



Dynamization of cyber notary in archival regulation in Indonesia

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Abstract

Cyber notary is a concept used in describing something from the conventional public notary function and its application in the implementation of electronic transactions. Cyber Notary has the main function to certify and authenticate electronic transactions. This research aims to examine the dynamization of cyber notary in the development of civil law today and examine the regulation of cyber notary in archival regulations in Indonesia. Using a library research method with a normative research approach, examining regulations related to the concept and regulation of cyber notary in the Indonesian Archives Law. The research results that 1) The dynamization of cyber notary in the development of civil law is currently not only regulated in the Notary Office Law, but also regulated in the ITE Law and the Archives Law with all its advantages and disadvantages, 2) Regulation of Cyber Notary in the Indonesian Archives Law in Article 1 that archives can take the form of various media according to advances in information technology, besides that it is also emphasized that Article 68 paragraph (1) explicitly allows archival institutions to transfer media into electronic form or other media.

Keywords: Cyber notary, regulation, archives

Introduction

The rapid development of information technology has ultimately influenced the formation of new legal acts that have never existed before. This also has an impact on the field of law, especially the Notary profession which is required to conduct electronic attestation^[1]. Regulation on cyber notary is a part that is in contact with archives, because the notary protocol as part of cyber notary is a collection of documents or archives of all work that is the duty and authority of a notary. Notary work is always related to documents, archives, warkah (additional documents attached to the deed). Article 1 point 2 of the Archives Law Number 43 of 2009 (Archives Law) states that archives are records of activities or events in various forms and media in accordance with the development of information and communication technology made and received by state institutions, local governments, educational institutions, companies, political organizations, community organizations, and individuals in the implementation of social, national and state life.

One of the notary protocols, minuta dea (original deed), is a record of a series of legal events or actions as outlined in the contents of the deed. Likewise, with other notary protocols, for example, the clapper book is a book listing the confronters who are present before the notary where the book is made in alphabetical order containing serial numbers, deed numbers, names of the confronters, the nature of the deed and the date of the deed.

The clapper book records all legal actions that have been outlined in the deed by the notary every day. Based on its function, if it is related to the notary protocol, it is included in the dynamic archive and is an active archive because the notary protocol is used continuously without a period of time it must continue to be stored and maintained properly by the notary, temporary notary, or substitute notary or notary holding the notary protocol. There must be an official report of the handover of the notary protocol from the previous protocol holder to the recipient of the notary protocol at that time, so the responsibility of the recipient or

holder of the notary protocol is very large, there must be no loss of archives unless it is a force majeure condition. The storage of notarial protocols that are currently conventional is therefore to prevent archives from being lost, burned and so on, they are stored in a fire and termite resistant vault. The position of notary is a public official required by law to assist and protect the community in obtaining written evidence or authentication of a situation, event, or legal action. If an official act outside of their authority, it can be considered an abuse of authority^[2].

Advances in the economic field have made authority and technology interrelated. Rapid economic changes require notaries to process contracts immediately, and one of the means that can support this acceleration is information technology^[3]. Indonesian positive law has regulated cyber notary in the Notary Office Law Number 30 of 2004 (UUJN) which is related to provisions regarding information and electronic transactions, namely in the Electronic Information and Transactions Law Number 11 of 2008 (ITE Law) in the form of provisions regarding electronic storage of documents and notarial deeds which are exceptions as legal evidence in the form of electronic information. Cyber Notary in Law Number 2 of 2014 (UUJN-P) is regulated in the Explanation of Article 15 Paragraph (3) which states that "Notaries have other authorities regulated in laws and regulations, among others, the authority to certify transactions carried out electronically (cyber notary), make a Deed of pledge of waqf, and aircraft mortgages". The purpose of cybernotary is to expedite the process of creating authentic deeds by ensuring that all statements requested from interested parties are included in the authentic deed and that all actions, agreements, or conditions mandated by law have been fulfilled^[4].

Notaries have the authority to legalize transactions carried out electronically, for example the signing of a deed where one of the parties cannot be present in person because they are in different regions, so to follow the rules of the UUJN that the parties are still present before the notary with one of the parties present via teleconference. UUJN-P only

regulates transactions conducted electronically, but there are no provisions regarding the electronic storage of the original deed minutes and documents. In relation to cyber notary, the ITE Law has generally regulated the electronic storage of archives or documents, although there are no specific rules that include or mention notary documents or archives. Article 1 point 4 of the ITE Law states that "electronic document is any electronic information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar form, which can be seen, displayed, and/or heard through a computer or electronic system, including but not limited to writings, sounds, images, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people capable of understanding them."

Various types of electronic documents are an option for safer document storage for an unlimited time. This is a concrete form of digitization that can be a reference for electronic storage of notarial protocols. In addition to the storage of electronic documents related to the authority of notaries is the issuance of electronic certificates by the Ministry of Agrarian & Spatial Planning / National Land Agency in this case related to the position of Notary-PPAT considering that electronic certificates are related to the transfer of land rights which is the authority of PPAT.

Article 1 point 9 of the ITE Amendment Law states that "an electronic certificate is an electronic certificate that contains an electronic signature and identity that shows the status of the legal subject of the parties in an electronic transaction issued by the Electronic Certificate Provider". In the future, the issuance of certificates that were previously conventional with paper-based will switch to electronic. About electronic deeds in the ITE Law has not been regulated.

Deeds which are valid evidence in the legal realm based on the ITE Law are still included in the exclusion of electronic documents. As regulated in Article 5 Paragraph (4) letter b of the ITE Law that "letters and documents which according to the Law must be made in the form of notarial deeds or deeds made by deed-making officials". In this article, the deed must be in notarial form where the parties are present before the notary, not electronic documents, this contradicts the provisions in UUJN Article 15 Paragraph (3) regarding cyber notary that a notary may certify transactions electronically. In the last several decades, the subject of archives has been greatly impacted by the advancement of information technology In the digital era. Before gradually switching over digital means, archive administration was done mostly on paper. Now, managing digital archives are common ^[5].

Electronic means that there does not have to be a physical face-to-face meeting between the notary and the parties. Civil law continues to experience rapid development because it is affected by business activities. The influence will be even more prominent when the object of engagement is no longer focused on tangible objects but also on intangible objects along with the development of digital technology in various fields of human life. The existence of cyber notary is one of the solutions to protect the legal interests of the parties who bind themselves, especially on intangible objects such as crypto and asset ownership in the metaverse ecosystem. The more abstract the intangible object, the higher the economic value contained in the

binding. Such is the development of the law of engagement in the digital era. Therefore, cyber notary devices must also really be an important focus that must be prepared by the Government and the Notary profession including regarding digital filing procedures. Cyber law notary services also require a clear legal basis so that they can be used as a reference for notaries in exercising their authority to provide services to the general public ^[6].

Based on these facts, this study will discuss the problem of how is the dynamization of cyber notary in the development of civil law today and how is the regulation of cyber notary in archival regulation in Indonesia?

Research Method

This study uses a library research method with a normative research approach by examining regulations related to the concept and regulation of cyber notary in the Indonesian Archives Law. Using secondary data in the form of literature and official documents about Cyber Notary, such as books related to this research, scientific papers and journals related to this research and information quoted from the internet. The data analysis method used is qualitative analysis, which describes the dynamization of cyber notary in archival regulations in Indonesia.

Discussion

Dynamization of Cyber Notary in Current Civil Law Development

Cyber notary is a concept used in describing something from the conventional public notary function and its application in the implementation of electronic transactions. So that Cyber Notary can function as a security in the implementation of electronic transactions via the internet through the application of conventional public notary functions which means that authentic automatically or electronically by using existing public infrastructure and using electronic signatures ^[7].

Cyber Notary has the main function of certifying and authenticating electronic transactions. Certification itself means that the notary has the authority to act as a Certification Authority (trusted third party) so that the notary can issue digital certificates to interested parties. Another case with the authentication function is related to the legal aspects that must be fulfilled in the implementation of electronic transactions ^[8]. Archives in the Big Indonesian Dictionary (KBBI) have two meanings, namely

- a. Written documents (letters, deeds and so on), oral (speeches, lectures and so on), or pictorial (photos, films and so on) from a past time, stored in written media (paper), electronic (cassette tapes, video tapes, computer diskettes and so on), usually issued by official agencies, stored and maintained in a special place for reference.
- b. A place to store files (programs or data) as a backup.

Archives in English are called "archieve", while in Dutch they are called "archieff". Article 1 point 2 of Law Number 43 of 2009 concerning Archives states that archives are records of activities or events in various forms and media in accordance with the development of information and communication technology made and received by state institutions, local governments, educational institutions, companies, political organizations, community organizations, and individuals in the implementation of

social, national and state life. The deed minuta as part of the notary protocol, as well as other documents included in the notary protocol are archives and are classified as state archives which are currently still paper-based.

Sedarmayanti argues that based on its function, archives can be divided into two, namely^[9]

Dynamic Archives, are archives that are used in planning, implementing, organizing national life in general or are used directly in the administration of state administration.

Dynamic Archives consist of:

- a. Active Archives, namely archives that are still used continuously, for the continuity of work within the processing unit of an organization / office.
- b. Inactive Archives, namely archives that are no longer used continuously or the frequency of use is rare, or are only used as a reference.

Static Archives are archives that are not used directly for planning, organizing national life in general or for the daily administration of state administration.

Based on its function, if it is related to the notary protocol, it is included in dynamic archives and is an active archive because the notary protocol is used continuously without a period of time it must continue to be stored and maintained properly by notaries, temporary notaries, and substitute notaries or notaries holding notary protocols.

In the era of digitalization 4.0 (industrial revolution) towards 5.0, people must follow the rapid technological advances in various fields. There has been a shift from conventional media to digitalization and is also called the cyber world. In the world of notaries, digitalization or cyber has begun to be used in relation to the duties and authority of notaries. Edmon Makarim defines cyber notary as the role of notaries in electronic transactions with cyberspace.

Indonesian positive law has accommodated the UUJN, while what relates to the regulation of cyber notary is information technology, more precisely the implementation of information and electronic transactions. whose legal product is the ITE Law, although in the ITE Law the provisions are still general (general), namely about electronic documents, electronic signatures (digital signatures), and electronic certificates have not specifically regulated the details of e-notary or cyber notary. In addition to being regulated in the UUJN and ITE Law, the concept of cyber notary is also related to the storage of documents from the duties and authority of notaries, namely notary protocols which include state archives that must be maintained and stored safely, so that the Law on archives is also part of cyber notary in the context of storing notary protocols.

Cyber Notary Provisions in the Notary Position Law (UUJN)

The authority of a notary in accordance with UUJN-P is regulated in Article 15 Paragraph (1), (2) and (3) of UUJN. Article 15 Paragraph (1) of UUJN-P states that "Notaries are authorized to make authentic Deeds concerning all deeds, agreements, and stipulations required by laws and regulations and/or desired by those concerned to be stated in an authentic Deed, guarantee the certainty of the date of making the Deed, keep the Deed, provide a grosse, copy and quotation of the Deed, all insofar as the making of the Deed is not also assigned or excluded to other officials or other persons stipulated by law."

Notaries are fully authorized by the Law as the only official who makes authentic deeds regarding the legal acts of the

parties stated in the deed and guarantees the certainty of the date of making the deed. The professionalism, accuracy, and discipline of the notary are tested in making the deed, must be in the position of a neutral and impartial party, ensuring that the contents of the deed are in accordance with the interests of the parties and do not violate decency, public order. After making the deed, the duty of the notary is not limited to that, but is responsible for keeping the deed as part of the notary protocol, as well as providing a grosse, copy and quotation of the deed if needed by the parties interested in the deed. Other officials who can replace the authority of a notary according to the provisions of the Law are substitute notaries and temporary notaries.

The authority of other notaries in more detail is regulated in Article 15 Paragraph (2) of UUJN-P that the authority of a notary consists of

- a. Legalizing signatures and determining the certainty of the date of letters under the hand by registering in a special book. This authority is called legalization and the notary is only authorized to certify the signatures of the parties and ensure the date of the letter and stamped enough, so the parties do not need to be present before the notary. This is in contrast to notarial agreements and/or deeds that require the parties to be present before the notary.
- b. Record the letter under the hand by registering it in a special book. This authority is also called waarmeking and the notary is only responsible for recording letters under the hand by registering in a special book. The notary is not responsible for the parties signed in the letter under the hand. The notary is also not responsible for determining the certainty of the date of the letter, so it is only limited to recording or registering.
- c. Make a copy of the original letter under the hand in the form of a copy containing the description as written and described in the letter concerned. Notary has the authority to make a copy of the letter under the hand according to the contents of the letter cannot be reduced, added or omitted.
- d. Attesting the suitability of the photocopy with the original letter. The notary must ensure the match or validate the original letter with the photocopy.
- e. Providing legal counseling in connection with the making of the Deed. Notaries provide legal counseling to the public or clients who come to the office, can provide legal opinions on problems or questions from the public or clients.
- f. Making Deeds related to land. Deeds related to land are one of them Power of Attorney to Enforce Mortgage Rights (SKMHT) which is the authority of notaries.
- g. Making a deed of auction minutes. The auction minutes deed is related to the implementation of the auction at the KPKNL (State Wealth and Auction Service Office).

In addition to the authority of the notary mentioned above, another authority is in Article 15 Paragraph (3) of the UUJN-P that "notaries have other authorities that are

regulated in accordance with the provisions of laws and regulations". In the explanation of the article, what is meant by other authorities regulated in laws and regulations is the authority to certify transactions carried out electronically (cyber notary), make a waqf pledge, and aircraft mortgages. Thus, transaction certificates issued by cyber notaries are authentic deeds. This is because such authority is regulated in the law relating to the execution of notarial duties ^[10].

Cyber Notary Provisions in the ITE Law

The authority of cyber notary is still relatively new in the provisions of UUJN-P because it is related to advances in information technology, digitalization of era 4.0. Another term for cyber notary is e-notary or cyberspace. The authority of a notary is still in the scope of certifying or can be interpreted as authorizing transactions carried out electronically, but in fact these electronic transactions have been very diverse in various fields including trade, showbiz, entertainment, education and so on. With the development of information technology and communication, this has caused the world to become borderless. Cyber Notary has the main function in certifying and authenticating electronic transaction activities. Electronic Transactions are legal actions carried out using computers, computer networks, and/or other electronic media ^[11].

The Internet is the main medium for conducting electronic commerce transactions. Transactions carried out electronically are an engagement carried out by parties by using exchanging information to conduct trade through electronic media (computers). This electronic transaction is commonly known as an online contract which is actually an engagement or legal relationship that is carried out by electronic means and combines the networking of a computer-based information system, coupled with a communication system based on telecommunication networks and services (telecommunicationbased) which is further supported by the existence of an internet global computer network (network of networks). Advances in information and communication technology have made a change from conventional or face to face transactions to electronic transactions using the internet. The duties and authorities of notaries are becoming increasingly complex, and inevitably notaries must understand information technology and also the provisions stipulated in the ITE Law.

The provisions on the authority of a notary to certify electronic transactions if it is related to the main authority of a notary to make an authentic deed, then what should be analyzed more deeply, the authority to certify is indeed equivalent to a notary making an authentic deed (notarial) or the context of legalizing such a form of legalization only. This is still ambiguous if interpreted in the context of certifying. There must be implementing regulations regarding the provisions of certifying transactions conducted electronically, because the scope of electronic transactions is actually very broad. The interpretation that is still uncertain is feared to have some impact on the legal certainty of the certification of transactions carried out electronically, if the certification authority is in the form of an authentic deed then if in the realm of law, it can still be a valid evidence, because in the ITE Law the authentic deed is an exception to electronic documents, and the legal consequences of the electronic certificate are relegated to an

underhand deed. However, if the authority of this certification is the same as legalizing by ensuring the electronic signature (digital signature) of the parties or legal subjects in the electronic transaction and ensuring the date of the transaction, it will not be a legal problem in the future.

Article 15 Paragraph (3) of UUJN-P which regulates cyber notary is actually not in sync with Article 16 Paragraph (1) letter m which states that the notary is obliged to read out the Deed in front of the confronter in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a testamentary Deed under the hand, and signed at that time by the confronter, witnesses, and Notary. This article stipulates that the signing of the deed is physically present before the notary and the notary is obliged to read out the contents of the deed. This contradicts the provisions in Article 15 Paragraph (3) in relation to certifying or legalizing electronic transactions. Indeed, there must be an implementing regulation so that there are more details regarding the implementation of the cyber notary that the authority of the Notary in certifying transactions conducted electronically is the same as the authority of the Notary in the provisions of Article 15 paragraph (2) letter a UUJN-P ^[12].

As is the case with the General Meeting of Shareholders (GMS) held by a Limited Liability Company (PT) where the Notary has the authority to attend and certify or stipulate the minutes of the GMS by notarial deed. Article 77 Paragraph (1) of Law Number 40 Year 2007 on Limited Liability Companies (UUPT) states that in addition to organizing the GMS as referred to in Article 76 of the UUPT, the GMS can also be conducted through teleconference, video conference, or other electronic media facilities that allow all participants of the GMS to see and hear each other directly and participate in the meeting. UUPT has accommodated the application of technology with teleconferencing but it is still limited to the holding of GMS only and if tolerated with Article 16 Paragraph (1) letter m of UUJN-P, it is very contradictory because the GMS is held without the physical presence of its members in front of a notary. Likewise, if it is connected to the ITE Law, it is also contradictory because a notarial deed as an authentic deed is included in the exception of Article 5 Paragraph (4) letter b ^[13].

The ITE Law does not explicitly regulate cyber notary, but Article 5 of the ITE Law has mentioned about valid electronic evidence. Then in Article 11 it also mentions about valid Electronic Signatures even though it does not specifically mention certain professions related to the electronic Signature. However, considering that cyber notary is also a series of procedures for storing documents electronically and can be valid evidence, it can be assumed legally that cyber notary is included in it even though it has not been specifically regulated. Cyber Notary can simplify the process of creating deeds, but some aspects of the Cyber Notary concept itself are not yet fully developed. Therefore, more advanced technology needs to be developed so that parties do not feel disadvantaged when creating notarial deeds ^[14].

Thus, based on the three regulations that can be related to the provisions of cyber notary in Indonesia, namely UUJN, ITE Law and Archives Law, although it has not explicitly mentioned the term Cyber notary, according to the author, it can be interpreted in good faith that Indonesian civil law has

actually, accommodated regulations regarding cyber notary even though it has not referred to the rules made in accordance with the term.

Regulation of Cyber Notary in the Indonesian Archival Law

The regulation of cyber notary in UUJN is only one article and there is no detailed explanation. In this era of digitalization, there should have been regulations on notary protocols as well, where notarial deeds are part of notary protocols. All types of notary protocols included in the provisions of the notary protocol, namely Article 62 of the UUJN concerning notary protocols which are state archives in the future will switch from conventional archive storage (stacks, paper bindings) to storage in electronic documents and electronic deeds with the aim of minimizing the use of paper (paperless). This is because the storage of notary protocols must be very large because it relates to the work, duties and authority of notaries, how extensive and large the space needed for storing notary protocol archives, so that electronic storage will be more efficient and effective. The UUJN has not regulated electronic documents and electronic deeds. It should have been regulated in the UUJN because it is also related to electronic transaction certification, while still prioritizing legal certainty and electronic storage security. Regarding electronic documents and information, it still refers to the ITE Law.

The Archives Law establishes a legal framework for the management of archives, including electronic archives, in order to ensure that archives are authentic, intact, reliable, and valuable as evidence before the law. As mentioned in Article 1 that archives can take the form of various media according to advances in information technology, it is also emphasized that Article 68 paragraph 1 explicitly allows archiving institutions to transfer media into electronic form or other media. Although the Archives Law provides a general basis for electronic archives, there are no technical provisions governing the storage of protocols or minutes from cyber notary services. Whereas in practice, cyber notary, deeds and digital minutes must be managed and stored electronically. So, this creates uncertainty regarding digital protocols that are eligible to become authentic and reliable deeds when stored electronically.

Structurally, notary protocols include state archives that must be kept by notaries. However, the absence of regulation in the UUJN and the lack of technical guidance in the Archives Law has indirectly created a double legal vacuum where Notaries are not certain that they can officially store digital archives so that they do not have a valid legal status when faced with archival institutions. Based on the aspect of the management system, the Archives Law actually requires systematic and easily accessible and accountable archival management, especially in adapting to the digital era, but unfortunately there is no implementative guidance in the Archives Law.

For this reason, alignment and harmonization are needed to integrate cyber notary into the national archive system through the following steps:

- a. The Archives Law needs to be reconstructed by including clear definitions in its Articles related to efforts to harmonize the interests of digital archive storage, especially important archives related to legal

acts in cyber notary. Including audio-visual recordings as primary archives with integrity, authentication and retention criteria.

- b. The Archives Law needs to clearly regulate technical and procedural standards related to types of electronic formats, metadata standards, digital authentication evidence, encryption, backup, and long-term data preservation.
- c. UUJN, UU ITE and the Archives Law as well as the PDP Law urgently need to be harmonized so that there is no multilateralism of regulations, so as to provide legal certainty that cyber notary digital archives can be accessed, protected and accounted for according to national law.

The Archives Law has actually opened the door for electronic archives in general, but has not been able to answer specifically about cyber notary archives. There is no formal recognition in the Archives Law of digital notary protocols as legal state archives. Then there are also no technical guidelines for technology-based archive storage. To realize a valid cyber notary in the frame of national archives, it is necessary to strengthen the regulations in the Archives Law through the definition of digital notary media and technical standards for its management. In addition, legal reforms are needed, including adjustments to the UUJN and harmonization with the ITE Law, in order to provide legal certainty regarding the validity of electronic notarial deeds and to maintain the security of digital transactions. This reform is also expected to make notary services more adaptive to technological developments, while maintaining integrity and security in the notarial process^[15].

Conclusion

The dynamization of cyber notary in the development of civil law is currently not only regulated in the Notary Office Law, but also regulated in Article 5 and Article 11 of the ITE Law and the Archives Law with all its advantages and disadvantages. Article 15 Paragraph (3) of UUJN-P has regulated the cyber notary that the Notary certifies or certifies transactions electronically. However, there must be implementing regulations to provide more details regarding the implementation of the cyber notary so that it does not conflict with the obligation to read the deed in front of the applicant.

The regulation of Cyber Notary in the Indonesian Archives Law is regulated in Article 1 and Article 68 paragraph (1) that archives can take the form of various media according to the advancement of information technology, and explicitly allows archival institutions to transfer media into electronic form or other media. However, the Archives Law has not been able to answer specifically about cyber notary archives. There is no formal recognition in the Archives Law of digital notary protocols as valid state archives. Then there are also no technical guidelines for technology-based archive storage so that it is necessary to strengthen the regulation by explicitly regulating cyber notary.

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