminal Code, as well as secondary data containing books and other supporting documents. Collecting research data with interview techniques and study of documents or library materials. The data analysis method used in analyzing the data is qualitative analysis. The results showed that: First, the electronic deed has not yet obtained a strong legal basis, so it does not provide a guarantee of legal certainty. Legal certainty can be achieved, if there are no conflicting provisions between one law and another. Second, electronic storage of deed minutes can already be done because several laws already allow it. The requirement for a deed to be stored electronically is an authentic deed that must be made and stored conventionally. Storage of minutes of deeds electronically can already be done because some laws already allow it. The requirement for a deed to be stored electronically is an authentic deed that must be made and stored conventionally. Storage of minutes of deeds electronically can already be done because some laws already allow it. The requirement for a deed to be stored electronically is an authentic deed that must be made and stored conventionally.*

Keywords: *Electronic; Keeping; Responsibility.*

1. Introduction

Notaries are appointed by the government not solely for the benefit of the notary itself, but also for the benefit of the wider community. The services provided by the notary are

closely tied to the issue of trust (trust of the parties) meaning that the state gives great trust to the notary.¹

The notary profession which has long been known in Indonesia, even long before Indonesia's independence, namely during the Dutch colonial era, was carried out with the authority of an authentic deed, especially in the trade sector.²

The Notary's responsibilities as a public official include the responsibilities of the Notary profession itself related to the deed, including: First, the civil responsibilities of the Notary for the deed he made. The responsibility in this case is the responsibility for the material truth of the deed, in the construction of unlawful acts. Acts against the law here in the nature of active or passive. Active, in the sense of carrying out actions that cause harm to other parties. While passive, in the sense of not doing an act that is a must, so that the other party suffers a loss. So the elements of unlawful acts here are the existence of unlawful acts, the existence of errors and the losses incurred. Second, the Notary's criminal responsibility for the deed he made.³The existence of trust given to a notary means that the notary inevitably has to be said to have also assumed responsibility for it. This responsibility can take the form of both legal and moral responsibility.

The number of recording activities carried out by a notary raises its own problems in terms of storage. The period of storage of these archives if they meet the provisions regarding company documents is a minimum of 30 years. The period of time is not short and on the way there is often a risk of damage or even loss. The Regional Supervisory Council cannot keep thousands of notarial deeds over the age of 25 at the Regional Supervisory Council's office because the Supervisory Council itself does not have an office to store the notary deeds, so the notary deed is stored in the concerned notary office. . This means that the provisions of Article 63 paragraph (5) of Act No. 2 of 2014 cannot be implemented properly.⁴

Notary, the notary is responsible for keeping the notary deed and protocol throughout the life of his office and will be forwarded by the next notary who replaces him. In a paradigm that is still hung on paper media, of course it takes space and relatively expensive maintenance or maintenance work to be able to secure the file. Meanwhile, notaries themselves certainly have limited funds, so it cannot be assumed that they have librarians or archivists who can support them well.⁵

¹ R.A. Emma Nurita, (2012), *Cyber Notary Pemahaman Awal Dalam Konsep Pemikiran*, PT Refika Aditama, Bandung, p. 2.

² Hartanti Sulihandari & Nisya Rifiani, (2013), *Prinsip-Prinsip Dasar Profesi Notaris*, Dunia Cerdas, Cipayung, p. 2

³Kunni Afifah. "Tanggung Jawab & Perlindungan Hukum bagi Notaris secara Perdata Terhadap Akta yang Dibuatnya". *Lex Renaissance*. Vol.2 No.1 (2017). p.151

⁴ Andi Muhammad Syuaib, Amin Purnomo & Akhmad Khisni. "Kepastian Hukum Penerapan Arsip Elektronik dalam Menyimpan Risalah Akta Notaris sebagai Bukti Otentik". *Sultan Agung Notary Law Review (SANLaR)*Vol.3. No. 1 (2021), p. 251

⁵ Edmon Makarim, (2013), *Notaris & Transaksi Elektronik kajian Hukum Tentang Cybernotary atau Electronic Notary*, PT RajaGrafindo Persada, Jakarta, p. 139.

Advances in technology and information also gave rise to a new term, namely the digital technology revolution which was marked by the proliferation of computers and the automation of records in all fields. To accommodate the development of technology and information, the government initially passed Act No. 11 of 2008 concerning Electronic Transaction Information (ITE). The ITE Law has penetrated in all areas of life, one of which is a notary by issuing the popular term "Cyber Notary".⁶Therefore, the duties and authority of a Notary to make an authentic deed must also shift from a conventional system to one based on an electronic system called Cyber Notary.⁷

In practice, there are so many deed archives (*minuta*) that must be kept and maintained by a notary, which has created problems for notaries, not only notaries who are still in their tenure but also up to the next successor notary. Inheriting the archives certainly has an impact on the cost of running a notary office which is quite large and relatively expensive. Not only that, in responding to requests for document discovery, especially to make copies of old deeds, because finding and retrieving documents is not easy.⁸

Cyber crimes in data storage, especially in this case storing electronic documents (*minuta* deed or notary protocols) raise new legal problems, namely violating the privacy of the parties' personal data because the data storage activities offered by cloud computing include the data of the parties, so that the identity of each party parties and other important information has the potential to be misused which results in a violation of the privacy of personal data, thus causing the loss of control over their very sensitive personal information.⁹

This study aims to determine and analyze the process and responsibilities in electronically storing minutes of deeds.

2. Research Methods

The method used in this study is a sociological juridical approach. The sociological juridical approach is carried out by field research aimed at the application of law. The sociological juridical approach is an approach that is carried out by looking at the reality in practice in the field.¹⁰ The specification of the research used is descriptive analysis, namely research that aims to provide an overview of the problems that occur in connection with the use of applicable laws and regulations and relevant theories then

⁶Arif Lukman. "Implementation of Regulation of the Minister of Agrarian Affairs and Spatial Planning (ATR) Act No. National Land Agency (BPN) Number 9 of 2019 concerning Implementation of Registration of Mortgage Rights Using an Electronic System (Analysis of Problems and Legality of Authentic Deed Electronically)". *Sultan Agung Notary Law Review (SANLaR)* Vol.3. No. 1 (2021). p. 347

⁷ Mohamat Riza Kuswanto, Urgensi Penyimpanan Protokol Notaris Dalam Bentuk Elektronik & Kepastian Hukumnya di Indonesia, *Jurnal Repertorium*, Vol. IV, No. 2, 2017, p. 65

⁸Freddy Harris & Leny Helena, (2017), *Notaris Indonesia*, PT Lintas Cetak Djaja, Jakarta, p. 123.

⁹ Sinta Dewi, Konsep Perlindungan Hukum Atas Privasi & Data Pribadi Dikaitkan Dengan Penggunaan Cloud Computer di Indonesia, *Yustisia*, Vol. 5, No. 1, 2016, p. 24.

¹⁰ Agung Nugroho & Sukarmi, 2020, "Notary Authority in Installing Mortgage as Effort to Settle Bad Credit (Second Way Out)", *Sultan Agung Notary Law Review*, Vol. 2, No. 2, 2020. p. 93.

collected through data collected, processed, and compiled theoretically in order to obtain troubleshooting in accordance with applicable regulations.¹¹ Data collection methods include library research, document studies, and interviews. The data analysis method used in analyzing the data is qualitative, namely a research procedure that produces descriptive data analysis through data obtained from respondents.

3. Results and Discussion

3.1. The Process of Making Deeds and Storing Minutes of Deeds Electronically

The role of the Notary is required to adapt to the development of technology and information. Therefore, a Notary must pay attention to the preparation or have a reference system procedure that can carry out his duties and authorities in adjusting the progress of technology and information, such as in the creation, storage, and use of public documents that are considered authentic or legal electronically.

Electronic deed is defined as an engagement or legal relationship that is done electronically. This is done by combining the network (networking) of a computer-based information system with a communication system on the network and telecommunications services (telecommunicated based), which is facilitated by the internet network.

The process of making a deed electronically is not much different from making a conventional deed, namely drafting a deed concept, reading the contents of the deed, digitally signing it by the appearers, then the appearers can read the contents of the draft deed on a computer screen or other electronic media used. Additions or corrections to the deed can be made at the time of signing the deed.

The making of a notarial deed has brought many benefits to the community, related to various forms of electronic transactions that are currently carried out in the community. For this reason, the community needs legal certainty regarding the use of technology in the various transactions they carry out, in this case legal certainty can only be obtained with the rule of law. According to Ega Farrell, who serves as a Notary, the obstacles in making electronic deeds are in terms of legal substance, legal structure, and legal culture.

The legal substance in making electronic deeds has not been fully accommodated in the UUJN and also the ITE Law which is the legal basis for notaries in capturing opportunities for making electronic deeds in accordance with the demands and developments of modern society that are currently happening. However, even though in the UUJN, the Civil Code and the ITE Law, it is not yet possible for a notary to make a deed electronically, but the opportunity for making an electronic deed remains open with the regulation of electronic deed making.

¹¹Lexy J. Moleong, (2015), *Metodologi Penelitian Kualitatif*, Remaja Rosdakarya, Bandung, p. 103

This electronic notary protocol storage is actually an effort to realize the implementation of Cyber Notary in the future which may be used as a means to support the activities of a Notary. Cyber notary is a concept that utilizes technological advances in carrying out the duties and authority of a notary.¹² There is no explicit statutory provision for making and storing minutes of deed using electronic media. The existence of this norm vacuum has resulted in the legality of the activity of making and storing minutes of deed with electronic media doubtful of legal certainty if applied, because it is considered not in accordance with the function and purpose of an authentic deed.

The minutes of deed that have been stored electronically do not legally meet the power of proof as a conventional notarial deed, because they do not meet the requirements for authenticity as regulated in Article 1 paragraph 1 of the UUJN and Article 1868 of the Civil Code. This has an impact on its legal power which can only function as a backup and not as a copy.

3.2. The Notary's Responsibility for Making Minutes of Deeds and Electronic Deed Storage

The notary's responsibility for the security of this digital deed is limited to the loss or damage of the protocol stored electronically by the notary as well as maintaining the confidentiality of the deed.¹³

Decision of the Constitutional Court Number 20 / PUU-XIV / 2016, The Constitutional Court stated that Preventing Differences in the Interpretation of Article 5 (1) and paragraph (2) of the ITE Law, the Court must affirm that Every interception must be carried out legally, especially in the context of application of law. Therefore, the court of judgment adds the word or phrase "in particular" to the phrase "electronic information and/or electronic documents". In order not to interpret that the decision will affect the meaning or meaning in Article 5 (1) and paragraph (2) of the ITE Law. Thus, to provide legal certainty, the existence of electronic information and/or electronic documents as evidence must be rejected in the explanation of Article 5 of the ITE Law."¹⁴

Proving that the Notary intentionally manipulates data or causes the loss or damage of the Deed so that it fulfills the elements of an unlawful act in Article 1365 of the Civil Code, then the form of the Notary's responsibility consists of 3 namely administrative, civil and criminal. Administrative sanctions for violating Article 85 of the UUJN are given by the Central Supervisory Council, Regional Supervisory Council, and Regional Supervisory Council (hereinafter referred to as MPD).

¹² Emma Nurita, 2012, *Cyber Notary Early Understanding in Concept Thinking*, PT. Refika Aditama, Bandung, p. 47

¹³ Dharmawan, NKS, Kasih, DPD, & Stiawan, D. (2019). Personal data protection and liability of internet service providers: a comparative approach. *International Journal of Electrical and Computer Engineering*, 9(4), p. 3177.

¹⁴ Reni Suryani, Suhendar, "Wise Use of Social Media, So as Not to Get Entrapped in the Criminal Law Sanctions of the ITE Law", *Journal of Community Service*, Vol. 3, No. 1, 2022, p. 170

The Regional Supervisory Council has implemented administrative sanctions in the form of verbal warnings for violations of the provisions on how to save minutes of deeds. Further, regarding the storage of digital deeds, no specific regulation has been found regarding this matter.

The minutes of the damaged/lost/destroyed deed are stored electronically, it can be replaced with a copy. The position of the copy of the deed is regulated in the provisions of Article 1889 of the Civil Code which states that if the original deed is no longer available, the copy can be used as evidence in civil cases with provisions. Meanwhile, the legal action taken by a notary if it is known that the minutes of the deed no longer exist, namely by making a report of the loss of the minutes of the deed recorded in the Repertorium and Klaper of the deed to the police with real reasons.

The notary's responsibility for the protocols is as stated in Article 65 of the Amendment UUJN that the notary is fully obliged and responsible for all the protocols it has.

Specifically for the aspects of security and accountability, it is necessary to implement a system that is safe, reliable, and accountable. So that the minutes of the deed that are stored electronically have the power of valid and binding proof at a later date. This can happen if the implementation system is accountable, so that the value or weight of its authenticity has a higher value.

The function and purpose of storing the Notary Protocol in electronic form must be assessed from two aspects, namely the economic aspect and the legal aspect. Economically, the storage of the Notary Protocol aims to be more practical, efficient, inexpensive and secure. From the legal aspect, electronic document storage can help and facilitate the legal process, especially the law of evidence relating to electronic evidence.

Notaries in terms of storing deeds electronically which may be very vulnerable to being hacked by irresponsible parties, in this case the Notary can make a report to the police for criminal acts in the digital world with reference to Act No. 11 of 2008 concerning Information and Electronic Transactions.

Efforts to overcome the digital world crime can also be called a form of responsibility of the Notary as the authorized official in storing the minutes of the deed electronically.

The strength of proof of the minutes of the deed stored electronically or the printed result cannot be said to be the same or equivalent to the authentic deed. This means the strength that the strength of the minutes of electronic deeds and their printed results are still considered as ordinary evidence that needs other evidence such as other documents, witness statements, and confessions. The printed results of the minutes of deeds stored electronically which are shown in the trial by a notary do not have the power of proof if they are not accompanied by other evidence.

The role of the Notary in carrying out the responsibility for electronic deed storage can be carried out before storing the deed, in the case of hacking his computer equipment, it

must start from preventive measures, such as increasing the security of computer equipment securities as standard policies of the United Nations Congress Resolution which have been stated in the ITE Law and regulations.

The responsibility of a Notary in terms of administration relates to the existence of administrative sanctions given if a Notary commits a violation as stipulated in Article 85 of Act No. 30 of 2004 concerning the Position of a Notary (State Gazette of the Republic of Indonesia of 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432, hereinafter referred to as UUJN).

The Notary's responsibility in criminal terms can be imposed on the Notary if the Notary has violated the provisions of the UUJN, UUJN-P and the Criminal Code. In this regard, if the Notary commits a criminal offense but does not violate the provisions of the UUJN or UUJN-P, then the Notary cannot be criminally responsible.

The civil liability of a Notary as regulated in Article 84 of the UUJN stipulates that if in carrying out his duties the Notary commits a violation that causes the deed to have the power of an underhanded deed or is null and void, or which harms the parties, then the parties have the right to sue the Notary for compensation and reimburse the costs that have been used. The Civil Code divides the issue of liability for unlawful acts into 2 groups, namely direct responsibility and indirect responsibility. The statutory provisions of unlawful acts aim to protect and provide compensation to the injured party.

4. Conclusion

The process of making a deed electronically is not much different from making a conventional deed, namely drafting a deed concept, reading the contents of the deed, digitally signing it by the appearers, then the appearers can read the contents of the draft deed on a computer screen or other electronic media used. Legal certainty can be achieved, if there are no conflicting provisions between one law and another. The opportunity for a notary to make a deed electronically cannot be applied because there is no synchronization (contrary) with the UUJN and the ITE Law. The form of a Notary's responsibility consists of 3, namely administrative, civil and criminal. However, regarding the violation of the provisions on the conventional method of storing minutes of deeds, the Regional Supervisory Council has implemented administrative sanctions in the form of verbal warnings. It is advisable to make changes (revisions) to the UUJN and the ITE Law, and to harmonize the law between various relevant laws and regulations, so that there is a legal synchronization between existing laws, which regulates the authenticity of authentic deeds and the power of electronic deeds in evidence which has been an obstacle in the making of a deed electronically by a notary.

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