

Cyber Notary Problems in Legal Reform in Indonesia

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Abstract. *Cyber Notary is a concept of using digital technology that is expected to bring great benefits to the legal system and society in Indonesia. Along with the development of digital technology, this concept is proposed as a solution to increase efficiency and security in notary services. Cyber notary allows the process of document validation and electronic signing to be carried out online, utilizing technologies such as blockchain and digital signatures. However, its implementation still faces various challenges. One of the main problems is the lack of comprehensive and specific regulations governing the use of digital technology in notary practice. In addition, concerns about the security and privacy of electronic data are serious obstacles. Cyber attacks and the risk of forgery of electronic documents require a stronger and more sophisticated security mechanism. In addition, in remote areas that still experience limited internet access. The lack of understanding and technical expertise among notaries who are tech-savvy also hinders the adoption of cyber notary. These factors emphasize the need for increased capacity and training for notaries to adapt digital technology in cyber notary practice. This study uses normative legal research with a legislative approach (statute approach) that examines regulations and laws related to legal issues regarding cyber notary. This study examines the implementation and challenges faced in implementing the concept of "cyber notary" in Indonesia, which is noted the need for revision and development of more specific regulations as well as collaborative efforts between the government, technology providers, and notary associations to overcome these challenges. With the right steps, the implementation of cyber notary in Indonesia can increase efficiency and trust in notary services in the digital era.*

Keywords: *Cyber; Digital; Regulation; Technology.*

1. Introduction

The application of information technology in the legal world is growing rapidly, including in the field of notary services. Currently, the concept of cyber notary has emerged as an effort to speed up and facilitate the process of making

notarial deeds by utilizing internet technology. However, the application of cyber notary in Indonesia still faces various problems that need to be considered in depth.

One of the main problems in the implementation of cyber notary is the issue of the validity of electronic documents. The use of digital signatures and electronic certificates is still a debate among legal experts, especially related to the legal force of documents produced through cyber notary. In addition, data security and protection of personal information are also major concerns in the implementation of cyber notary.

Not only that, the regulatory and policy aspects related to the implementation of cyber notary are also a challenge in themselves. The need to clearly and firmly regulate the procedures, standards, and methods in the implementation of cyber notary is very necessary to ensure the continuity and sustainability of this service in Indonesia. In addition, there needs to be synergy between various related parties, both the government, notary institutions, and information technology service providers to create a healthy cyber notary ecosystem.

In the social context of Indonesian society, there are still concerns regarding the acceptance and trust in cyber notary services. The public needs to be given sufficient understanding of the benefits and advantages of implementing cyber notary in order to increase their interest and trust in this technology. An educational and socialization approach needs to be carried out comprehensively to introduce and educate the public about the importance of cyber notary.

During the COVID-19 pandemic, the implementation of cyber notary in Indonesia has increasingly received attention because the need for notary services remains high but is faced with social restrictions. Cyber notary is expected to be an effective alternative in responding to these challenges, but there needs to be adjustments and regulatory updates to ensure that the implementation of cyber notary can run smoothly and orderly in accordance with applicable regulations.

In the global scope, the implementation of cyber notary in Indonesia also needs to pay attention to international standards related to information security and data protection. Openness to the development of information technology in the international world can be a reference in improving the quality and legitimacy of cyber notary services in Indonesia. Thus, Indonesia can be better prepared to compete in the increasingly digitally connected global market.

2. Research Methods

This study uses normative legal research. Normative legal research is a study of legal principles, legal systematics, the level of legal synchronization, legal history, and comparative law.¹Data processing collected from this research is literature. The approach used in this research is the statute approach by examining regulations and laws related to legal issues in this research.²The legislative

¹Soerjono Soekanto. (1986). Introduction to Legal Research. Jakarta: UI-Press. p. 51.

²Peter Mahmud Marzuki. (2019). Legal Research. Jakarta: Prenadamedia group. p. 181.

approach is used to analyze various laws and regulations related to cyber notary, while the conceptual approach is used to analyze and comprehensively review the concept of cyber notary.

The types and sources of legal materials in this study include primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials in this study are in the form of laws and regulations related to the authority of Notaries in making Notarial deeds through cyber notary institutions, including:

- a) Civil Code;
- b) Law Number 30 of 2004 concerning the Position of Notary;
- c) Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary;
- d) Law Number 40 of 2007 concerning Limited Liability Companies.

Secondary legal materials in this study are in the form of library materials, journals, online journals and articles, foreign literature, and expert opinions regarding the authority of Notaries in making Notarial deeds through cyber notary institutions. While tertiary legal materials include materials that provide guidance on primary and secondary legal materials, such as the Legal Dictionary, and others.

3. Results And Discussion

3.1. The concept of cyber notary in Indonesia

The concept of cyber notary in Indonesia is still under debate, although technology allows the role of Notary online and remotely, but legally this seems impossible.³Cyber notary still has shortcomings both in terms of meaning and conceptualization in making a Deed. However, in its regulation, the concept of cyber notary cannot be implemented effectively and efficiently due to the legal vacuum between the meaning and implementing regulations of cyber notary itself. So here it can be seen that cyber notary has been regulated but has a legal vacuum (*rechtsvacuum*) in the perspective of its meaning. In a legal vacuum, of course, it makes Notaries hesitate to use the concept of Cyber notary, so that as a result it hinders the development of the notary profession in serving the needs of the community.⁴

Cyber notary implicitly explained through the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, especially in the explanation of Article 15 paragraph (3) which reads "In addition to the authority as referred to in paragraph (1) and paragraph (2), Notaries have other authorities as regulated in statutory regulations." Paragraph 3 has a further explanation which reads "What is meant by "other

³Edmon Makarim, (2011) "Modernization of Future Notary Law: Legal Study of the Possibility of Cyber Notary in Indonesia." *Law and Development* 3 p. 468

⁴Cyndiarnis Cahyaning Putri and Abdul Rachmad Budiono, (2019) "Conceptualization and Opportunities of Cyber Notary in Law", *Scientific Journal of Pancasila and Citizenship Education*, Vol. 4, No. 1, p.30

authorities regulated in statutory regulations", among others, the authority to certify transactions carried out electronically (Cyber notary), make Deeds of Waqf pledges, and airplane mortgages."⁵

The authority of a notary in carrying out electronic transaction certification (Cyber notary) is not explained in detail and its scope is not described. Because it is not explained specifically, the author decided to interpret from the root word of the sentence. The term certification comes from the English word "certification" which means information or ratification, while in Dutch "waarmerken" which has the definition of ratifying, all private letters or private deeds that are signed, or stated with fingerprints can be requested for ratification to the head of the district court, regional head, through local officials or to a notary.⁶

The phrase "electronically" cannot be interpreted as a method of implementing authority, because in interpreting the phrase, there is a conjunction in the form of "which", so that electronically is an inseparable part of "transactions carried out electronically". In relation to the Theory of Legal Certainty, one aspect is that there are general rules that make individuals know what actions may or may not be done. In this case, in order to create and achieve one of the objectives of the law, namely legal certainty, it is necessary to have a meaning in the formulation of cyber notary as stated in the Notary Law, so that Notaries can know whether the actions (Notary authority in cyber notary) may be carried out and to what extent Notaries can carry them out, and know the limitations of the application of cyber notary in the context of making authentic deeds.⁷

This interpretation can lead to implications regarding which Notary legal acts can be implemented through cyber notary. The concept of cyber notary itself has no limits to its interpretation, so that in this case the provisions contained in the Notary Law regarding cyber notary result in it not being able to be implemented. However, if referring to other laws and regulations, for example the provisions regarding the General Meeting of Shareholders (hereinafter referred to as "GMS"), where the results of the minutes of the GMS are a Notary deed in the form of an official deed (relaas acten).⁸

The implementation of the GMS via teleconference media is stated in Article 77 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, namely: "In addition to holding the GMS as referred to in Article 76, the GMS may also be conducted via teleconference media, video conference, or other electronic media that enable all GMS participants to see and hear each other directly and participate in the meeting."⁹

⁵Ibid.

⁶R. Subekti and R. Tjitrosudibio. (2009). Civil Code. Jakarta: Pradnya Paramita. p. 475.

⁷Cyndiarnis Cahyaning Putri and Abdul Rachmad Budiono, Op. cit., p.30

⁸Ibid.

⁹Ibid.

The mechanism for making a deed of GMS via teleconference begins with the Mechanism for making a deed from the results of the General Meeting of Shareholders conducted via teleconference consisting of making a deed by a Notary, then reading it via teleconference so that the parties attending the GMS can know the contents of the deed. After the parties agree with the contents of the deed, the deed is then signed electronically using a digital signature. The parties who sign are the parties participating in the GMS, witnesses, and a Notary. All are done digitally. After signing, the GMS deed is valid and binding on the parties as a Law."¹⁰

The opportunity regarding the concept of cyber notary, although not in the perspective of making a deed, can be reviewed again in terms of storing Notary protocols. Indah Kusuma Dewi said that the opportunity for the implementation of storing Notary protocols in electronic form is very possible to be implemented, considering that notaries have implemented electronic applications as regulated in:¹¹

- a) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 4 of 2014 concerning Procedures for Submitting Applications for Legal Entity Approval and Approval of Amendments to the Articles of Association and Submission of Notification of Amendments to the Articles of Association and Amendments to Limited Liability Company Data;
- b) Regulation of the Minister of Law and Human Rights Number 5 of 2014 concerning the Ratification of Legal Entities of Foundations; and
- c) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 6 of 2014 concerning the ratification of the Legal Entity of Associations.

It is further explained that making the transfer of electronic data storage can only function as a backup, not as a copy that has binding legal force. Thus, normatively, the opportunity for making a deed of the results of the General Meeting of Shareholders by the PT Law and storing the Notary protocol in electronic form has actually been opened to the possibility of making a deed by utilizing technological developments.

Explanation of Article 15 paragraph (3) of Law Number 02 of 2014 as a legal umbrella for conducting electronic transaction certification (Cyber notary). However, this deed that is made still has a question mark whether it has fulfilled the authenticity of the deed as regulated in Article 1868 of the Civil Code (KUHPperdata) or not because the provisions in Article 1868 of the KUHPperdata are the requirements for the authenticity of the deed which states that an authentic deed is a deed made in the form determined by law, made by or

¹⁰Amelia Sri Kusuma Dewi, (2015), "Implementation of GMS Through Electronic Media Related to Notary's Obligation to Attach Fingerprints of Appearing Persons" Legal Arena, Vol 8, No 1, p. 111.

¹¹Indah Kusuma Dewi, (2015), Study on the Storage of Notary Protocols in Electronic Form Related to Provisions Concerning Cyber Notary., Unpublished thesis. Yogyakarta. Faculty of Law, Gadjah Mada University.

before public officials who are authorized to do so at the place where the deed is made.

The legal problem lies in the article that is the legal umbrella for cyber notaries clashing with the norms of the next article contained in the obligations of Notaries in making deeds, as stated in Article 16 paragraph (1) letter m which states that Notaries are obliged to "read the Deed before the person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a Deed of Will privately, and signed at that time by the person appearing, witnesses and Notary." This article is further explained in the Explanation that the Notary must be physically present and sign the Deed in the presence of¹²the person appearing and the witness. If the Notary does not carry out the obligations as referred to in Article 16 paragraph (1) letter m, then the evidentiary force of the Notary deed will be degraded to being limited to a private deed. This is in line with the provisions of Article 16 paragraph (9) which states: "If one of the requirements as referred to in paragraph (1) letter m and paragraph (7) is not fulfilled, the Deed in question only has evidentiary force as a private deed."

The above provisions can also be deviated considering that Article 16 paragraph 7 of Law of the Republic of Indonesia Number 2 of 2014 opens up the opportunity for Cyber notary to be carried out for electronic documents or electronic deeds because the Reading of the Deed before a notary is not mandatory when the person appearing wants the Deed not to be read because the person appearing has read it himself, knows, and understands its contents, with the provision that this is stated in the closing of the Deed and on each page of the Deed Minutes initialed by the person appearing, witnesses, and Notary. This phrase "physically" is what causes the concept of cyber notary or making deeds by utilizing technological developments. In this case, the obligations and authorities of the Notary experience a conflict (conflict of norm). It is not possible for the implementation of the making of a deed which in concept is carried out remotely and practically, to then be burdened with the obligation to attend physically. This obligation actually eliminates the essential element of the concept of cyber notary.

In addition, according to Article 5 of Law Number 19 of 2016 concerning Electronic Information and Transactions, in Article 5 paragraph 1 there is a phrase "Electronic Information and/or Electronic Documents and/or printouts thereof are valid legal evidence." This explains that valid evidence in court includes various forms and types, ranging from witness statements to electronic documents. Furthermore, Article 5 paragraph 4 explains "The provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) do not apply to:

- a. letters which according to the law must be made in written form; and

¹²Cyndiarnis Cahyaning Putri and Abdul Rachmad Budiono, Op. cit., p.30

b. the letter and its documents which according to the law must be made in the form of a notarial deed or a deed made by the official who made the deed."

So, because there is a phrase "exceptions" as a provision regarding valid evidence, notarial deeds in electronic form do not have perfect evidentiary power like authentic deeds and are only considered as private deeds that cannot be equated with letters, documents, and electronic certificates.

Thus, if a notary does not carry out his/her obligations, he/she may be subject to civil sanctions. These sanctions may be in the form of reimbursement of costs, damages, and interest that must be borne by the notary as a consequence of the demands of the interested parties. These sanctions arise because the deed made by the notary may only have the same evidentiary force as a private deed or may even be considered null and void by law. As a result, parties who feel aggrieved by the notary's negligence have a legal basis to demand compensation. This is important to ensure that notaries always comply with professional standards and applicable regulations, so that the integrity and validity of the documents they make are maintained.¹³

3.2. Scope of Notary Work: Emerging Challenges and Implementation

In the context of the notary's work area, the current position of Cyber notary has caused significant changes in the way notaries perform their duties. Previously, notaries were required to receive and check the signatures and identities of the parties involved directly. However, with the presence of Cyber notary, notaries can carry out the process of making deeds online without having to meet physically with the parties concerned. This provides greater flexibility in reaching clients in various regions without being limited by geographical distance.

However, the implementation of Cyber notary also faces several obstacles that need to be overcome. One of the main obstacles is the issue of data and information security. The process of making deeds online poses a risk of data leakage and misuse of personal information of the parties involved. Therefore, a strong security system and guaranteed data protection are needed to ensure the integrity and confidentiality of documents produced through Cyber notary.

In addition, the issue of the validity of electronic documents is also an obstacle in the implementation of Cyber notary. The use of digital signatures and electronic certificates still requires further clarification regarding their legal force according to applicable legal regulations. Clear regulatory and standard adjustments are needed regarding the recognition of documents produced through Cyber notary so that they can be widely accepted by related parties, including financial institutions and other institutions.

According to PSTE Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions and the Regulation of the Minister of Communication and Information Number 11 of 2022 concerning

¹³Habib Adjie, (2017), Civil and Administrative Sanctions Against Notaries as Public Officials. Bandung: Refika Aditama. p. 94

the Governance of the Implementation of Electronic Certification, this special digitally signed document has been recognized as valid by the Indonesian government and international institutions.¹⁴

In addition, issues related to public acceptance are also obstacles in the implementation of Cyber notary. The public needs to be given sufficient understanding of the benefits and security of using Cyber notary services in order to increase their trust and interest in this technology. Extensive socialization and in-depth education need to be carried out to provide a comprehensive understanding to the public regarding the advantages and disadvantages of implementing Cyber notary. In overcoming these obstacles, there needs to be an active role from the government, notary institutions, and information technology service providers to work together to create an integrated and secure Cyber notary ecosystem. Supportive regulations, guaranteed security systems, and intensive education will accelerate the adoption and implementation of Cyber notary in Indonesia. Thus, Cyber notary can be an innovation that drives the progress of the notary services sector in this digital era.

3.3. Harmonious Model for Resolving Disputes on Customary Land Rights

Article 1 number 7 of the Notary Law states firmly that notarial deeds are made by or before a Notary. The substance in this article can be concluded that in making a deed, it must be made before a notary and the parties face to face. This has caused a polemic in society in the implementation of cyber notary in Indonesia.

Various advantages and benefits that can be obtained by implementing cyber notary are, of course, in the implementation of Notary duties can be completed more quickly and save time, the implementation of transactions such as making deeds/agreements only require electronic documents but the parties can complete their business transactions, minimize expenses because they are not constrained by transportation and costs can be calculated, and another important thing is that public services can be provided more effectively and efficiently compared to conventional services.

Knowing that there is a condition of the Laws and Regulations that are not in accordance or harmonious in Article 15 paragraph (3) with Article 16 paragraph (1) letter m of Law Number 02 of 2014. Article 15 paragraph (3) regulates the provision that notaries have other authorities regulated in the laws and regulations, one of which is the practice of cyber notary. With the ability to carry out cyber notary, technically the parties' notary practices can not meet directly but can be assisted by information technology devices.

This is contradictory to the provisions of Article 16 paragraph (1) letter m which stipulates that a notary must be present to read and sign the deed before the

¹⁴Understanding the Concept of Cyber Notary and the Validity of its Documents, <https://blog.privv.id/cyber-notary/>, accessed on June 17, 2024, at 19.00 WIB

person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a private will, and signed at that time by the person appearing, witnesses, and the Notary. However, this is subject to an exception and is the basis for justifying the practice of cyber notary where Article 16 paragraph 7 opens up the opportunity for cyber notary to be carried out for the existence of electronic documents or electronic deeds because it is not mandatory to read the Deed before a notary when the person appearing wishes that the Deed not be read because the person appearing has read it himself, knows, and understands its contents, with the provision that this is stated in the closing of the Deed and on each page of the Minutes of the Deed initialed by the person appearing, the cyber notary, and the Notary. Thus, the creation of electronic deeds can be justified and its evidentiary force is equal to a private deed and can be upgraded to an authentic deed when the parties appear before a notary for ratification, and it is initialed by witnesses and the notary.¹⁵

4. Conclusion

It is known that in this law there are several conflicting norms, but due to the conflicting norms still being in the same law, it cannot be analyzed using the theory of conflict of norms of Legislation. Thus, the existence of Law No. 2 of 2014 urges revision and improvement so that the norms contained therein become harmonious and mutually reinforcing.

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¹⁵Nurul Muna Zahra Prabu, et al., (2019), "Problems of Implementing Cyber Notary Related to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary", *Surya Kencana Dua Journal: Dynamics of Legal and Justice Problems*, Vol, No. 2, p.895.

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