

Legal Responsibility of Notaries for Errors and Misuse in the Use of Electronic Certificates as Evidence in the Digital Era

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Abstract. *The development of information technology has driven modernization in various legal fields, including notarial services. One form of innovation is the use of electronic certificates in making notarial deeds. This study aims to analyze the form of legal responsibility of notaries for errors and misuse in the use of electronic certificates and to assess the adequacy of regulations governing their legal protection. The method used is normative legal research with a statutory regulatory approach and legal literature analysis. The results of the study indicate that notaries can be held accountable civilly, criminally, or administratively if there is a violation in the use of electronic certificates. Although the use of electronic certificates has a legal basis through the ITE Law and its implementing regulations, existing regulations do not fully regulate in detail the technical mechanisms, responsibilities, and supervision of notaries in the digital context. Therefore, it is necessary to prepare more technical and specific regulations to ensure legal certainty and protection for parties who use notary services in the digital era.*

Keywords: *Certificate; Electronic; Notary; Protection; Responsibility.*

1. Introduction

The rapid development of information and communication technology has brought about major transformations in various aspects of life, including in the fields of law and public services. One form of innovation in this digital era is the use of electronic certificates, which are now starting to be applied in notarial practice. An electronic certificate is a digital document that functions as proof of electronic identity and a guarantee of the authenticity and integrity of an electronic document. In practice, notaries as public officials who are authorized to make authentic deeds are also given the authority to use and issue electronic certificates to support the validity of the legal documents they make (Larina *et al*, 2021). The use of electronic certificates certainly brings a number of conveniences, including time efficiency, accelerated service, and reduced paper use. However, the application of this technology also raises a number of problems, especially those related to cybersecurity aspects and legal liability in the event of errors or misuse. Electronic certificates are very vulnerable to various forms of digital threats such as hacking, identity forgery, and data manipulation. When a digital document that has been electronically signed is proven to be defective or misused, questions arise about who

should be held responsible and what legal mechanisms can be applied (Mason & Seng, 2017).

In this context, notaries are in a strategic and vulnerable position. As a party that guarantees the authenticity of legal documents, notaries are required to have an adequate understanding of digital security and regulations governing the use of electronic certificates. Therefore, there needs to be an in-depth study of the forms of legal responsibility that can be imposed on notaries, both civil, criminal, and administrative, if an error occurs in the application of this technology. This study will examine the forms of legal responsibility of notaries for errors and misuse in the use of electronic certificates, and analyze the legal basis that regulates this. Thus, this study is expected to contribute to strengthening notarial regulations and practices in the increasingly complex and dynamic digital era (Nurunnisa & Prasetyawati, 2024).

Although the use of electronic certificates by notaries has been accommodated in various laws and regulations such as Law No. 11 of 2008 concerning Electronic Information and Transactions (UU ITE) and its amendments in Law No. 19 of 2016, and Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE), the implementation of this technology in notarial practice still raises various problems. One of the gaps that emerges is the absence of specific and detailed regulations regarding the form of legal responsibility of notaries in the event of errors or misuse of electronic certificates. In fact, in their duties, notaries play an important role as parties who guarantee the validity of legal documents. In this context, the aspect of legal responsibility becomes very important to explore, both in the civil, criminal, and administrative realms.

The relevant theories to be analyzed in this study include the legal liability theory, which divides the forms of responsibility into fault liability, strict liability, and duty of care. This study will also refer to the general principles of civil law and state administrative law that form the basis of the work of notaries as public officials. The purpose of this study is to identify and analyze the forms of legal responsibility of notaries for errors or misuse in the use of electronic certificates, as well as to examine the adequacy of current legal regulations. Thus, this study is expected to contribute to the development of notarial law regulations and practices that are adaptive to advances in information technology.

2. Research Methods

This study uses a normative legal method, namely a legal research approach that is based on literature studies and analysis of applicable positive legal norms. This approach was chosen because the study focuses on the study of laws and regulations governing the use of electronic certificates by notaries, as well as the form of legal liability that can be imposed if errors or misuse occur. The main data sources in this study consist of primary legal materials such as Law No. 2 of 2014 concerning the Position of Notary, Law No. 11 of 2008 concerning Information and Electronic Transactions and its amendments, and other implementing regulations such as PP Number 71 of 2019 and the Regulation of the Minister of Law and Human Rights concerning electronic certificates. In addition, this study also uses secondary legal materials in the form of scientific literature, legal journals, and opinions of relevant experts. Data collection techniques are carried out through documentation studies and content analysis. Data analysis is carried out qualitatively by interpreting existing legal norms and linking them to notarial practices in the digital era. This method allows researchers to identify

regulatory gaps and formulate normative recommendations that can be used as material for future evaluation and improvement.

3. Results and Discussion

3.1. Form of Legal Responsibility of Notaries for Errors & Misuse in the Use of Electronic Certificate

The legal liability of notaries for errors and misuse in the use of electronic certificates involves various legal aspects, both civil, criminal, and administrative. As a public official authorized to make authentic deeds, notaries have the responsibility to ensure that every document issued has legal validity and is not misused by other parties. When electronic certificates are used by notaries in making deeds, they must ensure that the technology is safe and its integrity is guaranteed (Apriana & Hamid, 2024). Errors or misuse of electronic certificates, such as hacking, forgery, or data manipulation, can damage the validity of the document and cause significant losses to the parties involved. The form of legal liability of notaries can be seen from several perspectives. First, in the civil realm, notaries can be asked for compensation if there is an error in making an electronic deed that causes material or immaterial losses to the injured party. This is based on the principle of civil liability which requires the party who makes the mistake to compensate for the losses incurred. Second, in the criminal aspect, notaries can be subject to sanctions if they are proven to have intentionally misused or negligently issued electronic certificates that result in criminal acts, such as document forgery or fraud. This action may refer to the provisions of the Criminal Code (KUHP) or other related laws that regulate document forgery and criminal acts in electronic transactions.

In addition, from an administrative perspective, notaries who make mistakes or negligence in using electronic certificates can be subject to administrative sanctions by the Notary Supervisory Board or authorized institutions. These sanctions can be in the form of a warning, temporary suspension, or even revocation of a notary's practice license. This is in accordance with the regulations governing notarial ethics and code of ethics. Thus, notaries have an obligation to maintain caution in using electronic certificate technology and ensure that all processes are carried out in accordance with applicable legal provisions, both related to digital security systems and regulations governing the implementation of electronic transactions (Bahri, 2019).

In the context of using electronic certificates, notaries must also understand the principles of prudence and professional responsibility inherent in their position. According to the results of research by Syarif (2022) in the journal *RechtIdee*, the use of electronic certificates by notaries in Indonesia still faces major challenges, especially regarding the readiness of human resources, technological infrastructure, and supervision from relevant authorities. The study shows that many notaries still do not fully understand the legal implications of using electronic certificates, including aspects of data security and confidentiality. This opens up loopholes for procedural errors or misuse that can have serious legal consequences. Furthermore, a study Bente *et al* (2024) in the *Journal of Law & Technology* highlights the importance of technical regulations and integrated supervision in the implementation of electronic certification. According to them, although regulations such as the ITE Law and PP PSTE have provided a strong legal basis, implementation in the field is still not optimal. They emphasize the need for special technical guidelines that regulate the work procedures of notaries in the use of electronic certificates so that violations that are detrimental to the community do not occur. With

these studies, it is increasingly clear that the legal responsibility of a notary is not only limited to the formal aspects of making a deed, but also includes the integrity of the digital system used. Therefore, it is important for notaries to always follow training and updates related to legal information technology, and to coordinate with electronic certification organizers that have been recognized by the government. This will strengthen the legal position of notaries and provide more optimal legal protection for parties who depend on the validity of electronic documents created.

3.2. Codes Do the Current Laws and Regulations Sufficiently Regulate Legal Protection Related to The Use of Electronic Certificates by Notaries

The laws and regulations governing the use of electronic certificates by notaries in Indonesia are basically available, but still raise questions about their adequacy in providing comprehensive legal protection. Several main regulations that form the legal basis for the use of electronic certificates include Law No. 11 of 2008 concerning Electronic Information and Transactions (UU ITE) as amended by Law No. 19 of 2016, Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE), and Regulation of the Minister of Law and Human Rights (Permenkumham) Number 24 of 2021 concerning Procedures for the Use of Electronic Certificates in Notary Services. These provisions state that electronic signatures have valid legal force and electronic certificates can be used to guarantee the authenticity and integrity of electronic documents. However, these regulations are still general in nature and do not specifically regulate the technicalities of the use of electronic certificates by notaries, especially in terms of procedures, legal responsibilities, and monitoring mechanisms in the event of a dispute (Penabudi *et al*, 2023).

This lack of technical regulation creates a loophole that is prone to misuse or creates legal uncertainty, both for notaries and for the community using their services. For example, there are no standard guidelines regarding data security procedures or minimum standards for electronic systems that must be used by notaries. This makes the implementation of electronic certificates highly dependent on the policies of each electronic system organizer, which do not necessarily have a uniform security system or comply with adequate personal data protection standards. On the other hand, legal protection for parties who are harmed due to errors or misuse of electronic certificates by notaries does not yet have a clear and fast dispute resolution mechanism. Research by Nazran *et al* (2024) in the Journal of Law and Technology states that Indonesia still needs more detailed derivative regulations, especially those regulating the role and responsibilities of notaries in the electronic certification system. Thus, it can be concluded that although there is a legal basis that recognizes and legitimizes the use of electronic certificates in notarial services, these regulations are not sufficient to provide optimal legal protection. More technical implementing regulations are needed, as well as stronger monitoring and law enforcement mechanisms so that the integrity of electronic documents can truly be legally guaranteed.

The implications of the use of electronic certificates by notaries can be seen from various aspects, both technical, legal, and social. Technically, the implementation of electronic certificates has a significant impact on the efficiency and ease of making legal documents. The process that previously required a long time to verify documents can now be accelerated, considering the validity of electronic certificates that can be guaranteed through digital technology (Capece, 2020). However, on the other hand, the implementation of this technology also poses major challenges related to security

threats, such as the potential for hacking and identity forgery that can damage the integrity of documents. This requires notaries to always update their knowledge and skills in the use of technology and ensure that the system used is safe from cyber threats.

From a legal perspective, the biggest implication of the use of electronic certificates is how to provide adequate legal protection for all parties involved, both notaries, service users, and third parties. Clarity regarding the legal responsibility of notaries in the event of errors or misuse is important to prevent potential legal disputes from arising (Duranti, 2013). The relevant theory to explain this phenomenon is the legal liability theory, which emphasizes that the party carrying out a legal action must be responsible for the consequences of their actions. In this context, notaries as parties using electronic certificates must be held accountable for any errors or misuse that occurs, whether in the civil, criminal, or administrative realms.

In addition, cybersecurity theory is also relevant in examining the protection of electronic certificates. This theory emphasizes the importance of securing digital data from threats that can damage the integrity of electronic systems, including in the context of making deeds by notaries. In this case, the system used by notaries must meet high security standards and be continuously updated to avoid loopholes that can be exploited by irresponsible parties. Thus, the implementation of electronic certificates by notaries requires a multidimensional approach, by integrating legal, technological, and ethical aspects to ensure that all parties are protected from potential legal and security risks.

4. Conclusion

The use of electronic certificates by notaries is an important step in the modernization of the legal system and notarial services in the digital era. This innovation brings various benefits, such as process efficiency, reduced use of physical documents, and increased accessibility of legal services. However, its implementation also raises a number of challenges that must be anticipated, especially related to aspects of cybersecurity and legal accountability. Notaries as public officials have full responsibility for the validity and integrity of the documents they issue, including those using electronic certificates. In the event of an error or misuse, the notary can be held accountable civilly, criminally, or administratively, depending on the form and level of the violation that occurs. Therefore, an adequate understanding of technology and caution in its use are a must in modern notarial practice. On the other hand, although there are several laws and regulations governing electronic certificates, such as the ITE Law and the PP PSTE, these regulations are considered not detailed enough to provide comprehensive legal protection, especially in the context of the duties and functions of notaries. More specific technical regulations are needed, as well as clear monitoring and dispute resolution mechanisms so that the implementation of electronic certificates can run safely, legally, and provide legal certainty for all parties involved.

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