

The Role of Notaries in Consumer Protection in E-Commerce in the Era of Digitalization

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Abstract. *Electronic commerce relies on the trust of commercial entities that guarantee the security of data and the legitimacy of transactions carried out. The government has enacted Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, one of which is to regulate electronic transactions. The ITE Law defines electronic transactions as activities that use electronic devices such as computers, internet networks and other digital media. The basic principle of electronic transactions is trust. To foster trust, stakeholders must strive for protection, especially consumer protection. In electronic transactions, there is an imbalance between economic actors and consumers in terms of bargaining power, which can result in legal agreements that are detrimental to consumers. In addition, storing consumer data as big data on computing systems does not guarantee its security, which can easily be lost, which is commonly referred to as a violation of consumer privacy. Consumers also need to be protected through education on the legal aspects of electronic transactions related to transaction terms, transaction security, transaction legality and dispute resolution. In fact, consumer protection in the field of electronic transactions is not yet optimal because several laws and regulations still contain inconsistencies and do not cover all aspects of protection.*

Keywords: Consumer; Digitalization; E-Commerce; Protection.

1. Introduction

Against the backdrop of advances in information and technology, the phenomenon of electronic commerce (e-commerce) emerged. This phenomenon occurs throughout the world, including in Indonesia. In electronic commerce sellers and buyers do not need to meet in person at the same

location to carry out transactions, they can transact without being limited by space and time. Because electronic commerce is a very large market with complex activities, it has the potential to give rise to legal problems, especially related to consumer protection issues(Brammantyo R. &, 2019). Therefore, it must consider the legal perspective so that the rights and obligations of the parties are guaranteed. Previous research found that public knowledge about Indonesian law, especially criminal and civil law, is relatively low(Hasibuan, 2014). The low level of public knowledge of the law and the low level of public education can give rise to legal problems in electronic commerce.

Electronic commerce relies on the trust of commercial entities that guarantee the security of data and the legitimacy of transactions carried out(Grabner-kräuter, 2008). The government has enacted Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, one of which is to regulate electronic transactions. The ITE Law defines electronic transactions as activities that use electronic devices such as computers, internet networks and other digital media.

The basic principle of electronic transactions is trust. To foster trust, stakeholders must strive for protection, especially consumer protection. In electronic transactions, there is an imbalance between economic actors and consumers in terms of bargaining power, which can result in legal agreements that are detrimental to consumers(Brammantyo R. &, 2019). In addition, storing consumer data as big data on computing systems does not guarantee its security, which can easily be lost, which is commonly referred to as a violation of consumer privacy.(Fabian, 2019). Consumers also need to be protected through education on the legal aspects of electronic transactions related to transaction terms, transaction security, transaction legality and dispute resolution(Khotimah, 2005). In fact, consumer protection in the field of electronic transactions is not yet optimal because several laws and regulations still contain inconsistencies and do not cover all aspects of protection.

This phenomenon facilitates the emergence of cyber notariy as a form of adaptation of the notarial field to changes in current trading models. A notary is a public official who provides legal services to the public, for example ratifying documents, drafting agreements and articles of association, as well as exercising other powers regulated by law.(Salim, 2015). The definition of a notary, its duties and authority are regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (UUJN). UUJN regulates that one of the powers of a notary is to record transactions carried out electronically (cyber notary). The American Information Security Committee, namely the Bar Association, defines cyber notary as a legal

profession similar to a notary, but only in the scope of electronic documents.(Putri, Conceptualization and Opportunities of Cyber Notary in Law, 2012).

The field of notarial law has a new development called cyber notary. Cyber notary can fulfill the public's legal needs for notaries in the current era of globalization, especially in the e-commerce sector. According to Putri & Budiono (2012), cyber notarization cannot be implemented effectively because there is a legal gap between the understanding and concept of cyber notarization and the regulations regarding the implementation of cyber notarization. The lack of effectiveness of cyber notaries is also caused by the limited rights and authority of notaries regulated in the UUJN(Pangesti, 2020). Another study found that the authenticity of the documents produced is questionable because there is no legal basis that specifically covers cyber notarization(Chastra, 2021). However, a normative legal study that explores normative conflicts in the articles of Law Number 2 of 2014 confirms that the legalization of transactions carried out by cyber notaries is an authentic deed.(Rossalina, Validity of Notarial Deeds Using Cyber Notary, 2016).

The aim of a cyber notary is essentially to facilitate transactions between parties whose domiciles are far apart, so that distance is no longer an obstacle. According to Article 15 Paragraph (3) UUJN, a notary's authority includes marking transactions carried out electronically. The provisions of Article 1 Paragraph 7, Article 16 Paragraph 1 (m) and Article 16 Paragraph 9 UUJN are still obstacles in electronic registration by notaries. This will be resolved as technology develops, so we cannot interpret it only literally.

There will be ambiguity in this provision if cyber notaries are introduced, so revisions to statutory regulations are needed to ensure legal certainty in the implementation of notary positions. The Human Rights Law, Civil Service Law, Archives Law and Administrative Management Law require that technology can be used in services provided by notaries, for example in company registration.

Technological developments occur rapidly and affect human life in many ways. Many of these developments are disruptive innovations, that is, innovations that tend to disrupt existing markets and ultimately replace those markets. The impact of technology, the digitalization of documentation activities, disrupts the previous balance. When modern notaries make changes and utilize the help of technology, notaries who ignore technology will choose to stick to established procedures.

The term that describes the use of technology by notaries in carrying out their duties is called "electronic notary". Opinions regarding this concept vary, some support it and some reject it. The main problem that arises is a dispute

regarding the authenticity of documents created electronically. Some argue that cyber notaries violate the ancient principle of *Tabellionis officium fideliter exerbo*, which means that notaries must carry out their business in traditional ways.

The birth of the cyber notary concept was proposed by the American Information Security Committee (Bar Association) in 1993. This concept allows US notaries to carry out various authentication of documents created in electronic business communications. In practice, this concept has been implemented in Florida and Alabama, although the validity of the law has often been questioned by other jurisdictions. That unlike Indonesian notaries who have a civil law background, American notaries adhere to the common law system. American notaries are not responsible for the accuracy or legality of the documents they create, as a result the strength of the evidence provided varies. In civil law countries, authentic deeds made by notaries have full evidentiary value, while authentic deeds made by notaries in common law countries do not have full evidentiary value.

Apart from that, this strong evidentiary value comes from the fact that notaries in civil law countries have solemn obligations arising from the implementation of the principle of *Tabellionis officium fideliter exerbo*, which includes the notary's obligation to be present in person at the place where the notary reads the deeds that have been made and signed. The signature must be original and must not be an electronic signature.

This formal obligation has very deep meaning and benefits. The aim is to guarantee that the party making the agreement is truly the person mentioned in the deed and contract in accordance with the wishes of the parties. This opinion is in accordance with the provisions that a real act is a complete argument according to the meaning of Article 1867 of the Civil Code.

Expanding the definition of an original deed by including the deed in electronic form through cyber notary practices can actually create new inconsistencies and reduce the evidentiary value of the original deed. According to Article 5 Paragraph 4 of the ITE Law, electronic documents do not have the same evidentiary value as original documents. So far, electronic documents are still considered personal documents such as electronic documents, letters and certificates. Therefore, the concept of cyber notary originating from America should not be applied just like that. When a notary continues to do his traditional work, this actually provides better legal judgment and stronger protection to maintain the strength of the original deed evidence. This is related to three things, namely the strength of external evidence, the strength of formal evidence and the strength of material evidence.

Based on the description above, there are problems, namely less than optimal consumer protection in electronic transactions and uncertainty regarding the cyber notarization law, making the role of notaries in providing legal services to strengthen consumer protection in electronic transactions invalid and consumers more vulnerable to being targeted by electronic transactions. This can give rise to legal problems in electronic transactions which have a negative impact on consumers.

2. Research Methods

This research is descriptive research with a juridical-sociological approach which aims to analyze the role of notaries in consumer protection in electronic transactions in Indonesia. This research confirms the results of previous research and influences consumer confidence in electronic transactions and the notary profession. Several previous studies showed inconsistent results, thus encouraging researchers to re-analyze the role of notaries in consumer protection in electronic commerce (e-commerce).

3. Results and Discussion

3.1. Notary Adaptation in Technological Developments in the Digitalization Era

Personal data in e-commerce is absolutely necessary in preventing digital crime, but is very vulnerable to misuse. This is based on data regarding the loss of personal data of e-commerce users being bought and sold. This misuse is the basis for efforts to protect consumers' personal data in order to provide comfort, security and legal certainty to consumers.

In accordance with Article 28G of the 1945 Constitution, the government is obliged to guarantee the protection of e-commerce consumers' personal data. However, this obligation has not been fulfilled optimally because there are no comprehensive implementing regulations aimed at protecting personal data. For example, the protection of personal data related to population data is regulated in Law Number 23 of 2003 (as amended by Law Number 24 of 2013), the protection of personal data related to digital finance is regulated in Bank Indonesia Circular Letter number 18/22/DKSP concerning Implementation Digital Services Finance. Bank Indonesia Circular Letter Number 18/22/DKSP states that personal data generated by digital financial services agents belongs to digital financial services providers. This violates the principle of personal data protection, because personal data must remain the property of the owner (Anggraeni, 2018).

A notary is a party who indirectly plays the role of custodian of private deeds. To make a deed, the notary asks the client to write down personal data such as

name, domicile, date of birth, nationality, NIK. At the end of the deed, the witness's personal data is also included (Moechthar, 2017). Documents made by notaries containing personal data of parties and witnesses are also at risk of being traded by unscrupulous notaries with low integrity, who should notaries be obliged to maintain the confidentiality of deeds and their contents based on Article 16 Paragraph 1 (e) UUJN.

Article 16 Paragraph (1) UUJN provides sanctions against notaries who do not fulfill their obligations to protect their customers' personal information, namely in the form of a written warning or termination of office. Apart from these administrative sanctions, victims can also ask for compensation from notaries who intentionally or negligently distribute documents and/or personal data. This is stated in Article 16 Paragraph 12 UUJN. So that notaries contribute to the protection of personal data by fulfilling the obligation to maintain the confidentiality of the contents of documents, including the personal data of parties and witnesses.

The adaptation that a notary must make when making a deed in this technological development in the era of digitalization is that the notary must be careful in including the identities of the parties and witnesses. The notary must confirm the correctness of the parties' identities by comparing them with valid identity documents. It is the first in a series of steps a notary can take to protect the parties' personal information. It is not impossible for irresponsible individuals to appear before a notary using someone else's identity. The notary's care in verifying identity is also an effort to protect consumers' personal information.

In general, the role of a notary in electronic transactions is no different from traditional transactions. Specifically, the role of a notary in electronic transactions is to carry out certification. Certification is the process of providing written assurance that a product, process or service meets specified standards, based on an audit carried out according to agreed procedures. From this point of view, a notary can act as a third party who has the authority to issue digital deeds to interested parties. The authority of a notary to authorize electronic transactions is regulated in Article 15 Paragraph 3 UUJN.

Notary participation in the electronic transaction verification process is regulated in Article 25 and Article 27 of the Minister of Communication and Information Technology Regulation Number 11 of 2018 concerning Implementation of Electronic Verification. The digital certificate creator can select a notary as the registration authority. As a registration authority, the notary verifies the authenticity of identity and the integrity of the verified documents, including name, NIK/NPWP/passport number, email address, telephone number and biometric data. If these conditions are met, the notary

sends a request for issuance of a digital deed to the digital deed organizer.

After submitting the application to the e-certification organizer, the notary will draw up a deed in accordance with statutory regulations. Authentication of electronic transactions functions for security, order and legal protection in society as technology advances. Therefore, in carrying out the function and authority to legalize electronic transactions via cyber notary, the notary must gather stakeholders via teleconference or video call (one telephone line) and hold a meeting with the notary, needing to communicate the objectives. The parties must clearly identify themselves to the notary as part of this process. The ID will be sent via email or messaging app and will be verified by a notary. The prepared documents are provided to the parties. After the parties read and understand the document, the document is digitally signed by the parties, witnesses and notary.

Authentication of electronic transactions is specified in Article 38 UUJN to be used as evidence before the law. However, Article 16 paragraph (1) letter (m) UUJN regulates that a notary is obliged to read the deed in front of the parties attended by at least two witnesses so that it can be used as valid evidence. If these conditions are not met, then the making of the deed is considered a private deed according to Article 16 Paragraph 9 UUJN.

Electronic documents for electronic transactions must be authenticated electronically, so that they are valid as evidence in accordance with Article 41 Paragraph 3 PP Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions. According to Article 1, Article 18 PP Number 82 of 2012, electronic certificates contain signatures and electronic identification that show the identity of the parties in an electronic transaction issued by the electronic certificate provider. Based on this article, if it is not issued by an authorized official and the format is not in accordance with Article 38 UUJN then the document is not an original document.

After the parties receive the electronic certificate, the interested party must use the electronic system in accordance with Article 41 paragraph (1) PP Number 82 of 2012. When carrying out electronic transactions in a private environment, submission of an electronic certificate is not necessary because the transaction is carried out electronically. If the contract does not meet the provisions, then the legalization of transactions carried out electronically is only considered a private deed. On the other hand, if the points above are met then it will be declared an authentic document.

In legalizing electronic transactions, the notary must verify the authenticity of the signature to fulfill the validity of a document, and in order to anticipate the occurrence of cyber crimes. Verification is also needed to fulfill the

requirements of the non-repudiation concept as a guarantee of the authenticity of the file so that there is no rejection by the owner of the signature. According to the ITE Law, electronic signatures must fulfill six requirements in order to carry out the authentication function and have legal consequences. The six requirements are that electronic signature creation data only relates to the signer; data relating to the creation of an electronic signature during the electronic signature process is completely under the control of the signing party; changes to the electronic signature that occur after the signature can be identified; changes in electronic information related to electronic signatures can be detected after the time of signing; There is a special way to find out who signed the signature; There are specific ways to indicate that the signatory agrees to the relevant electronic information.

The notary's role in authenticating electronic transactions is carried out in collaboration with the certificate authority (CA) as a trusted third party to ensure electronic transactions are safe and legal. In this role, notaries carry out many special duties. This includes, among other things, legalizing parties carrying out electronic transactions; the authenticity of the parties signing the electronic document; verification of electronic documents signed by the parties; guarantee signature security; and storage of information in the form of signed documents; assist the CA in issuing electronic certificates, especially in identifying parties requesting the issuance of electronic certificates; act as an intermediary in electronic transactions.

Article 1 paragraph (7) UUJN states that a notarial deed is a deed made by or before a notary. This regulation creates a conflict in the application of the cyber notary concept. In the cyber notary concept, where the entire process of making a deed is carried out electronically, the word "in presence" in Article 1 number 7 UUJN is legally equivalent to "versliden". Defined as "real" but in fact this "real presence" can be adapted to the current level of development, technically, "realistic presence" can also be achieved electronically.

One of the duties of a notary in e-commerce is to provide greater legal protection and legal certainty to legal entities carrying out transactions (Rukmana, 2021). Apart from verifying electronic signatures, notaries can provide knowledge to their clients regarding the legal aspects of electronic transactions to avoid disputes. Notaries can explain the legal status of goods and services sold to consumers, the legal status of entrepreneurs, the rights and obligations of each party, as well as possible disputes related to electronic commerce. The things mentioned above show that notaries have contributed to providing legal protection and legal certainty to legal entities that transact with them in e-commerce.

3.2. The Role of Notaries as Public Officials in the Era of Industrial Revolution

4.0

Notaries as public officials have the duty and responsibility to make deeds in accordance with UUJN. Notaries must adapt and follow current developments in carrying out their duties in order to face the challenges of global competition. In today's digital era, notaries must be ready to understand whether this moment is an opportunity or a challenge.

The era of the industrial revolution has many positive sides, but it also has a negative side, namely human resources that cannot adapt to technological advances. The era of industrial revolution 4.0 will guarantee the accuracy and timeliness of data access, guarantee global competitiveness, increase export market share through labor productivity and high profits in the industrial sector, and create new jobs (Tedjosaputro, 2019).

The existence of an online system in the industrial revolution 4.0 era means that the development of information poses challenges for the continuity of the notary profession. Trade is currently increasingly developing and electronic systems are interconnected. Another challenge is that this online system provides opportunities for manipulation and when done online, is vulnerable to unwanted things such as hacking.

In its development regarding business licensing, it is made using electronically integrated business permits (OSS). OSS is a permit issued by the OSS Institution on behalf of the Institution Director, Minister, Governor, Mayor/Regent, and electronically integrated business actors. OSS allows managing commercial permits for entrepreneurs with the following characteristics:

- a) In the form of a business entity or individual;
- b) Small, medium or micro businesses;
- c) Individual businesses and business entities, both new and established before the operationalization of OSS.

The results of implementing this OSS system will be approved in the form of NIB consisting of SIUP and TDP. NIB is an identification card for economic actors issued by the OSS institution after economic actors register. NIB must be owned by economic actors who wish to obtain a business permit through OSS, both new companies and companies that were established before the introduction of OSS. NIB is considered as TDP, API if the business actor will carry out import activities, customs access, if the business actor will export or import.

In the limited liability company (PT) institution, the SABH institution was

formed, namely a legal entity management system, an online limited liability company management system implemented by the Directorate General of AHU, Ministry of Law and Human Rights. SABH is also used to simplify business and organizational management once the system is ready. There is a data gap with the Ministry of Economy because SABH still uses KBLI in its OSS system which used 2017 KBLI before 2017. This difference has implications for NIB's rejection of the established OSS procedures (Yulia, 2019).

The main duties of a notary in establishing a PT are carried out online according to SABH procedures, starting from submitting the company name to its establishment. The notary enters PT data in electronic SABH format. If the data entered is correct, a statement of data correctness is issued electronically and approved electronically by the Minister, who then issues an approval decision as a legal entity.

Notaries can also hold teleconferences or video conferences in the context of implementing the PT GMS. If conducted via video conference or telephone, the notary must save it as an electronic document and authenticate it according to the required authentication protocols. Because of this convenience, it is not uncommon for data errors to occur when entering data into the system. If an error occurs when entering data, the notary must be responsible for making a new deed at his own expense (Permatasari & Hanim, 2017).

Based on the description above, the role of notaries is becoming increasingly important in the era of industrial revolution 4.0 as public officials who serve the public in creating legal documents in digital form. This legal document is intended to ensure legal certainty and protection for the community.

3.3. Implementation of Cyber Notary According to Applicable Law in Indonesia

Technological advances have created many opportunities for people to participate in various activities. The transition to the digital era has given rise to innovation in public services. Digitalization of public services is a fundamental criterion for service efficiency and the creation of services through technology with a focus on aspects of effectiveness and efficiency (RA Emma Nurita, 2012). Public services in the notary sector are generally carried out in traditional ways without using information technology. The involvement of information technology in the field of public services can also be utilized in the form of technology-based notary services, which are called cyber notaries.

Notary involvement also includes the use of information technology to manage various legal documents produced, which are carried out electronically consisting of the application of the principles of prudence, legal certainty, legal supremacy, integrity and freedom to choose technology using information

technology (Qisti Fauziyyah Suganto, 2019).

Legal regulations in Indonesia so far contain legal implications that are not related to modern domestic law as a whole. This can be clearly seen in the description of Section 1 of the UUJN that several provisions mentioned in the UUJN still refer to colonial Dutch East Indies legislation.

Article 1 number 7 UUJN regulates that notarial deeds are made directly in the presence of a notary and all parties. This creates problems for the public regarding the entry of cyber notaries in Indonesia. Using a cyber notary offers various advantages, including the creation of legal documents can be completed very quickly thereby saving time in carrying out transactions, the creation of documents or contracts is only limited to electronic documents, but covers all parties, public services can be delivered more effectively and efficiently.

Cyber notary has completed a bureaucracy, meaning modernization with optimal scope to advance public services. Cyber Notary was implemented jointly by the government and the Indonesian Notary Association (INI) with the idea of utilizing information technology to carry out notary authority and functions such as digitizing various records and certification. The importance of cyber notaries lies in the in-depth implementation of digital services aimed at enabling innovation and increasing the value of services. By digitizing the bureaucracy related to collaboration and coordination with the government through notaries and including information technology in its implementation. The concept of good governance in Indonesia cannot be separated from the success of the bureaucracy because everything is interconnected. Bureaucracy and adequate public services can also have a positive impact on development. The balance between the government and notaries will then produce efficiency and increase public enthusiasm (R. Siti Zuhro, 2012). The implementation of electronic notaries in Indonesia is expected to continue because it has been proven to be effective and efficient, as well as support from the government.

The main purpose of a cyber notary is to authenticate and legalize the provision of electronic documents. Certification means that the notary is authorized to act as a certificate authority (trusted third party) and issue digital certificates to all parties. Notaries have additional authority to validate activities via electronic notary, so that the printed validation results can be classified as electronic files.

Although technological advances have made it possible to carry out notary functions electronically and remotely (online and remotely), because the basic principles of UUJN are based on traditional procedures, this is currently not possible in Indonesia. The implementation of cyber notary can be started as needed, and the implementation of digitalization goes through a comprehensive implementation stage, planning strategic innovations in the organization,

infrastructure or culture so that they can be used effectively. The problem that arises with cyber notaries is that the current legislation is inadequate. In the era of digitalization of online information, law can respond to developments effectively and create values of justice and legal certainty in society. The transformation of documentation tasks from traditional to modern must be supported by a legal structure that can guarantee legal protection and certainty.

In the future, there may be opportunities to support notary activities from a legal point of view regarding the introduction of cyber notaries. The concept of electronic notary is a concept of the digital era which is accompanied by technological developments which require legal reform, as in the opinion of Roscoe Pound, that law is a tool for social reform (Salim. HS, 2010). To have an appropriate legal basis for the existence of cyber notaries, Indonesia needs to change regulations, especially Article 1868 of the Civil Code, Article 5 Paragraph 4 letter (b) of the ITE Law.

4. Conclusion

A notary must be able to respond appropriately and carefully to the challenges and opportunities in the era of the industrial revolution 4.0. A notary must be able to follow and understand current technological developments, technology has now become the rule of life. However, digitalization also has risks. One example is the role of notaries in managing electronic business permits (OSS) in an integrated manner as well as supporting and enforcing government regulations regarding the establishment of business entities in accordance with the KBLI, which will ensure that all business entities can obtain NIB.

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