

Legal Review on Prospects for Filling in The Form of Notary Protocol in Electronics Form and Legal Power

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Abstract. The purpose of this study is to 1. To know and analyze the prospects for a notary protocol archiving in electronic form, 2. To identify and analyze the force of law on notary protocol archiving in electronic form. The data used in this research is secondary data is data obtained through library research. Secondary data in this study is divided into two (2) in the form of primary legal materials and secondary law to support the study, then analyzed with descriptive analysis method.

Based on the results of data analysis concluded that: 1) the prospect of a notary protocol archiving in electronic form can be judged from the aspect of economic and legal aspects. Economically, the electronic storage notary protocols aimed at more practical, efficient, cheap and safe. While the legal aspects, can assist and facilitate the legal proceedings related to the rules of evidence that electronic evidence. 2) The legal force of proof protocol notary electronically stored in evidence in the field of civil law can only serve as a backup and not as a copy of which has no binding force, due to the restrictions given by the ITE Law in Article 5 (4) that the electronic document that does not qualify the authenticity of the documents as stipulated in Article 1 point 1 UUJN Amendment and Article 1868 of the Civil Code, with the idea or discourse on the transfer protocol notary of conventional (paper based) into an electronic (digital based) then the notary profession in carrying out the authority and obligation to keep archives and documents in a notary's protocol will become more effective and efficient.

Keywords: Normative Juridical Studies, Protocols Notary, Electronics.

1. Introduction

Marital Indonesia is a country that has a law system. In undergoing social life of nation and state, a very important point is the enforcement of law, good law, written or unwritten law. Subsequently enacted laws that will affect the relations between legal subjects. All of which have the right and obligation to execute the rule of law has been formulated. Guaranteeing the rule of law, order, and protection of the Law that core truth and justice.⁴ No doubt every man who is the subject of law have their own interests that may collide with each other at any time and sometimes contentious. With the law, disputes are minimized as much as possible so that all the goals each community can still happen.

Notary as a public official is a legal profession that has a very strategic position in the development of the Indonesian nation. Notary is a job that has a special skill that requires extensive knowledge and a heavy responsibility to serve the public interest. Notary born because people need it, not deliberately created and then position the new socialized to the public. Notary is not placed in the judiciary, the executive or the

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⁴ Supriadi, 2008, *Etika & Tanggung Jawab Profesi Hukum di Indonesia*, Jakarta, p.29.

judiciary for Notarial expected to have a neutral position. Notary held or presence is desired by the rule of law with a view to help and serve the people who need written evidence that is authentic about the circumstances, events or legal actions.

Currently the Act No. 30 of 2004 concerning Notary amended by Act No. 2 of 2014 concerning Notary (hereinafter referred UJNP). Notary Understanding referred to in Article 1 no. 1 UJNP is competent public officials to make the authentic act and have more authority as referred to in the Act. One one legal aid to resolve the legal dispute can be met by a Notary due Notary make written evidence have the strength of evidence is perfect. The jurists found notarial deed can be accepted in court as a tool buktiyang absolute about it, but nevertheless are held denials with evidence to the contrary (tegebejis) by witnesses, who can prove that what was described by the Notary in aktanya not true.⁵

Notary role in resolving a legal dispute is through a deed that serves as a tool to recall the events that have occurred, so that the authentic act in the form of a notarial deed by its nature is known in the form of Partij deed and deed verbal. Notaries charge mengkonstantir the will of the parties to be an agreement in a legal act (*Partij Acten*) or mengkonstantir a legal event in deed the minutes (process Verbaal Acten).⁶ Partij the deed or deed of the parties is a deed not only contain what is seen and experienced by notaries also includes what is promised or determined by the parties to Notary. Deed Verbal or official certificate that deed which contains only what is experienced and witnessed by a notary as a public official.

Article 16 point (1) letter b UJNP mention one being a liability for a Notary Public is a deed in the form of Minuta Deed and save them as part of the protocol Notary. According to the Article 62 UJNP while consisting of Notary Protocols are:

- Minuta deed.
Minuta original deed is the deed that includes the signatures of the applicant, witnesses and notaries who are saved as part of Notary Protocols.
- Repertorium / register the deed.
In this Repertorium, every day Notary deed records all created by or before him in the form of a deed or originali minuta stating the order number, the monthly number, the date, the nature of the deed and the names of the applicant.
- The book lists the deed under the hand of its signatories Notary (Legalization).
Legalization is legalized / Notary testament to the signing of the original document in the presence of a Notary, the Notary ensures that the correct identity of the parties and the time of signing. Notary store copies of documents that have been validated and copy the identity of the parties. Legalization numbers began from no. 01 annually. Writing No. Legalization: Leg. 01/2014.
- The book certificate listing the hands listed below (waarmerking).
Waarmerking is register / original registration documents under the hand wherewith signed by the parties. The benefit is that the Notary only guarantees that the document never existed and shape corresponding stored contents Notary.
The book list will.
Every month Protest Notary Deed conveying list and if not there then still required to be made with "NIHIL".
- Another book list must be kept under the provisions of the legislation.

⁵ Liliana Tedjasaputro, 1991, *Malpraktik Notaris dan Hukum Pidana*, Agung, Semarang, p. 4.

⁶Habib Adjie, 2008, *Hukum Notaris di Indonesia*, (TafsirTematik Terhadap UU No: 30 Tahun 2004 Tentang Jabatan Notaris), PT. Refika Aditama, Bandung, h.40.

Notary Deed is authentic act which otensitasnya persisted, even to the Notary had died. For that, there is an obligation to keep the Notary deed of which he had made as part of the protocol well, though Notaries concerned has died.

Written evidence in civil cases is the main proof, because the traffic in civil cases are often people with intentionally providing a proof can be used if a dispute arises and the evidence provided was typically in the form of writing. From the evidence it is a class writing very valuable for verification, which is called the certificate.⁷ And in between the letters and writings of the so-called certificate there was one more group that has a special strength of evidence that so-called certificate is authentic. According Pasal 1868 Book of the Law of Civil Law, an authentic deed is a deed which is in the form prescribed by law, be made by or before a public employee who is authorized to the place where the certificate was made. The deed the other, so that is not authentic is called certificate under the hand.

Notaries are obliged to keep the good deed / protocol while he served as a notary. But in certain cases the protocol must be submitted to the recipient Notary protocol. This is as dictated in Article 62 UUJN, When Notary concerned:

- Die;
- Has ended his tenure;
- Ask themselves;
- Not being able to spiritually and / or physically to carry out the duties of office
- As Notary continuously more than 3 (three) years;
- Appointed as State officials;
- Moving office area;
- Suspended; or
- Dishonorably discharged.

Article 63 paragraph (5) UUJNP states that: Notary Protocols other at the time of delivery was 25 (twenty five) years or more handed over by the Notary Public Notary protocol receiver to the Assembly Regional Supervisor (abbreviated as MPD). Article 70 UUJN Furthermore, regarding the authority of the Regional Supervisory Council, said one of the authorities Regional Supervisory Council is to determine the Notary Protocol storage area at the time of the handover protocol notary are aged 25 (twenty five) years or more.

Head of Information Technology Central Board Indonesian Notary Association (PPINI) Ismiati Dwi Rahayu not believe this provision could be implemented. How could the MPD is able to store thousands of protocols notary who has aged 25 years in office if the assembly supervisor MPD itself does not have an office. In fact, the MPD has stood since 2004. Because MPD does not have an office, the notary's protocols are now stored at the notary's office. Reporting notary office administration of all activities to the Regional Supervisory Council (MPD), are in practice still continues to be in written form (based on paper). It felt less effective and efficient, in addition to the issue of the place is also a lack of time for the MPD to go directly monitoring the activities of a notary in each office is quite a lot in the region. Has become a liability for the MPD for a notary protocol periodically check once a year. But in fact in some areas of the MPD notary work is still not able to perform its obligations stipulated by the law. That is, the provision of Article 63 paragraph (5) UUJN can not be executed properly. Likewise with the provisions of Article 1 paragraph 13 of Notary Law. This issue was further

⁷ Subekti, 2003, *Hukum Pembuktian*, PT. pradnya Paramita, Jakarta, p.25.

strengthened with no solution of the Notary Act itself. Law has not set firmly permissibility of storing and maintaining electronic notary protocol.⁸

This reality is considered should be examined to obtain correspondence between the rules that have been imposed by the practice actually happened. Therefore, the authors interested in studying the "Legal Review On Prospects For Filling In The Form Of Notary Protocol In Electronics Form And Legal Power".

Research Methods

In this study the authors use the research method normative juridical literature, this is done to obtain secondary data is data obtained by the research literature. This method is used to obtain scientific data and information relating to this writing, can be a literature such as books, rules and regulations as well as other information sources in written form.

2. Results and Discussion

2.1. Archiving Prospects In The Form Electronic of Notary Protocol

Notary is a legal professional officer or sworn to act according to the law should be said that the notary is indispensable for legal certainty and to prevent their actions tort. Therefore, for any activity and aktenya, notaries can be said to be responsible for the full so that the quality of the documents classified as an authentic deed and have the power executorial.⁹

In accordance with Article 16 (1) b and e UUJN which requires every Notary to keep minutes of the deed as part of the protocol Notary and obliging every Notary to issue Grosse deed, a copy of the certificate or certificate quotation based on minutes of the deed at the request of the parties or experts heir of the parties. Technology offers a way to save a notary protocol more practical, secure, and efficient, because of technological advances accelerated the notary must follow the development in serving the community.

As for the prospect of a notary protocol archiving in electronic form seen from several aspects, namely:

- Filing Protocol Basic Notary Law in Electronic Form; Pursuant to Article 15 paragraph (1), Article 16, paragraph (1), Article 63 and Article 65 UUJN that the notary responsible for storing certificates and notary protocol during his tenure and will be continued by the next notary who succeeded him. The work of notaries still hung on the paper as a medium, so it takes the rooms were spacious and fairly expensive maintenance to secure the files.
- Regulations that support Archiving in the Form of Electronic Notary Protocol; The regulations that support the implementation of the transfer of notary protocols in electronic form in Indonesia, namely:
 - In Law and Information Technology Articles 5 and 6 which admits of electronic documents as legal evidence;
 - In Act No. 43 Of 2009 on Archives;

⁸ <https://www.hukumonline.com/berita/baca/lt532c49f3cbb01/notaris-bingung-dimana-harus-menyimpan-protokol-notaris>, Accessed to Wednesday 9 November 2018 at 18:30 pm

⁹ Edmon Makarim, 2012, *Notaris & transaksi elektronik: kajian hukum tentang cyber notary atau electronic notary*, PT. Raja Grafindo Persada, Jakarta, p.7

- In Act No. 8 of 1997 concerning Corporate Documents;
- In Notary Law Article 15 (3) which has the authority to another notary stipulated in legislation.
- Archiving Functionality In The Form Electronic Notary Protocol. The function and purpose of electronic storage of notary protocols, can be assessed from two aspects: economic and legal aspects. Economically, storage notary protocol aims to be more practical, efficient, cheap and safe. While looking at the legal aspect, the electronic storage notary protocol can assist and facilitate the process of law, especially the law of evidence relating to electronic evidence.
- Archiving mechanism notary protocols in electronic form; System construction began digitizing *warkah* of making the archive to be checked, then in scanning. The scanning results are stored in the database server and automatically scan data output available digitizing documents. The results are stored in the database server is stored in the form Flasdisk or stored in a memory card with a capacity that is adapted to the number of data. Then order a gated, flasdisk database server and stored in a safe deposit box or anti-fire to be kept by a notary or storage can also be submitted to the MPD. With the electronic documents generated by the process can be opened when needed and made a copy of it for further use protocols represent a notary broken or missing.

2.2. Laws About Filing Protocol strength in the Form of Electronic Notary

Archiving notary protocol so is an effective and efficient but also useless, because currently only serves as backing up data can not be made because the evidence in the trial in because there are no clear rules about it. Remedies can be done for the realization of storage protocols notary public in electronic form, in the absence of legislation that expressly regulate the storage protocol notary electronically in UUJN, only the elucidation of Article 15 paragraph (3), which mentions the possibility of a notary to certify the transaction done electronically and the restrictions given by the ITE Law in Article 5 (4) that the electronic document that does not qualify the authenticity of the documents as stipulated in Article 1 point 7 UUJN Amendment and Article 1868 of the Civil Code, an authentic deed is a deed that made dlm form specified by the Law on / before public officials who authorized the deed to the place it was made.

Transfer of electronic notary protocol storage can only function as a back up is not a copy of which has no binding force. It is therefore necessary revisions to the relevant legislation so that the electronic certificate storage is done with an electronic system that its operation in accordance with the legislation in force have the same evidentiary force as the original.

3. Closing

3.1. Conclusion

- Prospects for a notary protocol archiving in electronic form can be judged from the aspect of economic and legal aspects. Economically, the electronic storage notary protocols aimed at more practical, efficient, cheap and safe. While the legal aspects, can assist and facilitate the legal proceedings related to the rules of evidence that electronic evidence. Protocol storage mechanism electronically notarized by a notary public can use media transfer process from printed documents, audio, video or scanning into digital form. Their electronic documents generated by the process can

be opened when needed and made a copy of it for further use protocols represent a notary broken or missing.

- The legal force of proof protocol notary electronically stored in evidence in the field of civil law can only serve as a back up and not as a copy of which has no binding force, due to the restrictions given by the ITE Law in Article 5 (4) that electronic document that does not qualify the authenticity of the documents as stipulated in Article 1 point 1 UUJN Amendment and Article 1868 of the Civil Code.

3.2. Suggestion

- It is expected the notary can harness the power of information and information technology in carrying out its duties and authorities, as well as the ranks of the notary can immediately reform against UUJN, because if not the notary will monotony of rules that limit, while the modern world is now completely cyber extremely demanding for all do practical, fast and efficient, which would still upholds the values filolsofis notary itself in terms of credibility, dignity and values remain the foremost in any actions of a notary.
- It is hoped that the notary protocols in electronic form in the future could be worth authentic is by changing / revise UUJN-P and UU ITE related to the authenticity of the notary and the government draft a law that explicitly regulate matters related to the use of technology, particularly with regard to storage electronic notary protocol so as to accommodate the legal force of evidence in the trial of a notary protocol that is stored electronically so that it has the same evidentiary force as the original

4. Bibliography

- [1] Supriadi, 2008, *Etika & Tanggung Jawab Profesi Hukum di Indonesia*, Jakarta.
- [2] Edmon Makarim, 2012, *Notaris & Transaksi Elektronik: Kajian Hukum Tentang Cyber Notary Atau Electronic Notary*, PT RajaGrafindo Persada, Jakarta.
- [3] Liliana Tedjasaputro, 1991, *Malpraktik Notaris dan Hukum Pidana*, Agung, Semarang.
- [4] Habib Adjie, 2008, *Hukum Notaris di Indonesia, (Tafsir Tematik Terhadap UU No: 30 Tahun 2004 Tentang Jabatan Notaris)*, PT. Refika Aditama, Bandung.
- [5] Subekti, 2003, *Hukum Pembuktian*, PT. pradnya Paramita, Jakarta.
- [6] Code of Civil law
- [7] Law of the Republic of Indonesia Number 30 Of 2004 concerning Notary
- [8] Law of the Republic of Indonesia Number 2 of 2014 on the Amendment of Act No. 30 of 2004 concerning Notary
- [9] Act No. 43 Of 2009 on Archives;
- [10] Act No. 8 of 1997 concerning Corporate Documents
- [11] <https://www.hukumonline.com/berita/baca/lt532c49f3cbb01/notaris-bingung-dimana-harus-menyimpan-protokol-notaris>, Accessed to Wednesday 9 November 2018 at 18:30 pm