

The Notary as a Digital Mediator is Not a Degradation of the Notary's Function

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Abstract. *Dispute resolution in Indonesian law is carried out in two ways, namely litigation settlement and alternative dispute resolution or out of court. In the course of their duties, notaries often to act as mediators before the disputing parties. However, for deep and substantial dispute resolution, the notary is not a party the authority to give a decision or sentence. It is the judge or certified mediator who is authorized to give a decision or sentence on a legal dispute. A notary's duties in dispute resolution are limited to witnessing and certifying documents. These duties are currently facilitated by technological developments, namely through the e-notary, e-signature and certification authority systems. The digitalisation of notaries certainly facilitates the work of notaries, but it does not mean reducing the functions of existing notaries.*

Keywords: *Digitalitation; Mediator; Notary.*

1. INTRODUCTION

In Indonesia, dispute resolution is carried out in 2 ways. Litigation resolution is usually carried out in a long process with a referee who determines whether a case or dispute is right or wrong. Current legal developments come to a time makes it easier to resolve simpler legal problems without the involvement of the judiciary which of course takes quite a lot of time and costs. Dispute resolution outside of court is through alternative dispute resolution through cooperation (cooperative).¹ This dispute resolution process is actually not something new in the development of law in Indonesia, the Indonesian people are already attached to the topic of discussion and deliberation. Concretely, the form of dispute resolution is "Mediation". This method is carried out by bringing together the disputing parties to discuss and convey views between the wishes of both the first and second parties with the help of a third party, namely the "Mediator", of course through this process a middle point is found and a solution to the dispute occurs between the parties is found.

Currently, the mediation process p. s become an effective and efficient dispute resolution method, with affordable costs and provides wider means for parties to find justice. The process prioritizes negotiations to reach an agreement between the parties

¹Usman, Rachmadi, *Pili p. n Penyelesaian Sengketa di Luar Pengadilan*, PT. Citra Aditya Bakti, Bandung, 2003, p.3

experiencing a dispute. Indonesian society upholds the belief in good friendly relations with a family spirit and maintaining good relations with business partners rather than momentary gain if a dispute arises. Resolving a dispute in court may result in huge profits if you win, but the relationship suffers. Saving one's face or good name is an important thing is sometimes more important in the process of resolving disputes in countries with Eastern culture.² Fundamentally, the spirit of dispute resolution through mediation is non-litigation, namely resolving disputes outside of court or often referred to as peaceful efforts. The normative nature of mediation is subject to Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court, in civil cases this is mandatory as a condition. This provision makes mediation efforts in civil cases as litigation mediation.

Through these regulations contained in Article 3 paragraph (1) of the relevant Perma, all judges, mediators, parties and/or their proxies in the legal space are obliged to carry out the mediation process. Article 17 paragraph (1) in this regulation also requires on the day of the trial been determined and attended by the parties, the judge conducting the examination of the case requires the litigants to carry out mediation efforts. This arrangement is also in accordance with the applicable procedural provisions in article 130 HIR and/or article 154 RBg. Mediation plays a very important role, especially in resolving family divorce cases in an effort to reduce the divorce rate, because mediation is one of the many efforts to find solutions to the problems of married couples who are experiencing conflict in the household. Mediation is seen as an effort to reunite household.

Notary is a profession in the legal space a role in the world of civil law. A notary plays the position of a public official whose authority is in making authentic deeds. In carrying out their duties, a notary must prioritize the principle of prudence, this is related to the notary's authority which is bound by legislation.

Information technology is a driving factor in the revolution in the legal profession. Richard Susskind interprets information technology as a driver for creating new possibilities to provide more legal services with minimal and efficient funding.³As time goes by, the technology used by humans is increasingly advanced. The essence of using increasingly advanced technology is to help humans carry out their activities. Currently, notaries play an important role in people's lives and the progress of the Indonesian economy. All forms of deeds made by a notary are authentic evidence, which provides legal certainty for the public. Written evidence possesses authentic characteristics regarding circumstances, events or legal actions.⁴Notaries as public officials who have the authority to make authentic deeds can be burdened with responsibility for their actions in connection with their work in making these deeds. Notaries are also required to work by always applying a professional code of ethics, where a professional code of ethics is a moral ethic specifically created for the good of the profession

²Fatahillah A. Syukur, *Judicial Mediation in Indonesia* (Bandung: Mandar Maju, 2012), p. 4.

³Susskind, R.E, *Tomorrow's Lawyers: An Introduction To Your Future*, United Kingdom: Oxford University Press, 2013), 57.

⁴Nyoman United Putra Jaya, *Legal Politics* (Semarang: Diponegoro University Press, 2014), 117

concerned, because each profession possesses its own identity, nature or characteristics and professional standards in accordance with the needs of each profession.⁵

Basically, notary service activities in the world currently utilize digital automation technology service facilities known as Cyber Notary, Remote Notary, or Electronic Notary (e-Notary) where this method is starting to be implemented in several countries. This term is used to describe the combination of the conventional functions of a notary with its electronic application.⁶The main function of implementing e-Notary is to carry out the certification and authentication process in electronic transaction traffic. Certification itself means the notary possesses the authority to act as a trusted third party. With the Certification Authority, notaries can issue digital certificates to interested parties. Meanwhile, the authentication function relates to legal aspects must be fulfilled in carrying out electronic transactions.⁷E-Notary can also be developed and applied in Indonesia. Moreover, the application of the e-Notary method is starting to become a necessity for developments in the notary sector which will later be able to support growth in various other sectors.

Article 15 paragraph 3 UUJN opens up opportunities for notarial activities to be carried out electronically. Furthermore, in Article 16 paragraph 7 there is an opportunity to hold an e-Notary for electronic documents and electronic deeds because reading a deed before a notary is something is not mandatory if the parties choose not to the deed read out because the parties read it themselves.⁸However, the problem is if we refer to Article 44 paragraph 1 which basically explains the signature of an authentic deed must be the signature of the person present and the notary himself, real and direct, not using an electronic signature, this will lead to conflict between norms and overlapping legal regulations. In Indonesia, in this case UUJN concerns the provision of e-Notary services.

Apart from that, there are no statutory regulations explicitly provide permission for the signing of authentic deeds to be done electronically and it is also feared there is no adequate security system for notary digital signatures will affect the principle of publicity. On the other hand, implementing e-Notary in Indonesia can narrow the gap between regions or regions so the use of notary services is no longer limited to notary work area regulations as regulated in Article 18 UUJN. In this way, it will enable faster, more effective and efficient notary services in facilitating all matters of the parties who need to obtain certainty and legal protection for all activities may arise as a result.

⁵ Muhammad Erwin and Amrullah Arpan, *Legal Philosophy: Searching for the Essence of Law* (Palembang: Sriwijaya University, 2008), 226.

⁶ Delia Mirza Avelyne, "Application of E-Notary in Electronic Transactions in View of Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE)," *Legal Spectrum Journal* 18, No. 1 (2021): 15-22.

⁷ Emma Nurita, *Cyber Notary: Initial Understanding of Thought Concepts*, (Bandung: Refika Aditama, 2012), 4.

⁸ Litha N. Mallolongan and Hendry J. Noor, "Opportunities for Implementing Electronic Deed Minutes of Storage Towards the E-Notary Era Based on Law no. 2 of 2014 concerning the Position of Notaries" *Notary Law Journal* 2, No. 1 (2023), 55.

2. RESEARCH METHODS

This research is empirical legal research or legal research uses secondary data as initial data which is then continued with primary data using literature study and combining it with field data.⁹ As empirical legal research, the data sources used are secondary data, consisting of primary legal materials and secondary legal materials. Analysis of research data was carried out qualitatively, namely comparing or applying applicable laws and regulations, opinions of scholars (doctrine) and other legal theories. Research conclusions are prepared deductively, namely drawing conclusions starting from the general to the specific.

3. RESULTS AND DISCUSSION

3.1 Digitalization of Notaries

E-notary or also known as Cyber Notary, is a concept utilizes technological advances in carrying out the duties and authority of a Notary. From the advantages and problems arise, cyberlaw is created which can be narrowly interpreted as a legal aspect whose term comes from cyberspace law, the scope of which covers every aspect related to individuals or legal subjects who use and exploit internet technology starting when they start online and enter cyberspace or virtual world. With the existence of cyberlaw, notaries are required to be able to utilize internet technology to provide services to the wider community. These services will fall under the concept of e-notary or cyber notary.

One of the benefits of carrying out an e-notary is the services in companies or Limited Liability Companies (PT), which will facilitate transactions between parties who live far apart so distance is no longer a problem. S p. reholders who are in America, Japan or Singapore can take part in the GMS using teleconference media with s p. reholders in Indonesia, witnessed by a notary in Indonesia. So, the physical presence of the s p. reholder is not required. S p. reholders who are abroad can be considered to still attend the GMS and their voting rights are still counted in the attendance quorum. The concept of holding a GMS by teleconference is regulated in article 77 paragraph (1) of the PT UUPT, which states holding a GMS can also be carried out via teleconference, video conference or other electronic media which allows all GMS participants to see and hear each other directly and participate.

In Japan, e-notary regulations began in 2000 and in the same year, Japan issued additional laws regarding electronic authentication for all companies.¹⁰ One of the authorities of Notaries in Japan in terms of implementing e-notary is authenticating electronic documents.¹¹ Other authorities include determining the exact date on electronic documents, maintaining electronic documents been notarized, providing copies of electronic documents (maximum three copies), stating electronic documents

⁹Tersiana, A. Research Methods. Jakarta: Great Children of Indonesia, 2018.

¹⁰ K. Yamamoto, "National Report Japan, Notary in Tokyo", Journal Notarius International 1, (2000), 41, <https://www.koshonin.gr.jp/pdf/english2.pdf>

¹¹ Andrew, M Pardieck. "Executing Contracts in Japan," accessed October 20, 2023, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2667858

been notarized by a notary not yet reached three copies.¹²The development of e-notary in Japan shows the law must develop in line with the times.¹³

The biggest problem in implementing e-notary in Indonesia is not related to authentication, in Indonesia the implementation of agreements involving the parties can be done by logging into the existing website, in which there is the contents of the agreement or clause submitted by the first party for subsequent purposes by simply pressing option to agree by the second party as a form of agreement to the agreement made. This is done without the need to use a signature which is basically like a general agreement. This process is called e-signature or electronic signature. An electronic signature functions the same as a signature on paper. What is called the "Functional equivalent approach".¹⁴ Electronic signatures the function of being a means of authentication and verification in terms of the identity of the signer, and the perfection and authenticity of electronic information. This refers to Article 53 paragraphs (1) and (1) of Government Regulation Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions.

As a result, the productivity of business people and consumers is increasing because there is effectiveness in carrying out business actions using electronic systems. This convenience in the process of making a notarial deed can be implemented at the face verification stage. This authentication process can be carried out by collaborating with a trusted third party or Certification Authority Institution which can provide a guarantee of the authenticity of the digital signature certification. This institution performs the function of tabulating data and digital storage of signatures used by parties, verifying the authenticity and correctness of data transformation and collecting other data. Trusted third parties or Certification Authority Institutions are organs are trusted to provide certainty or authenticity of the identities of the parties. Another task is to validate the public key and private key pairs owned by the parties. The certification process to obtain approval from the Certification Authority can be divided into 3 stages¹⁵:

1. Customers or subscribers create their own pairs of private and public keys using software on their computer
2. Show proof of identity as required by the Certification Authority.

¹² Nippon Koshonin Regokai. "How To Make Good Use Of Japanese Notaries," accessed October 20, 2023, <http://www.koshonin.gr.jp/pdf/en.pdf>.

¹³ Rahmida Erliyani and Siti R. Hamdan, *Notarial Deeds in Proving Civil Cases and the Development of Cyber Notary* (Yogyakarta: Dialektika, 2019), 64.

¹⁴ Edmon Makarim, *Notary & Electronic Transactions: Legal Study of Cyber Notary or Electronic Notary* (Jakarta: Raja Grafindo Persada, 2016), 50-51.

¹⁵ Muhammad Fernando and Abdul Salam, "The Urgency of Trusted Third Parties as a Reference for Digital Signature Authentication in Making Notarial Deeds" *Journal of Social Sciences and Education* 7, no. 1 (2023), 329.

3. Proving he p. s a private key can be paired with the public key without p. ving to reveal the private key.

After this process is carried out, parties can carry out transactions, transfer messages and various kinds of activities using a system is accommodated by the internet in a valid and safe manner. E-Signature works by creating it through a cryptographic system, an implementation mathematical system is directly related to c p. nging information into another pattern cannot be understood and sent back as before. This authentication helps the notary's work in carrying out face verification. So the question arises, w p. t will p. ppen to the notary's function if this authentication application is used in its entirety in the case of e-notary implementation?

The idea of e-notary in terms of Authentication helps the notary's work in carrying out face verification. There are various cases of false statements which are statements are not true compared to actual information, this relates to deeds made by a notary whose contents conform to the wishes of the parties but the parties provide dishonest information does not correspond to the actual situation. Obviously this is detrimental to the position of the notary whose information is stated in the form of a notarial deed. The implication of loss is not limited to the position of the notary but to other parties who feel they suffered losses from deeds made with false information. It cannot be denied the emergence of lawsuits can cause losses to the notary who is involved in the legal matters of the parties in dispute based on the deed he or she p. s made. Through Article 16 paragraph 1 letter c UUJN, in carrying out their duties, the Notary must attach letters and documents as well as fingerprints to the minutes of the deed. The existence of digital use can be developed with E-signature which accommodates fingerprints as proof of authentication of the parties' digital signatures. This digital use can also refer to the implementation of the Indonesian Notary Association (INI) Congress in collaboration with four Electronic Certification Organizing Institutions (PSrE), Privy, Peruri, Press Aja, and VIDA.

3.2 Notaries as Digital Mediator

Professions provide legal counseling include advocates and notaries. Advocates greater legal counseling obligations compared to notaries. Legal counseling carried out by advocates can take the form of legal counseling in the form of consultations provided to the public either through print, electronic media, or directly/face to face; socialization of various applicable regulations including legal services been provided, and advocates the right to receive an honorarium. Notaries only provide counseling to clients who will make deeds to them. Notary legal education can be carried out by providing correct understanding to the audience. The notary must explain the contents of the authentic deed been made. Not everyone who makes an authentic deed to a notary can properly understand the deed. Notaries do not receive honoraria for providing legal counseling to their clients. The role of a notary in providing legal education is carried out in order to assist in making authentic deeds and this is a unit cannot be separated from one another. This is in accordance with the provisions regulated in article 15 paragraph 2 letter e of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries which states firmly notaries the authority to also provide legal counseling in connection with the making of deeds.

Notaries adopted technology in their operations to increase efficiency. Notaries use software, document management, electronic signatures and technology-based systems to witness and certify transactions. Some notaries are also involved in mediation and dispute resolution in addition to their role in documenting transactions.

Notaries play a role in resolving disputes as mediators or intermediaries in several situations. This can be done in situations where the parties involved in the dispute agree to find a solution together under the guidance of a notary.¹⁶ Notaries can act as mediators in the mediation process. Mediation is a process involves the disputing parties meeting with a neutral notary, who helps them communicate, negotiate and find a solution together. Notaries try to help disputing parties reach a peaceful agreement without the need to involve formal legal processes such as court. This can save time and costs. Notaries help facilitate communication between parties to a dispute, helping them understand each other's perspectives and interests. This can help reduce tensions and enable parties to find mutually beneficial solutions.

Notaries often help disputing parties to find mutually beneficial solutions and reach peaceful agreements. A notary can help formulate an adequate and practical solution. If the disputing parties reach an agreement, the notary can assist in preparing the agreement documents and agreed terms.¹⁷

With their legal knowledge, Notaries can provide legal advice regarding agreements reached in the mediation process. The notary can provide testimony or proof of authentication of the agreement reached in notarial mediation so the agreement p. s legal force. Mediation in notarial practice is often used as an alternative to avoid lengthy and expensive court processes. This gives disputing parties the opportunity to reach a peaceful solution with the help of a notary as a mediator who is knowledgeable about law and ethics.

The role of notaries in dispute resolution is very limited in many jurisdictions. Notaries usually a more limited role compared to courts or mediators who are specially trained in dispute resolution. In the eyes of the law, notaries usually the following roles:¹⁸

1. Watching the document. Notaries the authority to witness the signing of legal documents. This is an important role in ensuring the document p. s been legally and authentically signed. The notary simply verifies the signer of the document is the actual party and p. s signed the document voluntarily.

2. Validate signature. A notary can certify a signature on a document, ensuring the signature is valid and authentic. This proof of authentication is required in several legal transactions.

¹⁶ Sembiring, Y. The Position of Notaries as Certified Mediator Inside and Outside the Court. (Doctoral dissertation, University of North Sumatra). 2019

¹⁷Cindarputera, R., & Putra, M. F. M. Authority of Notaries in Legal Counseling and Mediation Issues. JISIP (Journal of Social Sciences and Education) Vol 6 No 3. 2022.

¹⁸Sari, E. P. Settlement of Notarial Disputes Through Mediation Efforts by Notaries. Indonesian Multidisciplinary Journal, Vol 1 No. 3, 2022. P. 944-952.

3. Document transactions. Notaries a role in documenting transactions involving notarial deeds. They create notes describing transaction details, signatures, identification of parties involved and other evidence.

4. Providing a notary certificate. A notary can provide a notarial certificate confirming the signature or document is valid and p. s been provided by the actual party.

5. Documentation of Witness Statements. Notaries can document witness statements in certain situations can be used as evidence in legal proceedings.

However, a notary does not the authority to decide or substantially resolve disputes. Notaries do not the authority to give legal decisions or hold trials.¹⁹For more substantial dispute resolution, the disputing parties must access the judicial system appropriate to the jurisdiction or use a certified mediator in dispute resolution. The position of a notary is as a witness and ratifier of documents, and the role of the notary mainly focuses on the authentication and documentation aspects of transactions. For more in-depth dispute resolution, parties must seek assistance from parties with authority in dispute resolution, such as a judge or mediator.

To resolve in-depth and substantial disputes, the notary is not the party who p. s the authority to give decisions or punishments.²⁰The parties involved in the dispute need to access the justice system or use a certified mediator in dispute resolution to find a more substantial and legally compliant solution. Judges and mediators different roles in assessing, deciding and helping to reach agreements in legal disputes. It is important to understand the role and authority of each entity in the context of dispute resolution to ensure the resolution found is in accordance with the procedures and laws applicable in the particular jurisdiction.

The position of a notary as a witness and ratifier of documents in dispute resolution is increasingly made easier by the existence of information technology, so it is known as digitalization of mediators. In terms of document validation, notaries can utilize the e-notary system. Meanwhile e-signature and Certification Authority are used to provide certainty or authenticity of identity.

The existence of digitalization in carrying out notary duties does not mean a degradation of the notary's function. In fact, making notary tasks easier through digitalization will give notaries more time to serve the public and focus on completing their work in making quality authentic deeds without p. ving to be bothered by clerical tasks. Through digitalization of notaries, it is hoped the credibility of notaries will increase as a result of the higher quality of the notary's work.

4. CONCLUSION

¹⁹Iskandar, B. N. The Position of Notarial Deeds in Resolving Trademark Removal Disputes Outside of Court. *Notary Journal*, Vol 1 no. 1 of 2021. P. 49-68

²⁰ Panjaitan, W. N. Deed of Peace by a Notary as an Alternative Mediator for Dispute Resolution Outside of Court. *PATTIMURA Legal Journal*, Vol 1 No. 3 of 2022. P. 222-230.

In Law no. 2 of 2014 concerning Notary Services, which is the main guideline for providing notary services, still contains a legal vacuum regarding the implementation of publicity for e-Notary services in Indonesia. However, there is a big opportunity to provide publicity for e-Notary services, which can be done by looking at the prospects for providing e-Notary services. Based on the provisions of Article 15 paragraph 3 of Law no. 2 of 2014 concerning Notary Services which opens up opportunities for notarial activities to be carried out electronically and there are other authorities attached to the notary as long as the making of the deed is not otherwise excluded by law. Notary regulations in guaranteeing the authenticity of electronic transactions play a role in legalizing (certifying) electronic documents by participating in affixing electronic signatures digital certificates issued by institutions are affiliated with the Certification Authority, namely the Ministry of Communication and Information, which is the overall authority to administer electronic certification. (Certification Authority) and the role of notaries in issuing electronic certificates through electronic certification providers.

5. REFERENCES

Books:

- Erliyani, Rahmida dan Siti R. p. mdan. 2019. *Akta Notaris dalam Pembuktian Perkara Perdata dan Perkembangan Cyber Notary*. Yogyakarta: Dialektika,
- Erwin, Mu p. mmad dan Amrullah Arpan. 2008. *Filsafat Hukum: Mencari p. kikat Hukum*. Palembang: Universitas Sriwijaya,
- Jaya, Nyoman S. Putra. 2014. *Politik Hukum*. Semarang: Universitas Diponegoro Press,
- Makarim, Edmon. 2016. *Notaris & Transaksi Elektronik : Kajian Hukum Tentang Cybernotary atau Electronic Notary."* Jakarta: Raja Grafindo Persada,
- Nurita, Emma. 2012. *Cyber Notary: Pema p. man Awal Dalam Konsep Pemikiran*. Bandung: Refika Aditama,
- Syukur, Fatahillah A., 2012. *Mediasi Yudisial di Indonesia*. Bandung: Mandar Maju,
- Usman, Rachmadi, *Pili p. n* .2003. *Penyelesaian Sengketa di Luar Pengadilan*, PT. Citra Aditya Bakti, Bandung,

Journals:

- Avelyne, Delia Mirza. "Penerapan E-Notary Dalam Transaksi Elektronik Ditinjau Dari Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik (ITE)." *Jurnal Spektrum Hukum* 18, No. 1 (2021): 15-22
- Cindarputera, R., & Putra, M. F. M. Kewenangan Notaris Dalam Persoalan Penyulu p. n Hukum Dan Mediasi. *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* Vol 6 No 3. 2022.
- Fernando, Mu p. mmad dan Abdul Salam, "Urgensi Trusted Third Party Sebagai Acuan Autentifikasi Tanda Tangan Digital Dalam Pembuatan Akta Notaris" *Jurnal Ilmu Sosial dan Pendidikan* 7, No. 1 (2023), 329.

- Iskandar, B. N. Kedudukan Akta Notaris Dalam Penyelesaian Sengketa Peng p. pusan Merek Di Luar Pengadilan. *Notary Journal*, Vol 1 no. 1 tahun 2021. p. l 49-68
- Mallolongan, Lit p. Nabilla dan Hendry J. Noor. "Peluang Penerapan Penyimpanan Minuta Akta Secara Elektronik Menuju Era E-Notary Berdasarkan Undang-Undang No. 2 Tahun 2014 Tentang Jabatan Notaris." *Notary Law Jurnal 2*, No. 1 (2023): 55.
- Panjaitan, W. N. Akta Perdamaian Oleh Notaris Sebagai Mediator Alternatif Penyelesaian Sengketa Di Luar Pengadilan. *PATTIMURA Legal Journal*, Vol 1 No. 3 Tahun 2022. p. l. 222-230.
- Sari, E. P. Penyelesaian Sengketa Kenotariatan Melalui Upaya Mediasi oleh Notaris. *Jurnal Multidisiplin Indonesia*, Vol 1 No. 3, tahun 2022. p. l 944-952.
- Sembiring, Y. Kedudukan Notaris Sebagai Mediator Bersertifikat di Dalam dan di Luar Pengadilan. (Doctoral dissertation, Universitas Sumatera Utara). 2019
- Yamamoto, K "National Report Japan, Notary in Tokyo", *Journal Notarius International* 1, (2000), 41, <https://www.koshonin.gr.jp/pdf/english2.pdf>

Internet:

- Regokai, Nippon Koshonin. "How To Make Good Use Of Japanese Notaris." accessed on 20 October 2023. <http://www.koshonin.gr.jp/pdf/en.pdf>.
- Pardieck, Andrew M. "Executing Contracts in Japan." accessed on 20 October 2023. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2667858