

Possibility of Implementing Digitization of Notarial Authentic Deeds as Electronic Evidence

Original Article

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Abstract

The aim of this article is to examine the usage of cyber notary, which has not been effective because of the vague standards surrounding the concept of cyber notary, including its definition and rules. Additionally, the article aims to assess the feasibility of incorporating cyber notary into traditional notary practices. The method used in this research is normative legal research. The results of this article are: First, there is a need for legal harmonization or re-actualization of rules between UUJN/UUJN-P and the ITE Law so that they can serve as a legal framework regulating the digitalization of authentic deeds, and notarial deeds can be categorized as valid electronic documents under the ITE Law. Second, the implementation of digitizing authentic notarial deeds is based on fulfilling legal needs in the notary sector, which extends beyond the formulation of rules regarding cyber notary to include the digitization of authentic deeds and notaries' obligations in executing cyber notary duties.

Keywords: Digitization, Electronic Evidence, Possibility, Notary.

1. Introduction

Over time, humans have developed various technologies that are used as tools to facilitate daily life activities. The presence of various technological innovations in the midst of human life today is a reality that cannot be denied, now the majority of humans use technology in every aspect of their lives. One of the technological developments is the emergence of technological innovations that combine communication technology with information technology, which is more familiar as telematics technology. As a result of these innovations, relationships between humans are becoming increasingly borderless, communication and interaction are easier to do without time lag (real time), and information is easily accessed and obtained so that it is more efficient and effective.

The more diverse human needs are, the more important legal certainty is, so that services in the legal profession are increasingly needed as well. Notary is a legal profession that is much needed by the public. Law No.30 of 2004 concerning the Position of Notary as amended by Law No.2 of 2014 concerning Amendments to Law No.30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN) Article 1 point 1 formulates "*Notary is a public official authorized to make authentic deeds and other authorities as referred to in this Law.*" The formulation of the regulation shows the authority of the notary. The formulation of the regulation shows that the authority of a notary is as a maker of authentic deeds. Regarding ownership of perfect evidence, in today's life authentic deeds have a very important meaning (Prabawa & Rudy, 2020).



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In Indonesian notarial law, public officials such as notaries, should follow these technological developments to support their professional duties and in order to improve services to the public in making authentic deeds, so that notaries in carrying out their duties maximally utilize technology, especially in making deeds, so that they can be carried out with the help of technology in the network (Girsang et al., 2024). The Civil Code Article 1868 formulates "*an authentic deed is a deed made in the form prescribed by law by or before a public official authorized to do so in the place of the deed.*" From the provisions of the Civil Code Articles 1870 and 1868, it can be said that an authentic deed is a deed made before an authorized public official and can provide perfect evidentiary power, and UUJN Article 15 formulates that notaries have the authority to make authentic deeds (Prabawa & Rudy, 2020).

In the current era of modernization, every business actor and notary in carrying out their official duties should respond positively to the existence of information and communication technology which has undergone extraordinary transformations (Diatnika & Mahendrayana, 2022). This is in line with the demands of the notary position which requires faster, easier and more straightforward services, all of which are a form of innovation in the digitalization system which aims to provide easy information and communication in the form of the best public services to the community in line with the advancement of electronic systems (Afriana, 2020; Aryani & Pulungan, 2021; Hendra, 2013)va. The advancement of technology in information and communication has led to significant changes in various aspects of human life. One such area impacted is the role of notaries who provide legal services to the public. Notaries must now adapt to using electronic media, also known as e-notary or cyber notary, to fulfill their duties efficiently and effectively.

The concept of cyber notary exemplifies the advancements in technology during the age of globalization, impacting various aspects of life such as the evolution of notary services (Mas Saraswati & Yogantara S., 2024). The purpose of cyber notary is to speed up and simplify the making of authentic deeds by ensuring that all statements requested from interested parties are included in the original deed as well as by fulfilling all legal obligations (Matra, 2012; Meilany, 2020). The influence of technology is neatly wrapped up in the application of electronization in every notary activity in carrying out his position. This slowly requires notary work that was originally only paper-based to slowly switch to digital form (Yanti & Wesna, 2024). Although in fact the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN-P) has slowly accommodated the practice of cyber notary as evidenced in the provisions of Article 15 paragraph (3) of UUJN-P 2014 which regulates "Notaries have other authorities regulated in laws and regulations". Other authorities as written in Article 15 of the UUJN-P, can be understood through the explanation of the law, considering that the explanation of the law is a form of interpretation that clarifies the norms contained in the body of the law, so that the explanation of the law is an official interpretation provided by the legislator to understand the norms in the law in question (Septian & Abdurahman, 2021). In this regard, the elucidation of Article 15 Paragraph (3) of UUJN-P states that:

"what is meant by other authorities regulated in laws and regulations, among others, is the authority to certify transactions carried out electronically (cyber notary), make a Deed of pledge of waqf, and aircraft mortgages."

As per the information in Article 15 paragraph (3) of UUJN-P, it is clear that notaries are empowered to authenticate digital transactions, also known as cyber notary services. This can be evidence that the conception of cyber notary has existed in the regulation on the office of

notary, although in practice it still raises a lot of debate so that the application of cyber notary in notarial practice cannot be applied optimally. The application of cyber notary that has not been maximized is due to the vagueness of the norms of the cyber notary concept itself, both from the meaning and from the regulation (Nisa, 2020). The lack of clarity in legal rules regarding the concept of cyber notaries is seen as having consequences that could impede notaries in fulfilling their responsibilities effectively (Ramli, 2006). However, despite the rapid pace of technological advancements, the use of cyber notaries in notarial services is still a feasible option.

The core requirements for creating notarial deeds under UUJN-P 2014 include physical presence during deed creation, deed reading, wet-ink signatures, and immediate fingerprinting after the deed is read. While the Law does not prohibit electronic copies of deeds, disregarding these fundamental provisions compromises the authenticity of the deed. If the process of making an authentic deed as stipulated in the UUJN-P is examined carefully, the development and progress of the times that have now begun to use technology in every line of life, making the clause "present before a notary" raises ambiguity in its meaning. UUJN/UUJN-P actually does not regulate the meaning of "in the presence of a notary" can be done physically or online through teleconference. This is a flaw in the legislation to transform Notary services that still maintain the provision of services in a manual manner (paper based) so as to provide the possibility of applying cyber notary in making authentic deeds with an electronic system (digitization).

With regard to this matter, it is deemed necessary to reform and harmonize regulations regarding the existence of technology in the making of digital notarial authentic deeds for the needs of the community at large who need notary services to make authentic deeds as one of the types of evidence with perfect evidentiary value before the court can be made in digital form.

2. Methods

This study employs normative legal research as the research method, focusing on norms as the primary objects of study. This research uses two approaches in its discussion, where the two approaches are the Statute Approach, the Analytical, and Conceptual Approach. The legal materials of this research are sourced from primary legal materials and secondary legal materials. The analysis technique used to process legal materials is a construction technique, namely a technique in the form of forming juridical patterns by understanding and reversing propositions (*a contrario*).

3. Results and Discussion

3.1. Conception of Digitalization of Notarial Deed as Electronic Evidence

As long as the Civil Code is still in effect, the presence of notaries as public officials will also still be needed in the community. As in the Second Chapter on Proof by Writing in Article 1868 of the Civil Code is the foundation for the creation of the role of a notary as a government official with the power to authenticate documents, the presence of authenticated documents is vital as a form of proof. In order to ensure that notaries create valid documents, they must stay updated on technological advancements, particularly in the realm of digital notarization.

Matters that are substantial, or which are not limited to the offline presence of the face before the notary, as well as the reading of the deed and also the signing of the deed can use e-sign or digital signature technology, the preparation of minutes and copies of the deed,

embedding the face's fingerprints, and other substantial matters that have been regulated in the UUJN-P are expected to be able to be carried out using digital electronic media, until the issuance of a copy of the deed which is also in digital form.

Notarial authentic deeds basically individualize legal acts on the day, date, month, year, and hour of the legal act so that notarial authentic deeds can guarantee formal truth. UUJN-P basically does not prohibit notaries from issuing digital copies of authentic deeds, but it is feared that this could degrade the authenticity of the notarial deed. Because, if the preparation is done online using teleconference media, it is feared that it will cause uncertainty about the time and date of the preparation of the deed minutes. This can occur if there is a difference in the time and place of the confrontation (time stamping), causing confusion about when exactly the time shows the legal event of certain legal actions occurred. Therefore, it is necessary for the parties or the confronter to agree on the time to be used in the preparation of the deed electronically, in order to ensure the formal correctness of the deed.

When examined through the perspective of the provisions of Article 5 of Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law) regulates the provisions of electronic documents as valid legal evidence. Article 5 paragraph (4) classifies notarial deeds as one of the documents that are not valid for use in the form of electronic documents as valid legal evidence. This makes the authenticity that was originally owned by a notarial deed becomes degraded if it is made in the form of an electronic document.

However, the conceptualization of digital authentic deeds as valid electronic evidence according to the law can begin with a study of Article 15 and Article 16 of the ITE Law relating to the implementation of electronic systems. From the provisions in these articles, it can be understood that documents in digital form have authentic evidentiary value if they are made using an electronic system that has security, reliability, and can be accounted for. Departing from this, if there is legal harmonization or reactualization of the rules between the UUJN/UUJN-P and the ITE Law regarding the regulation of the digitization of notarial deeds as electronic evidence in the concept of cyber notary, then the regulation in terms of making authentic deeds electronically can be implemented in the practice of holding the office of notary. So that the UUJN/UUJN-P and the ITE Law can serve as a legal framework governing the digitization of authentic deeds.

Substantially, the authority of notaries in making electronic authentic deeds has not been regulated in detail in both UUJN-P 2014 and ITE Law 2016, however, there are opportunities that can be used as an entry point for the use of technology in making electronic authentic deeds, namely Article 15 paragraph (3) of UUJNP 2014; regarding cyber notary, where notaries are authorized to certify electronic transactions, but unfortunately this authority to date still causes differences in views and debates among experts due to the unclear meaning and intent of the cyber notary. Thus, it is necessary to have a concrete explanation from the lawmaker on this matter, in addition to harmonizing the related regulations, so that the implementation of cyber notary can be carried out properly and optimally.

In order to achieve the creation of electronic authentic deeds carried out by notaries as a form of implementation of the cyber notary concept, it is necessary to revise legal regulations supported by technology that is accountable and reliable. This is a form of using technology in the current era. So that notarial deeds in the future can be made and stored in digital form. Based on the positive legal provisions above, then, the making of authentic deeds electronically can be implemented properly, if the laws and regulations explicitly regulate the mechanism of making, storage procedures, and authenticity.

In addition, it is also necessary to support effective and efficient digital technology so that the making of authentic deeds electronically can be applied properly, especially ensuring the authenticity of the digital deed. Several positive legal provisions applicable in Indonesia regarding the opportunity to make authentic deeds electronically by means of technology have been accommodated in various regulations, including:

- 1) Related to physical presence and face-to-face, virtual meetings can be conducted, namely using technology in the form of video conferences, where with this technology, the parties and notaries interact actively with each other through audio and video connections without having to meet physically, specifically for the GMS, an electronic GMS has been regulated or also known as an e-RUPS. The implementation of the e-RUPS has been regulated by the provisions of Article 77 of the 2007 Company Law, which in essence the GMS can be held using teleconferences, video conferences and other audio-visual means, provided that the meeting participants can actively participate together and participate in each other, then the notary can actually make a deed in the form of minutes of the meeting by reading the deed directly in front of the parties (meeting participants), then after the deed is read, the meeting participants and the notary immediately sign digitally (e-signature).
- 2) Regarding electronic signatures or digital signatures, their application has been regulated in legislation, namely Article 11 of the ITE Law, which essentially states that electronic signatures are equated with manual signatures.
- 3) Related to the ratification of legal entities of companies and/or business entities through the legal entity administration system applied by the Directorate General of General Legal Administration (DITJEN AHU) under the supervision and control of the Ministry of Law and Human Rights. In the Platform, notaries can submit/apply for the ratification of legal entities and/or business entities electronically, making it shorter and faster than using conventional/manual procedures. Authentic deeds are deliberately made in order to create legal certainty, in addition it also aims to protect the parties who make them, including for the wider community who have an interest either directly or indirectly in the rights and obligations that arise. In the realm of evidence, an authentic deed is formally and materially recognized for its legality before the court if it is made in writing (on paper) and made by an official who has the authority to do so as the applicable provisions.

3.2. Possibility of Implementing Digitalization of Notarial Authentic Deed

By legal mandate, a notary must be able to aid and safeguard individuals seeking written proof or authoritative documentation for various situations, occurrences, or legal matters. People who are appointed as notaries must readily and sincerely serve the public. For this service, the notary is entitled to receive an honorarium. A notary will be meaningless if there is no society that needs him, even though he is authorized by law (Handoko, 2019).

The slow pace of legal development in Indonesia demonstrates the potential impacts of information technology on society and the legal system. The advancements in technology bring both advantages and challenges to legal issues. The number of laws and regulations that are still a legacy of colonialism is still used today and legal products produced in terms of material and material cannot keep up with the rapid development of information technology.

To explore the potential of converting official documents into digital format, there is a need to reconsider and update the legal framework surrounding the role of cyber notaries. For the sake of realizing efficiency and effectiveness, the change in the concept of implementing the office of notary, which was originally carried out offline, is now slowly being implemented online and most importantly in the regulatory reform is expected to be able to accommodate

3 things, namely, the authority of notaries; authenticity of digital deeds; security guarantees for digital authentic deeds; legal responsibility for electronic documents/information which is the basis for making digital authentic deeds (Irawan et al., 2022).

This will be well realized if reactualization, harmonization and synchronization of various provisions of laws and regulations are carried out, including the need for changes to the UUJN-P and the ITE Law. There are a number of important factors to consider when considering the digitization of notarial documents in accordance with the use of cyber notaries:

- 1) Mechanism of proving notarial authentic deeds in digital form
- 2) Security arrangements of the identity of the notary.
- 3) Legal liability for all electronic information/electronic documents submitted by the confronter as a reference for the notary in preparing the authentic deed electronically and not limited to the minutes of the digital deed, the output/output of the digital authentic deed (copy) which is leaked due to virus attacks, hacker crimes, system unreliability, user negligence (notary & service user/client) and as a result of various other cybercrimes.

In light of the information provided earlier, in order to increase the likelihood of successfully implementing cyber notarization, it is essential to revise the current legal framework, including:

- 1) It is important to align the UUJN-P with the ITE Law by making changes to the sections regarding the powers of notaries in creating electronic official documents, including Article 5 and Article 6 of the ITE Law with the UUJN-P.
- 2) It is necessary to amend the articles in the UUJN-P to emphasize the preparation of digital authentic deeds These articles include:
 - a. Article 1 point 7 of UUJN-P which relates to the definition of a notarial deed.
 - b. Article 15 Paragraph (1) of UUJN-P which relates to the authority of a notary.
 - c. Article 18 of UUJN and Article 19 Paragraph (1) of UUJN-P which relates to the domicile and office area of a notary.
 - d. Article 38 of UUJN-P which relates to the form of deed and paper media used in making notarial deeds.
 - e. Article 39 Paragraph (1) of UUJN-P which relates to the requirements of the confronters and identifying witnesses.
 - f. Article 40 Paragraph (1) of the UUJN-P which relates to the physical reading of the deed in the presence of witnesses.
 - g. Article 44 Paragraph (1) of the UUJN-P which relates to the deed that must be read aloud by the notary before it can be signed by the parties involved and the witnesses present.
- 3) It is necessary to regulate the legal responsibility of notaries in the event of negligence committed by notaries in making electronic authentic deeds that cause leakage of electronic data / electronic documents.
- 4) It is necessary to amend Article 5 paragraph (4) of the ITE Law regarding the provision of exclusion of notarial deeds as electronic evidence.

Changes to legislation are important so that digital authentic deeds can fulfill two elements of the evidentiary stage: First, the elements of evidence, where digital authentic deeds are qualified to be valid evidence according to laws and regulations. Second, the rules of evidence, whereby digital authentic deeds, according to statutory regulations, are valid as

evidence that can be used in court because regulations govern their creation, implementation, and probative value.

If the making of electronic authentic deeds is implemented using a system that has been integrated with certain institutions, this can make it easier for notaries to verify the data used as a basis for preparing authentic deeds, this is because with the integration of the system it can in real time detect the authenticity and correctness of all legalities, considering that in carrying out their duties as authentic deed makers, notaries are only based on the principle of legal presumption.

4. Conclusion

In the digitization of notarial authentic deeds, there is a need for legal harmonization or reactualization of rules between the UUJN/UUJN-P and the ITE Law so that the UUJN/UUJN-P and the ITE Law are able to become a legal framework that regulates the digitization of authentic deeds, and notarial authentic deeds can be categorized as valid electronic documents according to the ITE Law. The possibility of implementing the digitization of notarial authentic deeds, based on the fulfillment of legal needs in the field of notary, which is not limited to the formulation of rules regarding cyber notary, digitization of authentic deeds of notary obligations on the authority to carry out cyber notary.

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