

CYBER NOTARY: BETWEEN NOTARY OPPORTUNITIES AND CHALLENGES IN FACING THE ERA OF DIGITAL DISRUPTION 4.0 TOWARDS 5.0

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ABSTRACT

This research aim to analyze the position of Notary as a profession that cannot be separated from the development of existing technology. The wave of technology in the Industrial 4.0 and Society 5.0 era requires Notaries to be able to move quickly, especially in carrying out their duties. Major changes in technological developments have encouraged the Indonesian nation as a modern democracy to transform its electronic system for the public interest . The term Cyber Notary emerged in this case, which was discussed as being able to speed up the work of a Notary as a public servant in terms of making a Notary deed. If it is based on the values that shape it, technology and politics are of course different; technology thrives in scientific knowledge and objective facts while law is made in the public domain which demands technical regulation in the reciprocal relationship between culture, politics and technology . This is concretized by Act No. 14 of 2008 concerning Public Information Disclosure (UU KIP) and Act No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE) in conjunction with Act No. 19 of 2016.

A. INTRODUCTION

The entry of the 4.0 era where the Internet on Things (internet for everything) is very helpful in carrying out daily activities including work, and currently Indonesia is promoting society 5.0 where in this era all technology is part of humans themselves, the internet is not only used for information but to live life. In society 5.0 where the main component is humans who are able to create new value through technological developments, it can minimize gaps in humans and economic problems in the future.

Notaries are expected to be able to compete and be efficient in dealing with the 4.0 era which is all related to electronic transactions.¹The position of Notary as a profession that cannot be separated from the development of existing technology. The wave of

1 Suryadi, *Disruptive Era Learning Towards Society 5.0 (A Study of Education Management Perspective)*, Proceedings of the National Seminar on Graduate Program Education at PGRI Palembang University, January 10, 2020, page.22

technology requires Notaries to be able to move quickly, especially in carrying out their duties.

In the Covid-19 pandemic situation, the Government has issued Presidential Decree No. 11 of 2020 concerning the Establishment of a Covid-19 Public Health Emergency, PERPU No. 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic, and Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Covid-19. This is a separate problem because the requirement for an authentic deed is that it must be signed in the presence of an authorized official, namely a notary, if the deed is not signed in front of a notary, then it can be said that the deed is a private deed.

In making an authentic deed electronically, one must be really careful and thorough in its manufacture, because authentic deeds have weaknesses in terms of proof, because virtual deeds are very vulnerable to making changes, falsified or can be made by parties who are in fact not interested parties but as if acting and behaving like the real right².

B. RESEARCH METHODS

This research used the qualitative methods with normative approach. Which analyze that the notaries in carrying out their duties and authority based on information technology, especially in terms of making deeds. Notary service activities need to be developed from a conventional basis to an electronic system known as Cyber Notary.

C. RESULT AND DISCUSSION

Discussions related to the opportunities and challenges of the position of a Notary in the era of disruption cannot be separated from the existence of notary legal politics in this regard. Legal politics itself cannot be separated from political, economic, socio-cultural, scientific, defense and security issues because it is closely related to existing realities³.

In legal politics, it determines the extent to which the development of information technology is carried out by using legislation as the basis. The use of technology with automation and digitization should be able to provide convenience that provides legal certainty to the community in line with the demands of the needs of today's society which in the progress of digitalization does not change the nature of the position of a Notary, the procedure for making a Notary deed and the characteristics of an authentic deed.

The Existing laws and regulations should not be ignored, but must be seen as a tool that must be functioned in order to create order and legal certainty for the community. Thus, the government, which is part of state institutions, is able to put pressure on and direct the legal system and legal

2 A.M.Ramli, The Power of Electronic Deeds as Evidence in E-Commerce Transactions in the Indonesian Legal System, *Media Notariat Jurnal*, April-June 2003, Year XVIII, page.19

3 Nyoman Serikat Putra Jaya, *Legal Politics*, Second Printing, Publishing Agency UNDIP, Semarang, 2016, page.17

politics that should be selected and developed. Indonesia is a state of law, so politics should follow the law and not the other way around. One indication of what and how the legal politics of a country can be found and revealed in the Constitution of the Republic of Indonesia.⁴

Related to the position of a Notary, in the development of this digital era the discourse of e-notary or the concept of Cyber Notary emerged. The use of this term is different depending on which country it refers to, the term "e-notary" was popularized by legal experts from countries that inherited the Continental European tradition, while the term Cyber Notary was popularized by legal experts who inherited the Common Law tradition⁵.

In carrying out the duties to be more effective and efficient, there is an electronic signature (digital signature) and video conferencing. It is a separate problem if the development is related to the position of a Notary as contained in Act No. 2 of 2014 concerning the Position of a Notary (Indonesian: UUJN) that in carrying out his position, the function of a Notary is to make an authentic deed to ensure certainty, order and legal protection⁶. The role of the Notary in making the deed starts from establishing, qualifying, and constituting an event⁷. In terms of making an agreement, the parties are present before a Notary.

Based on the Law on Notary Positions, legal certainty in the form of norms must be firmly adhered to in making authentic deeds so as to guarantee perfect proof. However, as part of service to the community, especially the business world, in addition to guaranteeing legal certainty, speed or flexibility is needed so that legal norms are needed that are flexible, not rigid and do not only prioritize aspects of legal certainty⁸.

The definition of e-notary or Cyber Notary cannot be found specifically in Indonesia, but can be interpreted as a Notary who carries out his position based on the development of information technology. E-notary makes a Notary as a party who provides an independent record of an electronic transaction carried out by the parties⁹.

The concept of Cyber Notary can be interpreted as a Notary who carries out duties or authorities related to his position, based on information technology related to the duties and functions of a Notary as contained in the UUJN¹⁰. In principle, Cyber Notary is not something new. It has been

4 Muhammad Akbar, Legal Certainty in the Ease of Doing Business in the Era of the Industrial Revolution 4.0 Related to the Notary Profession, *Law Jurnal*, Vol.I No.2, 2021, page.121

5 Edmon Makarim, *Notaries and Electronic Transactions, Legal Studies on Cybernotary or Electronic Notary*, Second Edition, Rajawali Pers, Jakarta, 2013, page.10

6 Considering letter b of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary

7 Achmad Ali, *Revealing the Veil of the Law*, Ghalia Indonesia, Bogor, 2011, page.120

8 Muhammad Farid Alwajdi, The Urgency of Cyber Notary Regulations in Supporting the Ease of Doing Business in Indonesia, *Jurnal Rechtsvinding Media Pembinaan Hukum Nasional*, Vol.9 No.2, August 2020, page.258

9 Edmon Makarim, Modernization of the Future of Notary Law : A Legal Study of the Possibilities of Cybernotary in Indonesia, *Jurnal Hukum dan Pembangunan: Faculty of Law UI*, No.3 Juli-September, 2011

10 R.A. Emma Nurita, *Cyber Notary Early Understanding in The Concept Thought*, Refika Aditama, Bandung, 2012, page.4

implemented in several countries, including the United States, Britain, France, Belgium, Germany, the Netherlands and countries in the Asian region including Hong Kong and Japan¹¹.

Cyber Notary in this case does not mean that there is no meeting between the parties or a meeting by teleconference, but in this case the parties continue to face the Notary directly, only the draft deed can be read from the computer and if the parties have agreed then the deed is signed electronically. The documents used in this case are electronic so they no longer use paper. Of course it will provide convenience in the storage process, facilitate search with the support of a reliable, effective, efficient system and of course save operational costs.

Behind all the advantages obtained by the existence of this Cyber Notary, there are weaknesses related to the risks posed in the form of loss of electronic deeds that have been stored due to the computer being infected by viruses, data theft, data falsification and data modification. This is a separate obstacle when the deed uses electronic. In terms of proving an authentic deed, based on the provisions of Article 1867 of the Civil Code, it is perfect evidence if it meets the requirements in the form of having to make it before or by a public official.

In the Elucidation of Article 6 of Act No. 11 of 2008 concerning Information and Electronic Transactions, what is meant by written form is identical to information and/or documents contained on paper, whereas in essence information and/or documents can be shown into any media, including electronic media.

The authentic deed in question is a Notary deed that meets the statutory requirements as referred to in Article 1868 of the Civil Code. Based on these regulations, there are 3 requirements for an authentic deed, namely:

1. Made in the form determined by the law, meaning that the manufacture of authentic deed must comply with the provisions of the law.
2. The necessity of making it before or by a public official, the purpose of making it before shows that the deed was made at the request of a person, while the making by a public official due to an incident, examination, decision and others as an example is the minutes of the meeting.
3. The official must have the authority at the place where the deed is made, the purpose of the authority here concerns 3 (three) things, namely:
 - a. His position and the type of deed he made.
 - b. Day and date of making the deed, and
 - c. Place of deed.

According to Ahmad Miru¹², there are several legal conflicts related to the implementation of the Cyber Notary concept in Indonesia, including:

11 Muhammad Ricky Ilham Chalid, Legal Barriers and Prospects for the Implementation of Electronic Notary Services in Indonesia Entering the Era of Society 5.0, *Indonesia Law Review Journal*, Vol.2 No.4, 2020, page.400

1. Article 1 number 7 of the Law on the Position of a Notary concerning a Notary Deed is an authentic deed made by or before a Notary according to the form and procedure stipulated in the Act.
2. Article 1 point 8 and number 9 UUJN concerning the minutes of the deed and the copy of the deed. There are still differences when referring to the UUJN, the Minutes of Deed are the originals of the Notary Deed while the Deed Copies are verbatim copies of the entire deed and at the bottom of the copy of the deed the phrase "is given as a copy with the same sound".
3. Article 16 paragraph 1 UUJN, regarding the obligation to read the deed in front of 2 (two) witnesses and signed at the same time. Article 16 paragraph 1 letter m of Act No. 2 of 2014 concerning Notary Positions states that the reading of the deed must be carried out in front of the appearers and is attended by at least 2 (two) witnesses. In the explanation of the UUJN, it is stated that the Notary must be physically present and sign the deed before the appearers and witnesses. The word physically present, if translated word for word, that is present and physically, present means there is or comes, while the word physical has the meaning of body or body, so that the purpose of being physically present is to be physically present in other words tangible or physically visible. This explanation of being physically present will cause problems in the application of the Cyber Notary concept, if this concept applies technological advances by bringing together both parties or each party via video conference. Another challenge is related to the provision in Article 16 Paragraph (1) letter m of the UUJN that the reading of a deed by a Notary is an obligation in making an authentic deed. In Article 16 paragraph 9 UUJN if one of the requirements as referred to in Article 16 paragraph 1 letter m and paragraph 7 is not fulfilled, the deed in question only has the power of proof as an underhand deed so that its authenticity is lost.
4. Article 38 paragraph 4 of the UUJN concerning the form and nature of the deed, description of the signing, place of signing or translation of the deed.
5. Article 48 UUJN. The contents of the deed may not be changed or added, either in the form of overlapping, insertion, deletion, or deletion and replacing it with another (Paragraph 1). Changes to the deed in the form of additions, replacements, or deletions in the deed are only valid if the changes are initialed or given another sign of ratification by the appearers, witnesses, and notaries (Paragraph 2).
6. Article 50 of the UUJN concerning the deletion of words, letters, or numbers is carried out in such a way that it can still be read according to what was originally stated, declared valid after being initialed or given other ratification marks by the appearers, witnesses, and notaries.

12 Ahmad Miru, Cyber Notary from the Viewpoint of the Indonesian Legal System and Implementation of Cyber Notary in Indonesia Viewed from the Law on Notary Positions, *Papers in Notary Cyber Law Seminar*, 25 June 2011 in Hotel Mercure, page.206-207

7. Based on the advantages and disadvantages of this Cyber Notary, it is necessary to further study the most suitable concept to be applied in Indonesia, including being associated with the process of proving the validity of an authentic deed when using an electronic deed and electronic signature. Along with the development of technology, it will become a separate problem if the Notary deed is made electronically because there is no further regulation in the Notary Position Act.

Various conflicts in laws and regulations certainly do not close this Cyber Notary concept to be applied in Indonesia. Although in the process of implementation it is necessary to have provisions that are adapted to the conditions of the Indonesian nation which need to be supported by several factors, including:

1. One form of significant adjustment in the practice of notary services is the acknowledgment of electronic document management, as stipulated in Article 5 paragraph (1) of Act No. 11 of 2008 concerning Electronic Information and Transactions, that electronic information and or electronic documents and or the printout is a valid legal evidence. However, this provision is exempted from electronic transactions in the Notary profession, namely that the provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) do not apply to letters which according to the law must be made in written form; a letter and its documents which according to the law must be made in the form of a notarial deed or a deed made by the official making the deed. Referring to the provisions of Article 5 paragraph (4) of the ITE Law, an electronic deed does not have the perfect power of proof like an authentic deed. Until now, electronic deeds are only considered as private deeds which are equated with documents, letters and electronic certificates. Expanding the meaning of an authentic deed by including a deed in electronic form as a result of the practice of Cyber Notary will actually create new contradictions that might reduce the evidentiary power of the authentic deed.
2. The existence of Article 77 paragraph 1 of Act No. 40 of 2007 concerning Limited Liability Companies which states that the GMS (General Meeting of Shareholders) can be held through teleconference media, video conference or other electronic media facilities that allow all meeting participants to see and hear directly and participate in the meeting.
3. In practice, e-notary provides a lot of convenience and speed in service to the community. Based on the Regulation of the Minister of Finance Number 130/PMK.101/2012 concerning Registration of Fiduciary Guarantees for Financing Companies that conduct consumer financing for motorized vehicles. Since the regulation was enacted, thousands of fiduciary deeds must be registered, thus requiring a strategy in the registration process to be more effective and efficient.

The most important and urgent thing related to the industrial revolution 4.0 and 5.0 in carrying out the duties and authorities of the Notary position is to make changes to Article 5 Paragraph (4) of the ITE Law

and Amendments to Article 16 Paragraph 1 letter m and Paragraph (7) UUJN. Cyber Notary is an opportunity as well as a challenge for Notaries to be able to carry out their duties and authorities based on advances in information technology while still paying attention to the validity of making authentic deeds so that they have legal force. Therefore, it is important for the Indonesian people to realize synchronized laws and regulations, especially in Act No. 4 of 2012 concerning the Position of Notary. It is necessary to further regulate the authority to be able to apply Cyber Notary as contained in other laws and regulations that have acknowledged the existence of electronic mail or electronic documents equipped with electronic signatures. Legal politics is the basis for policies to update existing laws and regulations to suit the rapid development of technology.

D. CONCLUSION

In the Disruption Era 4.0 towards 5.0, there are challenges as well as opportunities for Notaries along with very fast technological developments. Notaries as public officials who have the task and authority to provide public services are required not to be technologically stuttering and to be able to provide information technology-based public services. The use of electronic means can make work more effective and efficient, documents can be created electronically and electronic signatures can also be done. In its development, Era 5.0 Notaries are faced with changes in the development of electronic systems, such as electronic certificates, electronic certificates, and even electronic signatures that do not require direct physical presence. Legal politics related to the role of Notaries in the era of disruption provides a form of policy that needs to be taken along with technological developments from 4.0 to Society 5.0.

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