



Legal Review of the Effect of Technological Developments on Notary Services in Making Authentic Deeds

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ABSTRACT

Technological advancements have compelled notaries to enhance their legal services to meet the evolving demands of society, leading to the adoption of the cyber notary concept. Implementing cyber notaries is anticipated to improve notarial services by enabling electronic execution of notarial deeds, thereby providing greater legal certainty for both notaries and the public. This research aims to analyze the application of the cyber notary concept in Indonesia, assess the legal certainty it offers, and identify obstacles hindering its implementation. A normative juridical method was employed, focusing on the examination of legal literature and statutory regulations. The study reveals that while cyber notaries are acknowledged in Indonesian law, their practical implementation faces significant challenges due to unclear regulations and overlapping legislation. The absence of explicit legal provisions regarding the authority of notaries to execute deeds electronically leads to legal uncertainty. The findings underscore the necessity for comprehensive legal frameworks to resolve inhibiting factors and provide clear guidelines for the implementation of cyber notaries. Establishing explicit regulations would enhance notarial services and ensure security and legal certainty for both notaries and the public in the electronic execution of deeds.

Keywords: Notary, Cyber Notary, Electronic Technology, Notary Services.

INTRODUCTION

Internet-based technology facilities are a way to maintain a social life. Therefore, humans develop means to interact that make it accessible without knowing boundaries so that human needs are fulfilled in communicating in line with current technological developments (Warjiyati, 2018).

As stated in Article 1868 of the Civil Code, notaries have the authority as public officials to provide public services, such as making authentic deeds valid written evidence (Hendra, 2012).

Information technology and electronic transactions are at the forefront of globalization. Technological advances will change people's lives, resulting in integration or convergence in technology, media, and telecommunications development (Mansur, 2015). Advances in

technology will also open up opportunities and challenges for Notaries, requiring Notaries to not only work manually but also Notaries need to utilize technological advances (Dwitriani & Santoso, 2023).

Notaries are expected to keep up with technological advances because Notaries will be expected as a third party who has a role in a conventional transaction (Sari et al., 2018). A notary has services that currently play an important role in society, not only to do deeds but also Notary as a neutral party in electronic transactions later (Makarim, 2011).

Moral principles in the profession have been systematically regulated, which will be inherent in the notary code of ethics. The norms set by professional groups in the professional code of ethics will provide direction to act appropriately to ensure the moral quality of the profession in the eyes of society. The code of ethics functions as a tool for social control, controlling whether professional group members have fulfilled their obligations. The code of ethics aims to increase dedication, professional quality, and service, avoid unfair competition, and establish good relationships with members (Shodiq & Octarina, 2022).

Based on the background above, the purpose of this research is to analyze the impact of technological advancements on the role of notaries in electronic transactions, particularly focusing on how notaries adapt their responsibilities to align with current technological developments. This research also aims to explore the integration of notary practices with information technology, ensuring compliance with legal frameworks and ethical standards. The benefits of this research are to provide insights into the development of notary services in the digital era, offering practical solutions for enhancing the quality and accessibility of these services. Additionally, this study will contribute to the academic discourse on notary practices in the context of globalization and technological transformation, serving as a reference for policymakers, legal practitioners, and scholars in formulating strategies to improve the legal profession's readiness in facing digitalization challenges.

RESEARCH METHOD

The research method used in this research is normative juridical. Normative juridical research is library legal research examining library materials or secondary data. (Soekanto, 2017). Using this research method, it is hoped that it can answer all existing problems regarding the development of electronic media today, which is associated with the work of notaries who are also required to keep up with the times. This type of research typology is Explanatory, which strengthens or tests existing research results or legal conditions to perfect and provide new nuances in applying legal theories or norms. Based on the form of research used in this research, namely the normative juridical form, the type of data used is secondary data from literature searches supported by primary data. Primary data is obtained directly from the community (Soekanto, 2017).

RESULT AND DISCUSSION

The Influence of Technological Development on the Concept of Cyber e-Notary in the Office of Notary in the Digital Era

In order to provide legal certainty, Notaries, in carrying out their profession, must be able to harmonize themselves and strive to be professional in implementing the provisions of the Notary Position Law to provide legal certainty. In order not to be subject to sanctions in the form of "fines as a form of Notary's responsibility," the Notary must see the provisions in the Notary Position Law.

To realize legal certainty, there is an essential reference for Notaries in Article 16, paragraph (1) letter (m) of the Notary Position Law, where the article regulates what Notaries, namely reading the deed, must do (Faulina et al., 2022). Regarding the presence of the parties and witnesses, namely witnesses who are present, at least two people, namely witnesses who are present when reading the letter under the hand then, will be signed by the Notary. This provision explains that the presence of the confronters and witnesses is a physical presence and needs to be authorized by a physical signature to ensure the legal certainty of the deed made by the notary.

With the development of technology such as internet media today, Indonesia has followed existing developments, for example, during the formation of Law Number 40 of 2007 concerning Limited Liability Companies. In the Limited Liability Company Law, it has been regulated that the General Meeting of Shareholders must be held physically (Buiten et al., 2023). However, along with the development of technology, the General Meeting of Shareholders can also be held or held through video conferencing and other electronic media that can be used by all of the General Meeting of Shareholders to hear, see, and participate in the meeting directly.

Technological advances in the position of Notary who carries out duties or authorities based on information technology related to the duties and functions of notaries, especially for doing deeds, have led to the concept of a cyber notary, which wants to create a simple concept where the faces no longer have to meet physically in a place (Dinata & Kurniawan, 2024).

Documents that a Notary can make with the authority are notarial deeds and deeds under the hand. In Article 5 paragraph (4) Letter b of Law Number 11 of 2008 concerning Electronic Information and Transactions (from now on abbreviated as ITE Law), there is an explanation that the deed must be done by the authentic nature and by the applicable provisions in the Law which is written and also contained in the form of a notarial deed (Kumalasari, 2019). Notaries have obstacles related to the existence of electronic signatures used as evidence because these electronic documents must be legally declared with the original that already exists first. To prove the electronic document is valid evidence, there needs to be legal force and proof that cannot be refuted, so it needs to be accompanied by evidence of instructions from expert testimony.

Notaries have concerns related to the existence of electronically signed documents that must be carried out by regulations based on applicable laws. These documents must also have

obtained certification authority for authentic deeds that must be made before a notary (Yulia, 2019).

In carrying out the position of a Notary, it is an obligation to maintain the confidentiality of all matters relating to deeds and letters or documents made to protect the interests of the parties concerned. The lack of legislation that provides legal certainty and security for owners of personal data means that the role of storing personal data is huge in reducing the occurrence of crimes related to personal data.

Implementation of the Cyber Notary Concept in Notary Services in Indonesia and its Obstacles

A cyber notary is a form of exercising notary authority using information technology (Xiong et al., 2022). This concept focuses on the electronic execution of deeds, starting with the parties' faces and ending with the deed's signature.

Applying the concept of a cyber notary to do authentic deeds in Indonesia will undoubtedly present many legal obstacles. Indonesia adheres to the civil law system, which views that authentic deeds must be made by and before a notary and that authentic deeds are perfectly evidenced by Article 1867 of the Civil Code. Countries that adhere to the standard law system see that this does not affect the strength of the deed (Alwajdi, 2020).

In implementing the concept of cyber notary, it is necessary to involve an integration of advanced digital tools and platforms. An electronic signature verified by infrastructure technology plays a vital role in the process of this concept. The cyber notary will provide an audit trail that will be used as a reference in the event of a dispute in the digital storage system for the existing electronic document archive.

The concept of cyber notary is undoubtedly a result of the emergence of the times in the era of globalization, which has caused many shifts in notary services. Cyber notary has been regulated in the Explanation of Article 15 paragraph (3) of the new UUJN (Chastra, 2021). The explanation of the paragraph provides an understanding of the essence of the concept of cyber notary; namely, this concept is a general concept that explains the function of notaries that is implemented with transactions and relationships electronically through internet media (Benny, 2015).

The concept of cyber notary will increasingly utilize the advancement of technology for notaries to make authentic deeds in cyberspace and carry out daily notary services such as the electronic signing of deeds and general meetings of shareholders conducted by teleconference.

The community needs a notary as a public official to provide notary services for those who need authentic written evidence of legal acts that occur in the community. When a notary, as a public official, has taken actions that are not within his/her authority, the notary can be said to have violated his/her authority (Hadjon, 1997). Cyber notaries will also pose challenges so that it is not only an advantage in cyberspace (Sitompul, 2012).

The condition of legal progress in Indonesia shows the need for more utilization of information technology, which not only provides benefits but also raises problems in the legal

sphere of the community. Many regulations inherited from the colonizers are still in use today, and the legal products produced in terms of material will not be able to keep up with the rapid development of information technology. Some efforts are made legally to regulate technology, namely laws that will be reflected in technological developments (Rossalina, 2016).

The concept of cyber notary can be applied in Indonesia. However, it is related to the storage of notary protocols/deeds, as has been done in Rome, Germany, Austria, and France, which have digitized the storage of notary protocols that have become state archives. The state's regulations have protected these archives (Harris & Helena, 2017).

Helen Boediono states that there are still opportunities to implement technological advances, namely the concept of cyber notary in notary services (Budiono, 1998):

1. Can attest the signature and also determine the certainty of the date of the letter under the hand (Article 15 paragraph (2) letter a UUJN);
2. Can send reports made online by notaries or their attorneys that have been authorized from the list of deeds and other lists made in the previous month with a maximum of 15 days in the following month to the Regional Supervisory Council (Article 16 paragraph (1) UUJN);
3. Can send a list of deeds conducted online relating to wills or also a list of zero to the Minister of Law and Human Rights cq Central Register of Wasiat in the following month (Article 16 paragraph (1) letter j UUJN)
4. They inquired whether the testator made an online will before the notary made the Certificate of Inheritance.

The Legal Certainty Theory regarding the notary's authority over cyber notaries can be interpreted. It was initially unknown whether it was allowed. This is due to a legal vacuum with clear legal limits, which only apply to authentication of activities for certification of electronic transactions.

Several factors cause the overall implementation of legal sustainability, especially notary services. There is an explanation related to cyber notaries in Article 15 paragraph (3) of UUJN, namely the position of a cyber notary, which is only limited to certification of transaction activities between notaries and notaries, but not on the authority of notaries with the preparation of deeds as a whole. This is also due to inadequate regulation regarding cyber notaries in Indonesia (Bungdiana & Lukman, 2023).

According to research on the implementation of the concept of cyber notary in notary services, a notary has the authority in the registration authority to delegate a document or data electronically. The notary must be trustworthy in checking the authenticity and completeness of the requirements submitted by the applicant of the certificate rather than the notary being lied to by the parties involved. This notary service will provide an opportunity for the concept of cyber notary, which in the future will significantly assist notaries in carrying out their services to maintain communication between the parties involved and notaries who will conduct

transactions through the data information cycle. This concept will run a technology-based notary service.

Notaries have been given the authority to certify transactions carried out electronically by Article 15, paragraph 3 of the UUPT. However, in the practice of the concept of utilizing this technological advancement, notaries experience obstacles in carrying out their duties and authorities, namely the presence of users of notary services to have to appear before the notary, which will show differences in the concept of a cyber notary which wants to eliminate the physical meeting aspect (Yulia, 2019). Factors that hinder the implementation of cyber notaries are caused by the formal requirements that must be met to support the validity of notarial deeds, which are also regulated in the UUJN.

In the implementation of the cyber notary concept, there are also obstacles in doing notarial deeds that cause problems related to the evidentiary power of the deed. When the UUJN has been revised, the position of electronic deeds in the cyber notary concept can be equalized and given an equal position in terms of proving the authentic deed. There still needs to be a needs to be a legal basis that explicitly regulates the application of cyber notaries, especially in using authentic deeds as trial evidence.

CONCLUSION

This study concludes that although the concept of cyber notary has been recognized in Indonesian law, its implementation still requires a lot of improvement due to the absence of clear implementing regulations. In addition, the implementation of this concept is also constrained by overlaps with existing laws and regulations. The Indonesian government recognizes the importance of transitioning towards a digital notary system to meet the evolving legal needs of society. However, its technical implementation requires advanced technology and a secure digital storage system to guarantee the integrity and security of digital transactions. One of the main challenges in implementing the cyber notary concept is the clash with the rule of law that requires the physical presence of the relevant parties in the making of an authentic deed, as stipulated in Article 16 paragraph 1 of Law Number 2 Year 2014. This creates legal uncertainty regarding the implementation of electronic deeds.

This research makes an important contribution to the future by highlighting the urgent need for clear and comprehensive regulations to support the implementation of cyber notary. In addition, this research also provides a basis for the development of policies that integrate advanced technologies in notarial services, including reliable digital security systems and supporting technological infrastructure. By overcoming existing regulatory and technical barriers, the concept of cyber notary has the potential to improve efficiency, security, and legal certainty in notary services in the digital era.

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