

Implementation of Electronic System based on Notary Administration

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Abstract. *This study aims to (1) identify and understand the implementation of electronic-based Notary Administration in the conception of legal certainty. (2) knowing and understanding the effectiveness of electronic-based administrative system management. This research is descriptive with a sociological juridical approach. The data collected in the form of primary data and secondary data. Data was collected through field studies and literature studies. Data were analyzed by quantitative descriptive. The results of the study show that (1) the Implementation of Electronic-Based Notary Administration provides legal certainty guarantees if there are no conflicting provisions between one law and another (2) Effectively Management of the Electronic-Based Notary Administration System is economical, electronic notary protocol storage aims to be more practical, efficient, inexpensive and secure. Meanwhile, from the legal aspect, it can help and facilitate the legal process related to the law of evidence, namely electronic evidence.*

Keywords: Administration; Electronics; Notary.

1. Introduction

The role of a notary related to the duties and authorities of the Industrial Revolution 4.0 to 5.0 is required to be able to participate in technological developments because all legal events carried out through electronic media are important to obtain legal certainty guarantees. Article 77 of Act No. 40 of 2007 concerning Limited Liability Companies (“UUPT”).¹

Not only have the authority but also the office administration obligations like a company such as writing a list of deeds, a list of legalized letters, a list of letters,

¹ Widiyawati, Citra Widi, (2016), *Kajian Yuridis Keabsahan Pernyataan Keputusan Rapat Atas Risalah Rapat Umum Pemegang Saham Perseroan Terbatas Melalui Media Telekonferensi*, Surakarta: UNS, p. 3.

an alphabetical list of letters, a list of protests book; a will, and a limited liability company register. Notary administrative activities cannot be separated from the notary's managerial expertise to carry out filing procedures. Notary office archives are also part of notary administration activities. The procedure for storing the original or original deed along with its documents is also the responsibility of the Notary in the context of maintaining and maintaining the state archives properly and seriously.²

Article 65 of Act No. 30 of 2004 concerning the Position of a Notary as amended by Act No. 2 of 2014 regulates and stipulates the responsibilities of a Notary, especially for every deed he makes even though the Notary protocol has been submitted or transferred to the notary protocol. The responsibilities of a notary during his term of office are also related to the storage of all protocols he has. Article 1 number 13 of the Law on Notaries, a notary protocol as a collection of documents constituting a state archive that must be stored and maintained by a notary in accordance with the provisions of the legislation. Article 63 paragraph (5) UUJN submission of a notary protocol to a substitute notary whose time of submission is 25 years or older to the Regional Supervisory Council (MPD) cannot be applied because the MPD is unable to keep a large number of notary protocols that are over 25 years old in the office of the Regional Supervisory Council. . This is still kept at the notary's office concerned. This causes the notary protocol to be stored in the notary's office concerned. Given the importance of the position of the authentic deed made by the notary, it is also important to maintain a minimum of the deed as part of the notary protocol. The substitute Notary is also obliged to maintain the protocol that has been given to him by the Notary who has died.³

Archiving practices that are carried out in the notary world until now still use conventional media in the form of paper and are stored manually. Physical storage for a long period of time is often prone to loss and damage. For example, when the notary's office moves, often many files or minutes are scattered and lost, the factor is the lack of storage space so that many notary files are scattered, fires and natural disasters. Loss and damage to the minutes of the deed are not properly accommodated in the UUJN, causing problems in the future for the interests of the client.⁴ Notary administrative problems found

² Kuswanto, Mohamat Riza & Hari Purwadi, (2017). Urgensi Penyimpanan Protokol Notaris Dalam Bentuk Elektronik dan Kepastian Hukumnya di Indonesia, Jurnal Repertorium, Volume IV No. 2 July-December 2017, p.62-69

³ Rositawati, Desy, I Made Arya Utama, Desak Putu Dewi kasih (2017). Penyimpanan Protokol Notaris Secara Elektronik Dalam Kaitan *Cyber Notary* Mahasiswa Program Magister Kenotariatan Universitas Udayana Acta Comitatus (2017) 2: 172 – 182 Issn: 2502 -8960 | E-Issn: 2502-7573

⁴ Nisa', Nailly Zahrotun (2020) Aspek Legalitas Penyimpanan Minuta Akta Notaris Secara Elektronik Magister Kenotariatan Universitas Surabaya, Indonesia Jurnal Civic Hukum November 2020, p. 205-219 P-Issn 2623-0216 E-Issn 2623-0224

147 cases that have been decided in courts both high courts and district courts in Indonesia, namely problems including fake deeds, statements in fake deeds, reading of deeds not before a notary, and notary staff committing fraud against notaries both in minutes of deed, decision letter legal entity or falsified documents.⁵

Because of the importance of the position of the authentic deed made by a notary, so maintaining the minimum deed as part of the notary protocol is also important. The substitute notary is also obliged to keep the protocol that has been handed down to him by a notary who has passed away. You can imagine how much space is needed to store a notary protocol. Therefore, to anticipate the impact of storage and maintenance processes that are constrained on place and cost of treatment, the solution for notary protocol storage is through the application of information or electronic technology. The enactment of Act No. 8 of 1997 concerning Company Documents (hereinafter referred to as the Company Document Law), the transfer of data in the form of letters or writing on paper (based paper) into electronic media. Letter f of the Company Document Law, that technological advances have allowed notes and documents made on paper to be transferred to electronic media. Based on the consideration of letter e of the Company Document Law, media transfer is the company's choice in storing documents without causing economic and administrative burdens.

Article 15 paragraph (3) of Act No. 02 of 2014 which stipulates that notaries also have other powers as regulated in the legislation. This has been described in the explanation of Article 15 paragraph (3) of Act No. 02 of 2014 of which is one of them. If a notary makes a deed using electronics, then based on Article 15 paragraph (3) of Act No. 02 of 2014, which states that other authorities regulated in laws and regulations include: the authority to certify transactions carried out electronically, make a pledge deed waqf and aircraft mortgages. Not so with Article 16 paragraph (1) letter m of Act No. 02 of 2014 which states that a notary must be present to read and sign the deed.⁶ This research is to know and understand the implementation of electronic-based Notary Administration in the conception of legal certainty. know and understand the effectiveness of electronic-based administrative system management.

2. Research Methods

⁵ <https://putusan3.mahkamahagung.go.id> accessed On 08 June 2021 at 19.00 WIB.

⁶ Rossalina, Zainatun & Moh. Bakri, Itta Andrijani (2019) Keabsahan Akta Notaris Yang Nggunakan Cyber Notary Sebagai Akta Otentik Program Studi Magister Kenotariatan Pascasarjana Fakultas Hukum Universitas Brawijaya Hukumvolume 3, Number 1, 07 June 2019

This research includes sociological juridical research. The approach method used is a sociological juridical approach. The research specifications used are analytical descriptive. The data sources used in this research are primary data and secondary data, the legal material collection techniques used in this research are field studies and library studies, then the data analysis method uses qualitative data analysis.

3. Results and Discussion

3.1. Implementation of Electronic-Based Notary Administration in Indonesia Conception of Legal Certainty

Notary service activities in the era of globalization have moved towards electronic-based services known as the Implementation of Electronic-Based Notary Administration so that it should be further regulated in the laws and regulations in force in Indonesia. This is to ensure certainty, order, and legal protection to the parties and the Notary related to the Deed he made. Indonesia, which is in the era of globalization, is marked by the era of information and communication technology (ICT) which introduces cyberspace (cyberspace, virtual world) through the internet, communication with paperless electronic media. circumstances of place and time through this electronic media.⁷By observing developments in several countries, both in the form of Common Law and Civil Law, many countries have empowered the function and role of Notaries in electronic transactions. Therefore, like it or not, Indonesia must also stimulate the implementation of its Notary services in electronic transactions, even to the point of providing notary services themselves electronically.⁸

Legal certainty is a very important aspect in making an authentic deed by a notary. This is because it will be a problem for the parties if the losses are experienced because there is no legal protection for the parties, it is even possible for the Notary to be caught in a legal case because there are no clear legal rules related to the Deed which is made electronically. Notaries need legal certainty in making the deed electronically, meaning that the notary needs a measure that becomes a guide in making the deed electronically. This measure is called a rule made by a party who has the authority to do so, because in legal certainty, there are clear norms so that it can be used as a guide for Notaries who are subject to this regulation.

⁷ Badruzaman, Mariam Darus, (2001), *Mendambakan Kelahiran Hukum Saiber (Cyber Law) di Indonesia: Pidato Upacara Purna Bhakti Sebagai Guru Besar Tetap pada Fakultas Hukum Universitas Sumatra Utara*, Medan: USU Press, p. 3.

⁸ Edmon Makarim, (2013), *Notaris dan Transaksi Elektronik: Kajian Hukum tentang Cyber Notary atau Electronic Notary*, ed. 2, print. 2, Jakarta: RajaGrafindo Persada, p. 133.

1. The notary has the authority to make an authentic deed of all actions, agreements, and stipulations required by laws and regulations and/or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, providing grosse, copies and quotations of the deed, all of this as long as the making of the deed does not assigned or excluded to other officials or other persons stipulated by law.
2.
 - a. validate the signature and set a definite date a letter under the hand by registering in a special book;
 - b. book a letter under the hand by registering in special books;
 - c. make a copy of the original letter under the hand in the form of a copy which contains a description as written and described in the letter concerned;
 - d. validate the compatibility of the photocopy with the letter original;
 - e. provide legal advice in relation to the making of the Deed;
 - f. make a deed related to land; or
 - g. make a Minutes of Auction Deed.

In addition to the above authorities, one of the other powers referred to in the Elucidation of Article 15 Paragraph (3) of the new UUJN is to certify transactions conducted electronically (Cyber Notary). But unfortunately, there is no further regulation regarding the authority of the Notary in terms of Cyber Notary. So, it can be said that the word Cyber Notary is only mentioned in the Elucidation of Article 15 Paragraph (3) of the new UUJN, but it does not explain what is meant by Cyber Notary. In Indonesia, the electronic evidence system in the ITE Law is still excluded because letters and documents must be made in the form of a notarial deed or a deed made by the official making the deed, taking into account the provisions of Article 1868 of the Civil Code. In Article 1866 of the Civil Code, evidence consists of: 1) written evidence, 2) witness evidence, 3) suspicions, 4) confession, and 5) oath. Notary protocols that are stored electronically such as Print Out, scanning microfilm, hard disk or flash disk and other storage media, namely information storage devices that are not paper and have a level of security that can guarantee the authenticity of documents transferred to them, also regarding electronic documents that have been regulated as a tool evidence recognized at trial in the form of material law through the Company Documents Law and the ITE Law. Apart from the transfer of documents in electronic form, the original manuscript still has the power of

authentic proof as long as it is made by an authorized official and the original manuscript must be kept.

The explanation of Article 15 paragraph (3) of the UUJN emphasized that a notary has the authority to certify transactions made electronically or called a cyber notary, while the provisions of Article 15 paragraph (3) of the UUJN state that "In addition to the authority as referred to in paragraph (1) and paragraph (2), the Notary has other authorities regulated in the laws and regulations." Other authorities referred to in the article have been described in the explanation of Article 15 paragraph (3) of the UUJN which states that "other authorities regulated in laws and regulations include: the authority to certify transactions conducted electronically, to make waqf pledge deeds and airplane mortgages."

Implementation of the conflict between Article 15 and 16 paragraph (1) UUJN are two articles that are in one law. Article 15 of the UUJN is the authority given by a notary to certify transactions electronically, while Article 16 of the UUJN is in line with the elements of the authenticity of the deed contained in article 1868 of the Civil Code. Cyber notary has been implemented by a Notary such as the implementation in the General Meeting of Shareholders of a Limited Liability Company where the deed is a type of relaas deed. This is because in the Limited Liability Company Law, especially Article 77 of Act No. 40 of 2007 concerning Limited Liability Companies (UU PT), it is stated that the General Meeting of Shareholders (GMS) can be held through teleconferencing media, video conferences, or other electronic media facilities that allow all GMS participants to see and hear and directly participate in the meeting. In addition, the use of computers in making deeds and during the online legal entity registration process through the Legal Entity Administration System website (sisminbakum) is a sign that notaries in Indonesia have started using computer systems and the internet in carrying out their duties.

Article 5 paragraph (4) of Act No. 11 of 2008 concerning Information and Electronic Transactions for now the concept of cyber notary, especially in making electronic deeds cannot be applied but that does not mean that it is impossible forever, because if viewed from Article 5 paragraph (2) and paragraph (3) of Act No. 11 of 2008 concerning Information and Electronic Transactions, it can be ascertained that the two paragraphs provide an opportunity for the realization of the electronic concept, it's just that there is a need for legal uniformity from the regulations for the position of a Notary so that the authority of a Notary can be added not only to serve conventionally but can also serve the community in the form of electronic services, especially in the manufacture of authentic electronic deeds, because this is very urgent along with the development of the increasingly rapid technological era.

This form of electronic strengthening or legalization is in the form of a time stamp, or ratifying the occurrence of a transaction at a certain time carried out between the parties. Conventional forms of legalization include ratification of signatures in a document, which is also regulated as one of the notary's powers based on UUJN.⁹Legal efforts that can be made to realize the storage of notary protocols in electronic form, in the absence of laws and regulations that explicitly regulate the storage of notary protocols electronically in UUJN, are only in the Elucidation of Article 15 paragraph (3) which mentions the possibility of a notary to certify transactions made carried out electronically as well as the restrictions provided by the ITE Law in Article 5 paragraph (4) that the electronic document does not meet the document authenticity requirements as regulated in Article 1 number 7 of the Amendment UUJN and Article 1868 of the Civil Code, making the transfer of notary protocol storage electronically only possible serves as a backup not as a copy that has binding force. Therefore, it is necessary to revise the relevant legislation so that the electronic deed storage carried out with an electronic system whose operation is in accordance with the applicable laws and regulations has the same evidentiary power as the original.

a. Article 15 Paragraph (1) of the new UUJN

In this Article, amendments should also be made to the contents of Articles regarding the authority of the Notary in keeping the Deed, providing grosse, copies and quotations of the Deed. This is because in the concept the Deed is made electronically or in other words without using paper media (paperless) so that the storage of Minuta, grosse, copies, and quotations of Deeds does not need to be in paper form, but is stored in a Microchip or Microfilm or other electronic media that can be printed as needed.

b. Article 18 UUJN and Article 19 Paragraph (1) new UUJN

In this Article, amendments should also be made to the contents of the Article regarding the domicile and area of office of a Notary. This is because in the Electronic concept, facing physically or directly facing each other is not required, but you can use visual-hearing media such as Teleconference or Skype without borders or city/province boundaries.

c. Article 38 of the new UUJN

This article should also explain about the deed made by a notary electronically. This is because in the electronic concept, the deed is

⁹ Fardhian, Legalisasi Dokumen Publik dan Transaksi Elektronik, <http://lkht.org/diskusiterbuka-cybernotary-5-februari-2014/>, accessed on 22 Nopember 2021.

made electronically, meaning that the deed is made without using paper media (paperless).

d. Article 39 Paragraph (1) of the new UUJN

In this Article, amendments should also be made to the requirements for the appearance of a Notary Deed. This is because in the electronic concept, the identity of the appearer does not need to be shown physically, but a Notary can download it from the agency authorized to make/issue the identity, for example, Identity Card (KTP), Family Card (KK), Deed/Marriage Certificate or identity card. others are allowed to be downloaded using a certain access code. According to Article 1 Number 14 and Article 64 of Act No. 24 of 2013 concerning Amendments to Act No. 23 of 2006 concerning Population Administration in conjunction with Article 6 Paragraph (2) of Presidential Regulation Number 35 of 2010 concerning Amendments to Presidential Regulation Number 26 of 2009 concerning the Application of National Identity Cards Based on National Population Identification Numbers, Electronic Identity Card is the official identity of the resident as proof of self issued by the Department of Population and Civil Registration which contains biodata, signature, photo, and fingerprint of the resident concerned so that it can be used as the official identity of the appearer in making the Deed before a Notary. This is to find out that the appearer is an interested party in the making of the Notary Deed and is known by the Notary.

e. Article 40 Paragraph (1) of the new UUJN

In this article, changes should also be made to the contents Article concerning the reading of the Deed by a Notary in front of the parties which must be attended by at least 2 (two) witnesses. This is because in the electronic concept, facing physically or directly face to face is not required so that the reading of the Deed by a Notary in front of the parties can use hearing media such as Teleconference or Skype without borders or city/province boundaries.

f. Article 44 Paragraph (1) of the new UUJN

In this Article, it is also advisable to make changes to the contents of the Article regarding the signing of the Notary Deed by the appearers, witnesses, and the Notary after the Deed is read by the Notary. This is because in the electronic concept, facing physically or face to face is not required so that the signing of the Notary Deed by the appearer, witness, and Notary can use a digital signature, seal and stamp. In addition, digital fingerprints are also used to comply with the provisions of Article 16 Paragraph (1) Letter c of the new UUJN.

In addition to changing the contents of the articles related to the authority of the Notary in making the Deed electronically as stated in the UUJN in conjunction with the new UUJN and the ITE Law, it is also necessary to pay attention to the electronic security system along with the security of the identity of the parties associated with the Notary Deed made electronically. This is to secure the parties related to the Notary Deed made electronically from various cyber crimes or crimes of information and communication space on the internet.

3.2. Effectiveness of Electronic-Based Notary Administration System Management

The function and purpose of electronic notary protocol storage can be assessed from two aspects, namely the economic aspect and the legal aspect. Economically, notary protocol storage aims to be more practical, efficient, inexpensive and secure. Meanwhile, in terms of legal aspects, electronic notary protocol storage can assist and facilitate legal processes, especially legal evidence relating to electronic evidence. Based on the two types of deed made by a notary above, it is currently impossible to apply information technology in the making of a notary deed electronically. Especially in the making of the relaas deed, in which the presence of a notary before the parties is a must. so that a Minutes can be made containing a description of the notary which is seen and witnessed by the notary himself at the request of the parties. Furthermore, when referring to the provisions of Article 5 paragraph (4) letters a and b of the ITE Law, it is known that documents made in the form of a notarial deed are not included in electronic information and/or electronic documents. So that the notarial deed made electronically does not have legal force as valid evidence according to the provisions of the ITE Law. By limiting the meaning of electronic information/electronic documents as regulated in Article 5 paragraph (4) letters a and b, then an authentic deed made electronically by a notary is deemed not to be valid evidence. Thus, the authenticity of the deed made by a notary in this case is not fulfilled.

Thus, 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 an electronic deed, but the opportunity for an electronic deed is still open with the regulation of electronic deed making at the General Meeting of Shareholders through teleconference media (GMS Teleconferencing). . Only in its implementation can not be applied, given the juridical obstacles that are still faced by notaries. Nevertheless, the provisions of Article 77 of the Company Law is a legal sign that indicates an opportunity for a

notary in making a deed electronically, but this provision does not have legal synchronization with the substance of the ITE Law that emerged later. The legislators did not emphasize more on the authority of the notary in the ITE Law, but on the contrary limited the authority of the notary in making electronic deeds. Whereas the need for services that are short and fast is a necessity that is needed in the midst of modern society. This is as stated by RB Simatupang, that: The current condition makes everything easier with the existence of information technology. Currently the boundaries of territory, time and distance are increasingly felt with the advancement of information technology.

The authenticity of electronic documents as legal evidence is also recognized in the ITE Law. Electronic documents are valid if they are created and stored in accordance with the provisions of the ITE Law, as well as specifications regarding system implementation, certification and electronic transactions. So that the integrity of the document can be guaranteed and can be accounted for before the court. Electronic documents are also recognized through the Supreme Court's SE (SEMA) Number 14 of 2010 concerning Electronic Documents as Completion of Applications for Cassation and Review which has subsequently been changed to SEMA 1 of 2014. The circular letter does not regulate the means of proof in the form of electronic documents/information. Rather, it is a decision or indictment that is transferred to electronic media such as flash drives, compact disk or sent via email to complete the appeal and review. Due to the previous method, there were several constraining factors, so it was converted into a file checking system from a rotating system into an electronically directed shared reading system.

Taking into account the legal aspects of the proof, it is also necessary to change the definition of prepositions mentioned in Article 1 point 7 of the new UUJN. Based on the article, the appearer in the physical sense of paper (physically, without any media, is before a notary). Thus, the required documents still have to be shown physically. In practice, the Notary of course makes the Deed in accordance with the provisions of Article 1 number 7 of the new UUJN, but there are still some obstacles that must be faced by the Notary in carrying out his duties to the community, namely:

1. Limited Deed storage space and the number of Notaries;
2. Violation of the Notary's professionalism related to the requirements of authenticity;
3. Weak evidence supporting the authenticity of the identity of legal subjects;
4. Conflict of interest of the Notary in making the Deed;

5. Breach of confidentiality;
6. Tax liability;
7. Weak control of tracking and guidance of related agencies.

In the concept of Cyber Notary, that facing physically or directly facing each other is not required, but you can use visual media such as Teleconference or Skype without borders or city/provincial boundaries. So, the Notary carries out his position by applying it to transactions or relationships electronically via the internet as the main medium in his performance to make a Deed and leads to the form of a Deed which is initially legal if it is written on paper, to a Deed electronically (electronic deed) or in the form of a Deed. electronic document. In further development, the identity of the appearer does not need to be shown physically, but a Notary can download it from the agency authorized to make/issue the identity, for example an Identity Card (KTP), Family Card (KK), Deed/Marriage Certificate or other identities that are allowed to be downloaded using certain access codes. Likewise, the documents required for making the deed are simply downloaded by a Notary from a certain agency. On the other hand, the appearers, witnesses and notaries simply use digital signatures, seals and stamps.¹⁰ In addition, digital fingerprints are also required as stipulated in Article 16 Paragraph (1) Letter c of the new UUJN which states that in carrying out their positions, the Notary is obliged to attach letters and documents as well as the fingerprints of the appearers on the Minutes of Deed.¹¹In terms of storage media, the storage of Minuta, grosse, copies, and quotations of Deeds does not need to be in paper form, but stored in a Microchip or Microfilm or other electronic media that can be printed as needed. If this can be done, the Notary's office does not require a large room.

In addition to paying attention to the legal aspects of the proof, it is also necessary to pay attention to the security system in the concept. This is to protect the confidentiality and security of electronic data related to the Notary Deed against the application of concepts in electronic data exchange from cybercrimes or crimes of information and communication space on the internet (Cyber Crime). In addition to the security system in the concept, it is also necessary to pay attention to the identity security of the parties related to the Notary Deed which is made electronically. This is because in making the Notary Deed electronically, the parties do not meet physically, so there must be a certain mechanism that is able to guarantee the identity of the parties concerned to avoid fraud or cybercrime or other information and communication space

¹⁰ Edmon Makarim, Op.cit., p. 128-129.

¹¹Act No. 30 of 2004 concerning the Position of a Notary, Act No.. 2 of 2014, LN No. 3 of 2014, TLN No. 5491, Ps. 16 Paragraph (1) Letter c.

crimes on the internet (Cyber Crime). Therefore, to ensure the security of the identity of the parties in the concept, there must be a third party or special authority authorized to check the veracity of the data, is independent, and can be trusted (trusted third party), which in this case is known as the Certification Authority (Certification Authority) hereinafter referred to as CA). CA is a trusted third party to provide certainty or validation of the identity of a person and provide someone who has met the requirements, a digital certificate.

4. Conclusion

Implementation of Electronic-Based Notary Administration in the Concept of Legal Assurance The implementation of Notary services that utilize technological advances in making authentic Deeds in cyberspace is possible for Notaries in Indonesia based on the Elucidation of Article 15 Paragraph (3) of the new UUJN, however the implementation is still a lot of conflict between One law with another so that 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. there must be the urgency of electronic notary protocol storage can be assessed from the economic aspect and the legal aspect. Economically, electronic notary protocol storage aims to be more practical, efficient, inexpensive and secure.

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