

The Notary Role in Making a Deed of an Electronic Sale-Purchase Agreement

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Abstract. *The purpose of this research is to analyze and find out: 1). The role of the Notary in making the deed of the sale and purchase agreement based on Act No. 25 of 2009 concerning Public Services. 2) Constraints and solutions in making a Notary Deed electronically. The method used in this study is the juridical-normative method, the specifications in this study are descriptive analysis, the data used are primary data and secondary data, using data collection with library studies and field studies, qualitative data analysis, problems analyzed by authority theory and legal certainty. The results of this study indicate that: 1) The role of a notary in making a deed of sale-purchase agreement based on Act No. 25 of 2009 concerning Public Services is to authenticate electronic-based documents, which authentication documents can be printed out anywhere, anytime. Notaries also play a role in providing certainty to the parties when conducting transactions completely on their own consciousness and without any coercion or threats to sign electronic-based documents. In this cyber notary, the difference is in terms of facing. So far, facing is done by being physically present but facing in relation to a cyber notary is done by using electronic media, such as teleconference or video call. 2) Obstacles and solutions in making Notary Deeds electronically, namely the absence of laws governing cyber notaries in Indonesia such as in developed countries, is an obstacle for Notaries to take one step further in order to create good, effective, efficient, and safe public services.*

Keywords: *Electronic; Legality; Services.*

1. Introduction

Globalization is an era that must be lived as a consequence of life that needs each other. Era This cannot be avoided so as not to be isolated from the world's progress. Advances in information and communication technology in a global context are opportunities and challenges that must be taken seriously. These opportunities and challenges must be answered by increasing the quality and quantity of human resources as well as the laws that regulate this, so that Indonesia can compete fairly in the trade in services, especially with regard to the role of Notaries.¹

Notary world is a combination of theory and practice in an ideal level, theory and practice are in line or sometimes not in line with each other. This means that theory does not always support practice, so the Notary world must be built not only taken and developed by theories from existing legal science, but Notaries must also develop their own theories to support the implementation of the Notary's duties and experience during carrying out the task. Notary position.² The role of a notary in the service sector is as an official who is given some authority by the state to serve the public in the civil sector, especially the making of authentic deeds.³ A Notary is usually considered an official from whom a person can obtain reliable advice. Everything written and determined (constatir) is true, he is a strong document maker in a legal process.⁴

Based on Article 1870 of the Civil Code (hereinafter referred to as the Civil Code) and Article 1871 of the Civil Code, "an authentic deed is a perfect means of proof for both parties and their heirs as well as all those who have rights from it regarding what is contained in the deed".⁵ Based on Act No. 2 of 2014 concerning the Position of a Notary, hereinafter referred to as UUJN, it can be seen that a Notary has an important role and function in the legality of transactions in Indonesia, even a Notary is also understood as a trusted third party. The services of a notary have become a public need, not only in the making of the deed, but

¹Habib Adjie, Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global, *Jurnal Hukum Respublica*, Vol. 16, No. 2, 2017, Surabaya, p.201

²Emma Nurita, (2014), *Cybernotary Pemahaman Awal dan Konsep Pemikiran*, Refika Aditama, Jakarta, p. 2

³G.H.S Lumban Tobing, (1999), *Peraturan Jabatan Notaris*, Erlangga, Jakarta, p.2.

⁴Tan Thong Kie, (2011), *Studi Notariat dan Serba-Serbi Praktek Notaris*, Cetakan Kedua, Ichtar Baru van Hoeve, Jakarta, p.5

⁵Taufik Makarao, (2004), *Pokok-pokok Hukum Acara Perdata*, Rineka Cipta, Jakarta, p.100

also as a witness or arbiter of the transactions carried out.⁶ However, UUJN has not explicitly regulated the authority of a Notary in making a Notary deed electronically. Article 1 number 7 UUJN states: "A Notary Deed is an authentic deed made by or before a Notary according to the form and procedure stipulated in this Law."

These various technological advances were then anticipated with the emergence of Act No. 11 of 2008 concerning Information and Electronic Transactions, which was later changed to Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as UU ITE) including Act No. 25 of 2009 concerning Public Services. Talking about the validity of transactions conducted electronically, including the provision of public services to the community, based on the provisions of Article 1320 of the Civil Code (hereinafter referred to as the Civil Code) which states that a valid agreement requires 4 (four) conditions, namely there is an agreement, legal competence, the promised object and the lawful cause.

The concept of cyber notary wants to provide a legal framework, namely so that actions before the parties or appear before the Notary and the Notary no longer have to meet physically (face to face) in a certain place, in this case the parties may be in a different place with the domicile or area of office of the Notary, on the other hand the parties are in different places. The role of the Notary is required to be able to participate in the development of technology and information.

As it is known that a Notary has long been known as a trusted third party, with the provisions of Article 15 paragraph (3) UUJN (P) which in his explanation states that a Notary has the authority in the cyber notary field to provide an opportunity for a Notary deed to be made using electronic media, in the case of In this case, the Notary plays a role in providing the legal aspects of a deed made electronically. Even so, Article 15 paragraph (3) of the amendment to the UUJN stipulates that Notaries also have other powers as regulated in the legislation.⁷

In making an authentic deed, the signer must be affixed by the appearer because the authentic deed made before a notary, in this case the minuta of the deed, is

⁶Tiska Sundani, Analisis Hukum Atas Penggunaan Dan Pembuatan Akta Notaris Secara Elektronik, *Jurnal Hukum*, Universitas Sumatera Utara, p.4

⁷Prayudicia, *Keabsahan Akta Notaris Secara Elektronik Dalam E-Commerce*, Tesis Fakultas Hukum, Universitas Sebelas Maret Surakarta, p. 9

the original deed that includes the signatures of the appraisers, witnesses, and the notary. Basically, the function of the signature is to guarantee the certainty of the date and to ensure that the parties do not evade the contents of the deed so that it will be legally binding for the parties.⁸

The role of the Notary here is very important in terms of providing public services to the public who will conduct transactions using electronic means. Based on the description of the background, the writer is interested in analyzing the problem: "The Role of the Notary in Making the Deed of Electronic Sales and Purchase Agreements by Using Act No. 25 of 2009 concerning Public Services". This study seeks to answer the role of a Notary in making a deed of sale and purchase agreement based on Act No. 25 of 2009 concerning Public Services as well as the obstacles and solutions in making a Notary Deed electronically.

2. Research Methods

The approach method used in this research is a normative juridical approach. Primary and secondary data sources were obtained by interview and study document methods. The data that has been collected both from field research and library research were analyzed using descriptive analysis methods.

3. Results and Discussion

3.1. The Role of Notaries in the Making of Electronic Sales and Purchase Deeds by Using Act No. 25 of 2009 concerning Public Services

Along with the development of information technology in society which is also accompanied by the development of increasingly rapid electronic transactions, the Notary in carrying out his duties and functions as public officials certainly cannot be separated from the development of information technology that develops in the community. Notaries as public officials have a central role in enforcing the law in Indonesia, because apart from the large number of Notaries, Notaries are known to belong to the elite group in Indonesia.⁹

With regard to the authority of a Notary in Article 15 paragraph (3) of Act No. 2 of 2014 it reads "In addition to the authority as referred to in paragraph (1) and

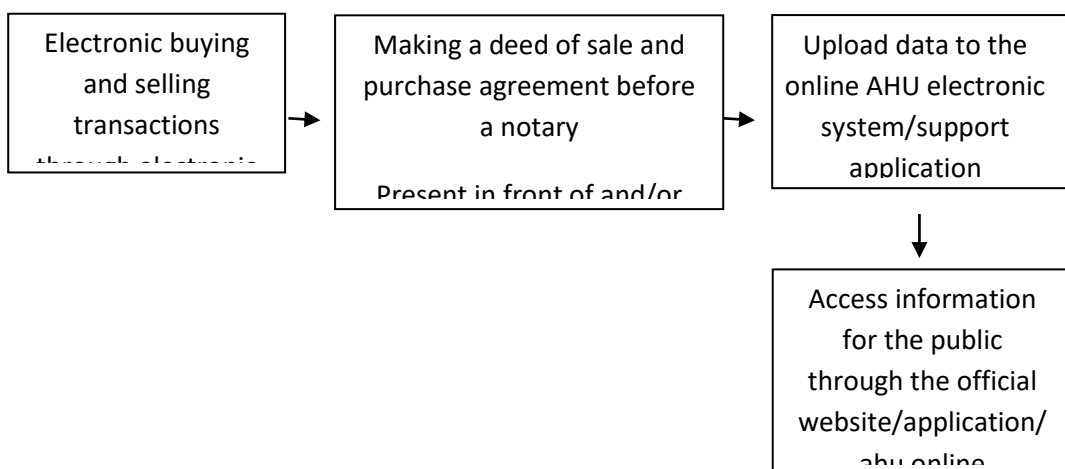
⁸Sudiharto, Keotentikan Akta Jaminan Fidusia yang Tidak ditandatangani di Hadapan Notaris, *Jurnal Pembaharuan Hukum*, 2015, p. 412

⁹Abdul Ghofur, (2010), *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika*, UII Press, Yogyakarta, p. 1

paragraph (2), a Notary has other powers as regulated in the laws and regulations." Other authorities as referred to in the Article have been described in the explanation of Article 15 paragraph (3) of Act No. 2 of 2014 which states that: "Other authorities regulated in laws and regulations include the authority to certify transactions made electronically (cyber notary), making a deed of *waqf* pledge, and aircraft mortgages."

Based on the explanation of the article, there is the authority of a Notary to certify transactions by means of a cyber notary. Making a deed with a cyber notary, the position of the appearer is not directly before the notary but through electronic media such as teleconference or video call.¹⁰ Edmon Makarim argues that the concept of a cyber notary in Indonesia is still under debate, although technology allows the role of a Notary to be online and remote, but legally it seems that this cannot be done.¹¹

The following is a simulation scheme for the role of the Notary in making the Sale-Purchase Agreement Deed electronically



In relation to cyber notaries, the role of the Notary is to authenticate documents which electronically based, which of the authentication documents can be printed out anywhere, anytime. Cyber notaries also have a role to provide certainty to parties when conducting transactions completely on their own consciousness and without any coercion or threat to sign electronic-based

¹⁰Achmad Sulchan, Sukarmi, Ari Widiyanto, (2017), *Akta Notaris Menggunakan Media Elektronik*, SINT Publishing, Semarang, p.9

¹¹R.A. Emma Nurita, (2012), *Cyber Notary, Pemahaman Awal dalam Konsep Pemikiran*, Refika Aditama, Bandung, p. 1

documents. Cyber notary can be likened to a security in the implementation of electronic transactions via the internet by implementing conventional public functions which means that they are authenticated automatically or electronically by using existing public infrastructure and using electronic signatures.¹²

Cyber notary has the function to perform certification and authentication in electronic transaction traffic. Certification has the understanding that the Notary has a role in acting as a certification authority so that the Notary can issue a digital certificate to interested parties. Article 15 paragraph 3 of the UUJN is the authority given by a Notary to certify notary cyber transactions.

The sale and purchase agreement must meet the conditions determined by law. This is so that the deed of the sale and purchase agreement is made into an authentic deed and does not become a deed under the hand. The procedures for making a deed of sale and purchase agreement include:

- The appearers come to the Notary's office with the aim of making a sale and purchase agreement so that it is stated in a deed.
- Submit the identity of the parties to the Notary, such as Identity Card (KTP), Family Card (KK), Marriage Certificate (for those who are married), Divorce Certificate (for those who are divorced), Certificate of Heirs (for those who represent as heir).
- Submit supporting evidence, such as:
 - Death Certificate (for those who show someone who has died).
 - Power of Attorney/approval (for those who represent or are authorized)
 - Proof of Mark/Ownership of Rights (certificate/land book of Ownership Rights/Building Right/Rights on Flat Units and so on)
 - Payment receipt
 - Another statement.
- The notary listens to the intentions and objectives of the parties as well

¹²Achmad Sulchan, Sukarmi, Ari Widiyanto, op.cit., p.106

as provides counseling regarding the deed to be made. The statements or explanations of the parties or the results of questions and answers with the parties and the evidence provided to the Notary are then poured into the form of a Notary deed in the manner as stated in the UUJN.

Several things that can be used as the basis for building a Notary deed structure are the background to be agreed, identification of the parties or legal subjects, identification of the object to be agreed upon, the framework of the deed, and formulating the substance of the deed which contains the position of the parties, the limits that may be allowed. and it may not be done according to the rule of law, things that are limited in its implementation, choices of law and choices of courts, and connection with other deeds (if any).¹³

Based on Article 24 of Act No. 25 of 2009 concerning Public Services, it is explained that documents, deeds, and the like in the form of electronic or non-electronic products in the provision of public services are declared valid in accordance with statutory regulations. In relation to the theory of authority, the authority given to a Notary is to certify transactions using a cyber notary, so the printout results of the certificate can also be categorized into electronic documents. Electronic documents must also meet the elements in Article 1868 of the Civil Code regarding the authenticity of the deed. The form and procedure for making a Notary deed can be said to be valid if it has complied with the provisions contained in Article 38 of the UUJN.

As for the reading of the deed by a Notary, it is an obligation in making an authentic deed. This is regulated in Article 16 paragraph (1) letter m of the UUJN, so that the reading of the deed is part of the verification or inauguration of the reading and signing of the deed in question. If the deed is made by a notary, it must also be read out by the notary concerned, not read by a third party, for example a notary employee.

According to GHS Lumban Tobing which states that if the Notary himself reads the deed, the appearers on the one hand have a guarantee if they have signed what they have heard before (the reading made by the Notary) and on the other hand the appearers and the Notary will get confidence if the deed it really contained what the audience wanted.¹⁴

¹³Habib Adjie, (2011), *Kebatalan dan Pembatalan Akta Notaris*, Refika Aditama, Bandung, p.37

¹⁴G.H.S Lumban Tobing, (1999), *Peraturan Jabatan Notaris*, Erlangga, Jakarta, p.201

As for the violations committed if the reading of the deed is not carried out by a notary, the deed will have the power of proof as a private deed or in other words the deed has lost its authenticity. This is in accordance with Article 16 paragraph (9) of the UUJN which reads: "If one of the conditions as referred to in paragraph (1) letters m and paragraph 7 is not fulfilled, the deed in question only has the power of proof as an underhand deed." So in conclusion, the Notary must read the deed he made so that the deed remains an authentic deed and does not lose its authenticity.

Based on the theory of authority, Notaries have attribution authority. This means that a notary is given direct authority by law to make a deed, including reading the deed. As long as the object of the agreement is still in the Notary's work area, the Notary still has the authority to make a deed even though the reading and signing uses a cyber notary. The deed remains valid as long as the form of the deed complies with the provisions of Article 38 of Act No. 2 of 2014 and Article 1868 of the Civil Code. Based on article 15 paragraph (3) UUJN Notaries are also given other authority, namely to certify transactions using electronic devices (cyber notary). If the form of the deed does not match, the transaction certification using a cyber notary becomes invalid to be categorized as an authentic deed.¹⁵

The role of the Notary in making a Notary deed cyber Notary according to the author has the same procedure as the making of a Notary deed that has been carried out so far. However, what distinguishes the two procedures is in terms of facing. So far, facing is done by being physically present but facing in relation to a cyber notary is done by using electronic media, such as teleconference or video call. The procedure for making a notary deed using a cyber notary is:

- The parties are present before the Notary by using a teleconference or video call to convey the intent and purpose of appearing before the Notary and submitting the deed to be made. The parties must clearly show their identity by sending their identity through an electronic certificate such as e-mail or fax and the Notary must match the identity with the person in the teleconference or video call.
- After that, the Notary has the role of making the deed in accordance with the form determined by the law which is then read out in front of the parties. In reading the deed, both the Notary, the witness and the parties

¹⁵Ibid, p. 131

use a teleconference or video call at the same time. After the deed has been read and understood by the parties concerned, the deed of sale and purchase agreement is signed by the parties, witnesses and a notary using a digital signature.

- With regard to digital signatures, the signature requires a process step, namely by forming a digital signature using a kind of fingerprint generated from the document and private key and digital signature verification which is a process of checking digital signatures by referring to the original document and the key given public. This way it can be determined whether the digital signature was created for the same document that uses the private key.
- If the process is fulfilled, then a digital signature can also fulfill the juridical elements as stated in a conventional signature. A person who puts his digital signature is considered to have acknowledged everything he wrote in the electronic document in question. Thus the digital signature has the nature of a one signature document, where if there is a slight change in the text sent, the digital signature will also change and will no longer be valid.

Associated with the theory of legal certainty, legal certainty in this case has not been fully achieved, because there is no clear regulation regarding other powers granted to Notaries. This can lead to legal violations of other laws that are related to the Notary Position law. As previously mentioned, Notaries have the authority to act as public officials, Notaries can also issue digital certificates to interested parties. In other words, the Notary can issue a certificate / deed electronically with the guarantee that the Notary can provide legal certainty to the parties concerned.

3.2. Constraints and Solutions in Making a Notary Deed Electronically

The concept of a notary cyber notary requires a notary in carrying out his duties or authority (his position) based on information technology, especially in making deeds. In this concept, that facing physically or face to face is not required, but can use media of hearing, (such as teleconference or skype). without state boundaries (borderless) or city/provincial boundaries. Cyber notary is a notary concept that performs functions by applying it to transactions or relationships electronically via the internet as the main medium in its performance to make a deed and leads to a form of deed that is initially legal if it is written on paper,

leading to an electronic deed (electronic deed).) or in the form of Electronic documents.¹⁶

In the process, the Notary makes a binding between the seller and the buyer with a binding agreement, this is done to protect the parties from legal uncertainty and prevent unwanted legal consequences. The agreement in question is an agreement made between one party in this case the seller or with another party in this case the recipient or buyer. In general, an agreement is a legal relationship between one or more parties and another or more parties that bind themselves together. The meaning of the agreement is explained in Article 1313 of the Civil Code (hereinafter referred to as the Civil Code). The principle of freedom of contract is defined as giving freedom to enter into an agreement or not to enter into an agreement.¹⁷

The binding of the deed of sale and purchase agreement is in practice made in the form of an authentic deed as the first step in maintaining the commitment to transfer rights in the form of a Deed of Sale and Purchase, although in essence the form of the deed of sale and purchase agreement does not exist in the Civil Code, but the development of community needs requires the agreement to be born with the principle of freedom of contract. The binding of the sale and purchase agreement deed is made authentically which aims to provide legal certainty and protection for the parties.¹⁸

The benefits of making a deed of sale and purchase agreement electronically are to facilitate transactions between parties who live far apart so that distance is no longer a problem. However, in practice, the making of a deed of sale and purchase electronically has problems, including:

- Being a cyber notary in the millennial era is very important, a noble society who is technology literate demands that all kinds of needs be provided instantaneously, practically, and can be done anywhere. However, this need has not been matched by adequate digital facilities for Notaries as public officials who provide public services in Indonesia.

¹⁶Habib Adjie, Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global, *Jurnal Hukum Respublica*, Vol. 16, No. 2, 2017, Surabaya, p.214

¹⁷Agus Yudha Hernoko, (2014), *Hukum Perjanjian Asas Proposional Dalam Kontrak Komersial*, Kencana, Jakarta, p. 110.

¹⁸Agustiro Nugroho, Kepastian Hukum Pengikatan Akta Perjanjian Jual Beli Di Hadapan Notaris Tanpa Dihadiri Para Saksi, *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum dan Keadilan*, Volume 11 No. 1 March 2020, p. 89

This is an obstacle to realizing a cyber notary in this modern era.

- Deeds that can be accessed online are currently only limited to the deed of granting mortgage which can be accessed on the website of ATR BPN partners made by the Land Deed Making Officer, while for Notaries only the deed of power of attorney imposes mortgage rights, not including other Notary deeds. The Electronic System provided for Notaries at this time is also still limited to the procedures for registering and appointing Notaries, as well as the Deed of Establishment of Legal Entities and Business Entities on the AHU online website, namely the Legal Entity Administration System (abbreviated as SABH).
- There is no special law that regulates cyber notaries. The delay in cyber notary services is due to the formal requirements that must be met to support the validity of the notary deed as regulated in the UUJN.

These obstacles resulted in the making of the deed through electronic media could not run optimally. Here are some solutions that can be done to overcome these obstacles, namely:

- It is necessary to have an electronic system that accommodates various aspects of public services, especially in the notary field for the realization of a cyber notary, with the aim of notaries in Indonesia being one step ahead and being able to provide services to the community more practically, effectively and efficiently.
- There needs to be improvements to existing regulations to accommodate this. What is meant by cyber notary here is only regarding administration in online AHU, this is because UUJN has not regulated cyber notary as in developed countries.
- Associated with a cyber notary, the certification result has not provided justice for the parties and the notary, because there is no legal certainty whether the certification result is an authentic deed or not. This is because there is no clear regulation.

4. Conclusion

The role of a Notary in making a deed of an electronic sale-purchase agreement using Act No. 25 of 2009 concerning Public Services is an activity or series of activities in the context of fulfilling service needs in accordance with laws and regulations for every citizen and resident of goods, services, and/or

administrative services provided by public service providers. In relation to cyber notaries, the role of the Notary is to authenticate electronic-based documents, which of the authentication documents can be printed out anywhere, anytime. Cyber notaries also have a role to provide certainty to parties when conducting transactions completely on their own consciousness and without any coercion or threat to sign electronic-based documents. Constraints and solutions in terms of making a Notary deed electronically, namely cyber notaries have not been matched with adequate digital facilities for Notaries as public officials who provide public services in Indonesia, limited online access, and the absence of laws governing cyber notaries. The solution that can be done is to form an electronic system that accommodates all aspects of public services, as well as the need for improvements and adjustments to regulations with legal facts that occur in society to accommodate the growing electronic system.

5. References

Journals:

- [1] Agustiro Nugroho, Kepastian Hukum Pengikatan Akta Perjanjian Jual Beli Di Hadapan Notaris Tanpa Dihadiri Para Saksi, *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum dan Keadilan*, Volume 11 No. 1 March 2020
- [2] Habib Adjie, Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global, *Jurnal Hukum Respublica*, Vol. 16, No. 2, 2017, Surabaya
- [3] Sudiharto, Keotentikan Akta Jaminan Fidusia yang Tidak ditandatangani di Hadapan Notaris, *Jurnal Pembaharuan Hukum*, 2015
- [4] Tiska Sundani, Analisis Hukum Atas Penggunaan Dan Pembuatan Akta Notaris Secara Elektronik, *Jurnal Hukum*, Universitas Sumatera Utara

Books:

- [1] Abdul Ghofur, (2010), *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika*, UII Press, Yogyakarta
- [2] Achmad Sulchan, Sukarmi, Ari Widiyanto, (2017), *Akta Notaris Menggunakan Media Elektronik*, SINT Publishing, Semarang
- [3] Agus Yudha Hernoko, (2014), *Hukum Perjanjian Asas Proposional Dalam Kontrak Komersial*, Kencana, Jakarta

- [4] Dyara Radhite Oryza Fea, (2018), *Panduan Mengurus Tanah Rumah dan Perizinannya*, Legality, Yogyakarta
- [5] Emma Nurita, (2014), *Cybernotary Pemahaman Awal dan Konsep Pemikiran*, Refika Aditama, Jakarta
- [6] G.H.S Lumban Tobing, (1999), *Peraturan Jabatan Notaris*, Erlangga, Jakarta
- [7] Habib Adjie, (2011), *Kebatalan dan Pembatalan Akta Notaris*, Refika Aditama, Bandung
- [8] Prayudicia, *Keabsahan Akta Notaris Secara Elektronik Dalam E-Commerce, Tesis Fakultas Hukum*, Universitas Sebelas Maret Surakarta
- [9] R.A. Emma Nurita, (2012), *Cyber Notary, Pemahaman Awal dalam Konsep Pemikiran*, Refika Aditama, Bandung
- [10] Salim Hs, 2016, *Teknik Pembuatan Akta Satu*, Raja Grafindo Persada, Jakarta
- [11] Tan Thong Kie, (2011), *Studi Notariat dan Serba-Serbi Praktek Notaris*, Cetakan Kedua, Ihtiar Baru van Hoeve, Jakarta
- [12] Taufik Makarao, (2004), *Pokok-pokok Hukum Acara Perdata*, Rineka Cipta, Jakarta

Regulation:

- [1] 1945 Constitution of the Republic of Indonesia
- [2] Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions
- [3] Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary
- [4] Civil Law Law / BW (*Burgerlijke wetboek*).