

August 29<sup>th</sup> 2018

# THE 4<sup>th</sup> INTERNATIONAL AND CALL FOR PAPER

Legal Construction and Development in Comparative Study  
The Role of Indigenous and Global Community in Constructing National Law

IMAM AS SYAFEI BUILDING  
Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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## INFORMATION OF THE CONFERENCE AND CALL PAPER

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**Welcome to Participants on**

**THE 4<sup>th</sup> INTERNATIONAL AND CALL FOR PAPERS**

**"Legal Construction and Development In Comparative Study"**  
*The Role of Indigenous and Global Community in Constructing National Law*

**29-30 August 2018**

**IMAM AS SYAFEI BUILDING**  
Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

**INVITED SPEAKERS :**

1. Prof. Henning Glaser  
Thammasat University, Thailand
2. Dr. Hilaire Tegnán, LL.M.  
Faculty of Law, Sorbonne University
3. Prof. Shimada Yuzuru  
Nagoya University, Japan
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Faculty of Law, Sultan Agung Islamic University

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AND CALL FOR PAPER**

*“Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)”*

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## PREFACE

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**Assalamu'alaikum, Wr. Wb**

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, HilaireTegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.**

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fifth International and call for paper next year.

**Wassalamualaikum, Wr. Wb**

Semarang, August 31<sup>th</sup> 2018

**Chairman of the Committee,**



**Dr. Anis Mashdurohatun, S.H., M.Hum**  
**NIDN : 06-02105-7002**

## **GREETING FROM THE DEAN OF FACULTY OF LAW**

*As-salamu'alaikum Wr. Wb.*

Thank to Allah is an absolute act that we must say after conducting the International Conference and Call for Paper by theme : “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” which was held by Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang, on August 29<sup>th</sup> 2018.

This conference tried to reviews different theories of legal development focusing on The Role of Indigenous and Global Community in Constructing National Law in order to highlight their similarities and differences. In the field of law, the substance of the discussion does not lie in 'whether the law is traditional because of the heritage of the past or not', but on the meaning of justice contained in the law. Often in discussing legal matters, we are caught up in the understanding of law in a procedural sense, not a law in a substantive sense-that satisfies the sense of justice. So it is not realized, there is a reduction of the meaning of the law substantively (which meets the sense of justice) becomes law procedurally. Especially when human life enters the era of globalization characterized by modern, as well as loaded with contemporary challenges and issues.

Globalization, in general people understand it is a process in the life of mankind to a society that covers the whole globe. This process is possible and facilitated by advances in technology, especially communication and transportation technology. Such understanding is not much different from the understanding of globalization as a process that refers to "a single interdependent world in which capital, technology, people, ideas, and cultural influences flow across borders". With such understanding, we are gradually going to live in a one world where individuals, groups and nations become more interdependent. In the global human society there will be patterns of social relationships that are different from before. And that too is a portrait of social life not found before.

Therefore, to discuss more about legal construction and development, Faculty of Law, Sultan Agung Islamic University was confidence to conduct a conference by the theme “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who had contributed in this event, so that this international seminar ran well.

*Wassalamu'alaikum Wr. Wb.*

Semarang, August 31<sup>th</sup> 2018

Dean,

A handwritten signature in black ink, consisting of a long horizontal stroke with a small upward flick at the end.

**Prof. Dr. Gunarto, SH, SE, Akt, M.Hum**  
NIDN.062004670



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# THE LEGALITY OF MAKING NOTARY ACTIONS USING ELECTRONIC MEDIA

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## ABSTRACT

As an effort to provide legal certainty and protection guarantees for parties conducting electronic transactions, Law Number 2 of 2014 concerning the Position of Notary Public (UUJN) in the elucidation of article 15 paragraph (3) has appointed a notary as an official authorized to certify electronic transactions. , coupled with the issuance of provisions contained in Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), it is increasingly proving the seriousness of the government in paying attention to the importance of realizing legal certainty and protection for the perpetrators of electronic transactions and their relation to the consequences. law resulting from legal acts committed with the electronic media.

Whereas however the existing legal rules are not made comprehensively so that they still cause bias in the application of the law, because there is a conflict of norms between the provisions of the explanation of article 15 paragraph (3) UUJN which regulates the authority of notaries to certify electronic transactions with the provisions of article 6 paragraph (1 ) UUJN which regulates the validity requirements of authentic deeds and the provisions of Article 5 of the ITE Law. The bias in applying the law is specifically related to the application of law to the validity of authentic deeds made using electronic media or authentic deeds made using evidence of electronic transaction certification.

*Keywords: Authentic Deed, Electronic Transactions, Electronic Media*

## A. INTRODUCTION

Along with the development of information technology in society which is also accompanied by developments Electronic transactions are increasingly rapid, so notaries in carrying out their duties and functions as public officials certainly cannot be separated from the advances in the development of information technology that are developing in the community. In this regard, therefore as stated in article 15 paragraph (3) of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Regulation of Notary Position, State Gazette of the Republic of Indonesia of 2014 Number 3, Supplement to the State Gazette Number 5491 (hereinafter referred to as Law Number 2 of 2014) which reads: "Apart from the authorities as intended in paragraph (1) and paragraph (2), Notary has the authority other stipulated in the laws and invitation."

Authority other things referred to in this article, have been described in the elucidation of article 15 paragraph (3) of Law Number 02 of 2014 which states that: "What is meant by other authorities regulated in the laws and regulations, among others: the authority to certify transactions that are carried out automatically. electronic (cyber notary), making a pledge deed of endowments and aircraft mortgages. "

However tThis is not the case with Article 16 paragraph (1) letter m of Law number 02 of 2014 which states that a notary must be present to read and sign the deed, which is a requirement for the authenticity of the deed which states that an authentic deed is a deed made in the form determined by law. law, is drawn up by or in front of public officials who are in power for it at the place where the deed was drawn up.<sup>1</sup>

So that is the case for the exercise of notary authority as referred to in the provisions explanation of the article15 paragraph (3) of Law number 2 of 2014, especially regarding the authority to certify electronic transactions and further regarding the validity of the notary deed,

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<sup>1</sup> R.Subekti dan R.Tjitrosudibio, 2009, *Kitab Undang-undang Hukum Perdata*, Pradnya Paramita, Jakarta, p.475

which is a product of the electronic transaction certification that has been carried out by the notary itself, if it needs to be further discussed in this study.

Based on the description above, this paper will seek answers to the problem: What is the validity of notary deeds using electronic media? And How is the application of making authentic deeds using electronic media, the obstacles and how to solve them?

## B. DISCUSSION

### 1. The validity of the Notary Deed Using Electronic Media

Regarding the making of a notary deed using electronic media, Pen research based his research on the concept of Article 15 UUJN which has authorized notaries to certify transactions by cyber notary. Cyber notary itself has actually been carried out by a notary such as the implementation in the General Meeting of Shareholders of a Limited Liability Company where the act is a type of deed of relaas. In addition, the use of computers in making deeds and during the legal entity registration process through the Legal Entity Administration System (sisminbakum) is a sign that notaries in Indonesia have started using computer systems and the internet in carrying out their duties. Another case with the Partij Deed, which is not possible to do by cyber notary.

However, if it is related to a legal product resulting from the exercise of the authority of a notary in carrying out electronic transaction certification in accordance with the provisions of the elucidation of article 15 paragraph (1) of the UUJN, namely in the form of an electronic transaction certificate, it is actually possible that the validity of an authentic deed is made by cyber notary in particular if The authentic deed turns out to be made based on evidence in the form of an electronic transaction certificate, so it can be concluded that the authentic deed was made using electronic media which should be legally valid, especially if it is linked to the provisions of Article 4 of the ITE Law, which states that evidence in the form of an electronic document has the power as a legally valid evidence.<sup>2</sup>

### 2. Application of Authentic Deed Making by Using Electronic Media, obstacles and Methods of Solving them

Notaries have the authority to act as public officials not as *Certification Authority (trusted thirdparty)* but notaries can also issue digital certificates to interested parties. In other words, notaries can issue certificates electronically with the guarantee that the notary can provide legal certainty to the party concerned. However, this contradicts Article 16 paragraph (1) letter m of Law Number 2 of 2014 which states that the reading and signing of deeds must be carried out in front of the audience and witnesses. This provision ultimately limits the performance of notaries to be more effective, because in their practice, notaries must take advantage of existing technology to simplify their performance and improve services provided to the public.

This means that there is a need for a renewal of Law Number 2 of 2014, especially with regard to the process of making deeds in the broadest sense and making deeds automatically. *cyber notary* in particular. In addition, it is also necessary to define the definition of certification using a cyber notary or making deeds using a cyber notary is the same as making a notary deed. This is intended so that in carrying out their duties, notaries can use sophisticated technology without having to violate laws regulating the implementation of their duties and other laws related to this matter.

According to the author, the procedure for making a notary deed by cyber notary has the same procedure as the making of a notary deed that has been implemented so far. However, what distinguishes the two procedures is in terms of facing, where so far facing here is done by being

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<sup>2</sup> Hikmawanto Juwana, disampaikan dalam acara Seminar Cyber Notary, *Tantangan Bagi Notaris Indonesia*, Grand sahid jaya Hotel, Jakarta, 2011.

physically present but facing in relation to cyber notary is done by using electronic devices, for example teleconferences or video calls.

The procedure for making a notary deed by using a cyber notary is that the parties appear before the notary by using a teleconference or video call to convey the intentions and objectives of the notary public and convey the deed to be made, the parties must clearly show their identity to the notary by sending their identity via electronic devices such as facsimiles and notaries match the identity with the person in the teleconference or video call, after that, the notary makes the deed according to the form prescribed by law which is then read out in front of the parties where in the reading of the deed is either a notary public, witnesses and parties use a teleconference or video call at the same time, and after completion of the deed is read and understood by the parties concerned, the deed is signed by the parties, witnesses and notary by using a digital signature.

### C. CLOSING

- a. Whereas making a notary deed using electronic media (cyber notary) or in other words using electronic devices such as teleconferences or video calls is contrary to the provisions of Article 16 paragraph (1) letter m of Law Number 2 of 2014 states that the reading of the deed must be carried out in front of the tappers and attended by at least 2 (two) witnesses, and in the explanation it is stated that the Notary must be physically present and sign the Deed before the tappers. This is a prerequisite for the authenticity of the deed so that if it is not fulfilled, the deed will only have the power of proof which is equivalent to an underhand deed.
- b. That the legal benefits associated with making deeds using cyber notary are felt to have provided benefits in the implementation of the position of notary public. This is because, the implementation of making a notary deed using cyber notary can provide convenience and practicality for interested parties and also for the notary itself. Whereas, however, the application of authentic deeds using electronic media has encountered obstacles due to the provision of Article 16 paragraph (1) letter m of Law Number 2 of 2014 which has limited the performance of notaries to be more effective, because in carrying out their practice, notaries must utilize technology existing in order to simplify their performance and improve services provided to the public, so that to overcome these obstacles it is necessary to reform Law Number 2 of 2014, especially those relating to the deed making process in its broadest sense and specifically regarding deeds making using electronic media (*cyber notary*)

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