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Authorities and Responsibilities of Notaries Regarding the Implementation of Cyber Notary in Indonesia

Iqbal Pandu Satrio

Faculty of Law, University of Jenderal Soedirman

Abstract

A cyber notary is a breakthrough and innovation that is very important in the legal world, especially Notary; through article 15, paragraph 3 of the Notary Position Act, notaries are given the authority to certify transactions electronically. So far, the certification of electronic transactions has been regulated in Law Number 19 of 2016 concerning Information and Electronic Transactions, which discusses all rules relating to electronic transactions. Cyber Notary itself conflicts with the current regulations, especially regarding proof of deeds made electronically by a notary and the authority obtained by a notary as described in Article 15 paragraph 3 of the Law on Notary Positions. This study aims to analyze the powers and responsibilities of a notary about the implementation of a cyber notary in Indonesia. The research method used is normative, using secondary data obtained from library research, including primary, secondary, and tertiary legal sources. The Notary's authority obtained in the cyber Notary is the authority to register online through the AHU Online application, including registration of the deed of establishment of PT, amendments to the articles of association of PT, fiduciary, and will. The deed made by the Notary electronically and in electronic and digital form has the power of proof under the hand.

Keywords: Cyber Notary, Electronic Transactions, Power of Evidence

Abstrak

Cyber notary merupakan terobosan dan inovasi yang sangat penting dalam dunia hukum khususnya kenotariatan, melalui pasal 15 ayat 3 Undang-Undang Jabatan Notaris, notaris diberikan kewenangan untuk mensertifikasi transaksi secara elektronik. Sertifikasi transaksi secara elektronik sendiri sejauh ini diatur dalam Undang-Undang Nomor 19 Tahun 2016 tentang Informasi dan Transaksi Elektronik yang didalamnya membahas mengenai segala aturan yang berkaitan dengan transaksi elektronik. Cyber notary sendiri mengalami benturan dengan aturan-aturan yang ada saat ini, khususnya mengenai pembuktian akta yang dibuat secara elektronik oleh notaris dan kewenangan yang diperoleh oleh notaris sebagai mana dijelaskan dalam Pasal 15 ayat 3 Undang-Undang Jabatan Notaris. Tujuan penelitian ini adalah untuk menganalisis kewenangan dan tanggung jawab notaris berkaitan dengan pelaksanaan cyber notary di Indonesia. Metode penelitian yang digunakan adalah normatif, dengan menggunakan data sekunder yang diperoleh dari penelitian kepustakaan antara lain sumber hukum primer, sekunder dan tersier. Kewenangan notaris yang diperoleh dalam cyber notary adalah kewenangan mendaftarkan secara online lewat aplikasi AHU Online, diantaranya pendaftaran akta pendirian PT, Perubahan anggaran dasar PT, Fidusia dan Wasiat. Akta yang dibuat oleh Notaris secara elektronik dan dalam bentuk elektronik dan/atau digital mempunyai kekuatan pembuktian dibawah tangan.

Kata kunci: Cyber Notary, Transaksi Elektronik, Kekuatan Pembuktian

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Introduction

The development of technology and the increasingly widespread era of globalization requires a nation to adjust and harmonize well. The presence of technology has had a significant impact on people's lives today. All information can be sent in just seconds; this proves that the digital era and technology can change something that cannot necessarily be realized into a reality.

Technology is a tool that can facilitate humans in all activities, which cannot be separated from each other. It has become an attachment between humans and technology as well as being a modern tool, which gives birth to science and

technology that helps humanity (Pribadi, 2018). Notaries are no exception; the digital era and globalization inevitably have to adapt to changes in the social order of the technological and digital era. Technology was born because of a community's need to facilitate transactions and communication between people. Notary in Indonesia is no exception in carrying out legal actions and carrying out the duties and authorities mandated by law. The authority of a Notary in making and authorizing electronic transactions is regulating in Article 15 paragraph 3 of Law Number 2 of 2014 concerning Notary Positions which reads, "In addition to the authority referred to in paragraph (1) and paragraph (2), a Notary has other authorities regulated in the laws and regulations." What is meant by "other authorities" as regulated in-laws and regulations, among others, is the authority to certify which is Carrie is out electronically (cyber notary), making a deed of waqf pledge, and aircraft mortgages. Electronic certification is a legal action carried out using a computer, computer network, and other electronic media (cyber notary).

Surya Jaya provides an understanding of cyber Notary, namely the use or utilization of information technology such as computers, computer networks, and other electronic media such as teleconferencing or video conferences in carrying out the duties of the Notary's authority. Meanwhile, according to the Deputy for Information Security Technology of the Minister of Communication and Information, Riki Arif Gunawan, the current system and technology have allowed Notaries to go digital. The registration system in e-commerce must be combined with identity verification in banking. Today's digital signature technology can combine the two, e-commerce convenience and banking identity verification (Jaya, 2017).

Freddy and Leny, in their book, consider it necessary to distinguish between a Cyber Notary and a Notary who uses cyber technology. Cyber Notary is a Notary who can certify an electronic document. So, there is a system that is recognized as a means of digital certification or certification. When a notary uses a tool as a teleconference to a shareholder who cannot attend in person, he is called a Cyber User Notary (NPC) because the power of attorney and a power of attorney is still obliged to be shown present before the notary (Harris, 2017).

Certification means that a Notary has the authority to be called a party acting as a Certification Authority (trusted Third Party). A Notary can issue a product in the form of a digital certificate to interested parties. Another function is authentication which relates to legal aspects that must be met in electronic transactions (Matra, 2012). Electronic Transactions as described in Article 1 paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions in conjunction with Law Number 19 of 2016 concerning Amendments

to Law Number 11 of 2008 reads, "legal acts carried out using computers, computer networks, and other electronic media."

What was conveyed by the above experts, however, in Article 5 paragraph (4) of the Information and Electronic Transaction Law states that provisions regarding Electronic Information and Electronic Documents do not apply to a letter which, according to the law, must be made in written form, and a letter with documents that must be made in the form of a notarial deed or a deed made by an official land certificate maker (Bahri, 2019).

As described above, in the virtual world (cyber) to carry out an activity not face to face directly, for legal certainty to people (*naturlijk person* or *rechtspersoon*) in conducting online transactions in order to give confidence to the transaction opponent, a Certification Provider appears. Electronic that will issue certificates for use in transactions. In the case of the issuance of the certificate, there is a Notary's role as the registration authority. At the time of registration, it is necessary to show the identity of the applicants to the Notary a certificate is to be issued. This is meant by Article 15 paragraph (3) of the Notary Position Act, namely the authority to certify transactions carried out electronically (cyber Notary) (Matra, 2012). That the authority is related to responsibility, the responsibilities of the notary as a public official include the responsibilities of the notary profession itself related to the deed, among others, the civil responsibilities of the notary for the deed he made related to the material truth of the deed, the responsibilities of the notary based on the notary position regulations and code of ethics. Meanwhile, according to Article 15 of Notary Office Act, the authority of a Notary is to do an authentic deed regarding all actions, agreements, and provisions required by laws and regulations, ratify signatures and determine date certainty, affixing letters under the hand and making letterhead and other authorities. It is regulated in the legislation. The provisions regarding the authority and responsibility of the Notary are essential parts to achieve legal certainty, order, and legal protection about legal evidence.

Cyber Notary and electronic transactions cannot be separated from evidence. The proof is the main thing in a court case, valid evidence according to civil procedural law as regulated in article 164 HIR/284 RBG, namely: letters, witnesses, confessions, oaths, judges' suspicions. The sufficient evidence must have several qualifications in order to have perfect and binding evidence. Letter evidence is categorized as written evidence; letters are divided into two types, namely deed and other documents that do not deed. Deeds are divided into authentic deeds and private deeds. The formal function of the deed (*formality causa*) is a juridical

acknowledgment of legal actions and as evidence (probation causa) is for waterproof and as evidence.

A cyber notary can understand that a notarial deed is done through electronic means. A notary only ratifies an agreement whose reading and signing of the deed are not carried out in the presence of a notary. The electronic transaction is an agreement in which the reading and signing of the deed are not done before a notary. This will determine whether the notarial deed has fulfilled the provisions as an authentic deed if it is associated with Article 16 paragraph (1) letter m of Law Number 02 of 2014 and Article 1868 of the Civil Code.

Electronic transaction certification (Cyber Notary) carried out by a Notary either makes and ratifies an electronic and digital deed whether the product made and produced by a Notary is legally valid evidence and has an equal position with an authentic deed of conventional form. When viewed from the laws and regulations in Indonesia. Suppose you look at the other side of the principle of technological progress. In that case, broader issues also occur for civil issues because e-commerce transactions have become an integral part of national and international commerce. Indonesia, which is also a member of the United Nations, applies the principles of the UNCITRAL Model Law as a legal umbrella in making regulations related to e-commerce transactions. The primary and specific objectives of this Model Law are: (Huala, 2013)

1. Provide rules regarding e-commerce addressed to the national legislature or law-making body of a country;
2. Provide more definite rules for electronic trading transactions.

Electronic transactions they also regulated in the UNCITRAL Model Law on Electronic Commerce 1996, which the UN General Assembly ratified with resolution 51/162 dated December 16, 1996. The UNCITRAL Model Law was formed as a basic rule to regulate the validity, recognition, and consequences of messages (electronic messaging) based on computers in commerce. The purpose of the UNCITRAL Model Law is to promote uniform legal rules in computer networks for commercial transactions (Huala, 2004).

The Notary Position Act and the UTE Law have the contents and powers that apply to any person who carries out a legal act as regulated in this Law, whether for a person or a legal entity. Whereas in the UNCITRAL Model Law on Electronic Commerce 1996, specific emphasis is placed on legitimacy, the legitimacy referred to here is the validity of trade agreements or trade contracts made through electronic systems. It has become a habit if every trade transaction agreement is always stated in an electronic agreement or contract in the form of a digital deed or electronic deed.

There is also a broader problem for civil matters because Currently, e-commerce transactions have become part of national commerce and international (Fauji, 2017). The application of Model Law principles in evidence is needed in an electronic transaction legal act. The public's need for authentic deeds and the increasing development of technology and culture amid the global virus outbreak, namely Covid-19. From a legal point of view, legal actions have the condition that the legal action must be poured into the form of an authentic deed. The community's need for law tends always to develop and be dynamic in line with the development of information and technology. Therefore, the law should constantly develop following the development of society, not become an obstacle in the development of society. The increase in social and economic activities with the constellation of the world community has entered a society oriented towards information, culture, and technology.

Therefore, based on this background, it is deemed necessary to research the implementation of a Cyber Notary, both regarding the authority of a notary and the validity of a digital or electronic deed as evidence from the perspective of Indonesian laws and regulations and the development of information and technology in Indonesia.

Research Problems

Based on the brief description above, the researcher wants to raise a problem formulation as follows:

1. What are the powers and responsibilities of a Notary in implementing Cyber Notary?
2. How is the validity of a digital deed made by a notary as evidence based on the laws and regulations in Indonesia?

Research Method

This research will be structured using normative juridical research, namely research that is focused on examining the application of rules or norms in positive law. The approach method used in this research is the statutory approach (Statute Approach), the analytical approach (Analytical Approach), and the conceptual approach (Conceptual Approach). The data needed in this research is secondary data; primary legal materials include the Civil Code, Law Number 2 of 2014 concerning Notary Positions, Law Number 19 of 2016 concerning Information and Electronic Transactions, and Ministerial Regulation Number 11 of 2018 concerning Electronic Certificate Operators. Then the secondary legal materials include libraries in the field of law, research results in law, and scientific articles, journals, and the internet. Researchers collect library data by collecting several books,

documents, laws and regulations, scientific works, and other literature. The legal materials obtained will be analyzed qualitatively.

Discussion

1. Authorities and Responsibilities of a Notary as a Third Party's Conducting Certification and Electronic Transactions

The development of technology today is very rapid; technology has become an inseparable part of modern society. Modern society lives in the era of information technology or popularly referred to as the disruptive era or the era of the industrial revolution 4.0, which means, now a nation has placed human life amid the flow of technology, not least in all legal actions, especially for Notaries. Legal actions carried out by Notaries are those related to certifying electronic transactions or popularly known as Cyber Notaries.

According to Surya Jaya, Professor of the Faculty of Law, Hasanuddin University, the cyber Notary uses or utilizes information technology such as computers, computer networks, and other electronic media such as teleconferencing or video conferences in carrying out the duties of the Notary's authority (Jaya,2020). Cyber notary in carrying out his duties applies full electronic media during the making of the deed. It means that the notary, the appeared, and the witness is not in the same place and at the same time. It refers to the word cyber, which means virtual (the parties do not meet but meet through cyberspace or the internet). There is a definition of a cyber notary in carrying out their duties of applying electronic media but staying in the same place. At the same time, only during the deed-making process do they not use conventional devices such as paper, pens, and pencils. The concept of a cyber notary in exercising the authority of a Notary is regularly in Article 15 paragraph 3 of Law Number 2 of 2014 concerning Notary Positions, namely "In addition to the authority referred to in paragraph (1) and paragraph (2), a Notary has other authorities regulated in the laws and regulations." The meaning of other authorities as regulated in Article 15 paragraph 3 is explained again in the explanation, namely: what is meant by 'other authorities regulated in-laws and regulations, among others, is the authority to certify transactions conducted electronically (cyber notary), which contains a Deed waqf pledges, and aircraft mortgages.

Electronic transactions are an advancement in today's era of Industry and Technology; in Law Number 19 of 2016 concerning Information and Electronic Transactions, Article 1 number 2 explains the meaning of electronic

transactions, namely, "Electronic Transaction is a legal action carried out using a computer, computer network, and other electronic media."

In the Government of the Republic of Indonesia Regulation Number 71 of 2019 concerning Electronic System and Transaction Operators Article 1 number 2 provides a meaning that is not much different from the Electronic Transaction Law, namely, "Electronic Transaction is a legal action carried out using a computer, computer network, and other electronic media." Electronic transactions are an advanced breakthrough in technological developments and, of course, for the world of law. Electronic transactions cover all elements in the life of the nation and state, including notaries in certifying electronic transactions.

Electronic certification is the process of certifying professionals, services, or goods for eligibility, quality, or standards used after the standard evaluation process. Trusted third parties carry out certification in electronic transactions based on regulations. In the existing regulations, it not clearly explained regarding the meaning of Electronic Certification both in the ITE Law and Government Regulation Number 71 of 2019 concerning PSTE, in the ITE Law it only explained the meaning of Electronic Certification provider, which in Article 1 number 10 provides the meaning, "Electronic Certification Provider is a legal entity that functions as a trustworthy party, which provides and audits Electronic Certification."

Then in Article 1 number 21 of Government Regulation Number 71 of 2019 concerning Electronic System and Transaction Operators also explains electronic certification providers whose meaning is not much different from what be explaining in the ITE Law, namely, "Electronic Certification Provider is a legal entity that functions as a trustworthy party, which provides and audits Electronic Certificates." So the provider of electronic certification is a legally responsible party, a notary is a trusted third party, a notary is a trusted third party (T3P) because if you look at the identity of the legal subject that brought, it is only a technical statement, so it considered still lacks the value of perfect legal power of proof. The authority that exists in Law Number 2 of 2014 concerning Notary Positions, in addition to the authority to certify electronically regulated in Article 3 of the Law, there are general powers exercised by Notaries, namely in Article 15 paragraphs 1 and 2, Article 1, namely:

Notaries are authorized to do authentic deeds regarding all actions, agreements, and provisions required by laws and regulations and desired by those with interest to be stated in an authentic deed, guaranteeing the certainty of the date of doing the deed, storing the deed, providing Grosse, copies, and

quotations of the deed. All of this as long the making of the deeds is not assigned or excluded to other officials or other people stipulated by law.

The authority contained in Article 15 is not only in doing authentic deeds but also given other powers as stated in Article 15 paragraph 2 of the Law on Notary Positions, namely:

In addition to the authority as referred to in paragraph (1), a Notary is also authorized to:

- a. ratify signature and determine the certainty of the date of the letter under the hand by registering it in a particular book;
- b. book a letter under the hand by registering in a particular book;
- c. make a copy of the original handwritten letter in the form of a copy containing the description as written and described in the letter concerned;
- d. validate the compatibility of the photocopy with the original letter;
- e. provide legal counseling in connection with the making of the Deed;
- f. do a deed related to land; or
- g. make a Minutes of Auction Deed.

Authority mentioned above is an authority attached to the duties and professions of a Notary in serving the community, both individuals and legal entities.

The authority of a Notary in certifying electronic transactions, when viewed from the existing regulations, will be described in the table below.

No.	Law Number 19 of 2016 concerning ITE	Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions	Minister of Communication and Informatics Regulation Number 11 of 2018 concerning the Implementation of Electronic Systems and Transactions
1.	Article 1 number 6, 6a, number 10, and number 21	Article 1 number 21	Article 1 point 5, Article 27 letter c, Article 29, and Article 30.
2.	Number 6: Electronic System Operator utilizes Electronic System by state administrators,	Number 21: Electronic Certification Operator is a legal entity that functions as a	Article 1 number 5: Electronic Certification Provider is a legal entity responsible for providing and auditing Electronic Certificates.

	Persons, Business Entities, and the public.	responsible party, providing and auditing Electronic Certificates.	
3.	Number 6 letter a: Electronic System Operator is any Person, state administrator, Business Entity, and community that provides, manages, and operates an electronic system, either individually or jointly, to Electronic System users for their own needs and needs of other parties.	-	Article 27: a. carry out self-examination; b. appoint a registration authority to carry out inspections, and c. Appoint a notary as the registration authority.
4.	Number 10: Electronic Certification Operator is a legal entity that functions as a responsible party, providing and auditing Electronic Certificates.		Article 29: The examination conducted by the registration authority as referred to in Article 27 letter b and a notary as referred to in Article 27 letter c does not discharge the responsibility of the Electronic Certification Provider.
5.	Number 21: A person is an individual, whether Indonesian citizen,		Article 30: Suppose the examination carried out by the registration authority as

	foreign citizen or legal entity.		referred to in Article 27 letters b and c is declared to meet the requirements. In that case, the registration authority and notary shall forward the application to the Electronic Certification Operator to issue Electronic Certificates.
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Based on the table above, we can see related regulations and give authority to Notaries to certify electronic transactions. From the perspective of the Civil Code, Article 1868 of the Civil Code explains that "an authentic deed is a deed made in the form determined by law by or before a public official who authorized for that at the place where the deed finished. A public official is a position that is authorized to do an authentic good deed. In this case, the notary as a public official, the public who enforces the law, is not the public as the general public. A notary is a public official whose legal product is a deed, which is bound by civil law provisions, especially in the law of evidence.

a. Dealing Through Electronic Facilities and Infrastructure from a Legal Perspective in Indonesia

Civil law in Indonesia is still a reference in the implementation of legal actions carried out by Notaries. Authentic deeds are strong evidence, with a Notary as a public official appointed and given the authority to make and ratify various deeds. The problem is that the industrial era 4.0 (four-point zero) has become a digital breakthrough that cannot separate from doing things. The Civil Code is a regulation that has existed and has been in effect since the colonial era; article 1868 of the Civil Code stipulates that a deed does before an authorized public official, namely a Notary. Along with the development of information technology, which results in a shift from conventional systems to digital systems, notary services are also shifting towards electronic and digital-based services, commonly known as cyber notaries. The role of notaries is required to be able to participate in the development and socialization of technology and information because in authority to certify electronic transactions Article 15 paragraph 3 of Law Number 2 of 2014 concerning Notary Positions.

The certification carried out by a notary is in the future referred to as an authentic deed as stated in Article 1 paragraph (1) of Law Number 2 of 2014 as an amendment to Law Number 30 of 2004, it declared that "Notaries are public officials authorized to make authentic deeds and have other powers as referred to in this law or based on other laws." Then, if we look at Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, which states that in carrying out his position, a Notary is obliged to read the deed before an audience in the presence of at least 2 (two) witnesses or 4 (four) witnesses specifically for the making of an underhand will and signed at the same time by the appeared, witness, and notary. Based on this formulation, it is clear that a physical meeting between the parties is required before a Notary directly faces to face. While in the concept of a cyber notary, it is the opposite, this physical meeting is not absolute because its function is replaced by telecommunications equipment. These are where the conflict of law arises between the conventional Notary deed product and the product in the form of an electronic Notary deed or Cyber Notary.

In the Civil Code, dealing through electronic and telecommunication facilities and infrastructure, between a Notary and a Client in doing a deed, is not clearly explained about dealing. A Notary Deed is called an authentic deed if it fulfills the requirements of the legislation, especially Article 1868 of the Civil Code. Based on the definition of an authentic deed in Article 1868 of the Civil Code, there are 3 (three) requirements for an authentic deed, namely:

1. The deed must be drawn up in the form and procedure determined by law.
2. Deed made by (door) or before (ten overstrain) a public official.
3. The official must have the authority to do the deed

The implementation of the position of a notary as an official authorized to do an authentic deed to ensure certainty, order, and legal protection, which has the core of truth and justice, which requires authentic written evidence regarding legal conditions, events, or actions. As A. Kohar stated that, legal certainty is a guarantee of legal protection for the parties. Acting based on the applicable legal rules will undoubtedly provide certainty to the parties who appear before a notary. An authentic deed made before or by a notary follows the applicable legal rules so that if a problem occurs, the authentic deed can be using as a guide for the parties (Putri A.R, 2011). The definition of the use of technology with video conference facilities in question is where the parties use video conferences through computers, laptops,

mobile phones, or other information technology that is connected to the internet and connected to a video camera that will capture images of the conference participants who will interact in the process of doing the deed and then will do a deed with a deed as usual.

Information Technology in practice has been carried out directly by a notary, namely in the general meeting of shareholders conducted through Electronic Media as regulated in Article 77 of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). The meeting is finished with conditions that allow all meeting participants to see and hear each other directly and participate in the meeting. In holding a meeting using the media, minutes of the meeting must make, which are approved and signed by all participants. The explanation of the article says that what is meant by "approved and signed" is signed physically or electronically (Budiono, 2015).

The making of a deed using technology it is finished by a notary, such as the implementation at the General Meeting of Shareholders of a Limited Liability Company, where the deed is a type of release deed. In the deed, the Notary explains/provides in his position as an official public testimony of all that he has seen, witnessed, and experienced, which other parties did (Tobing, 1999). The release deed or deed made by a notary in the practice of a notary contains a description that is seen and witnessed by the notary himself (via video conference media) at the request of the parties carried out in the form of a notarial deed. So that the notary's statement in the form of a release deed can be ascertained its validity even though the parties do not affix a signature and have perfect proof power. So, doing a deed using technology with other video conferencing facilities can make it possible to do another release deed. It is related to the parties who are allowed not to be present directly in the making of the deed, and also, there is no need for signing in the deed.

Based on the preceding, if you look at Article 5 of Law Number 19 of 2016 concerning Amendments to Law Number 18 of 2008 concerning Information and Electronic Transactions states:

- 1) Electronic information and electronic Documents and their printed results are legal evidence;
- 2) Electronic information and electronic documents and their printed results as referred to in paragraph (1) are extensions of valid evidence by the procedural Law in force in Indonesia;
- 3) Electronic information and electronic documents are declared valid if they use an electronic system by the provisions stipulated in this Law.

In Article 1868 of the Civil Code, dealing with each other is not described directly in the sense of directly dealing in real or face to face online using electronic media facilities and infrastructure. The position of a Notary is very important in supporting law enforcement through the implementation of his position as a public official who is authorized to make a legal product, namely an authentic deed to help create legal certainty for the community. In its regulations regarding the authority to do deeds using technology using video conferencing, it is not regulated in the notary position law regarding the deed that is allowed in the use of technology using video conference, namely for under-handed deeds related to the deed of the minutes of the meeting and then confirmed into an authentic deed. However, doing an authentic deed cannot be carried out immediately because there is no regulation (Hanum:8).

Many laws and regulations open up opportunities for the realization of doing deeds using technology in Indonesia, for notaries to use information technology to carry out their authority. It is just that legal uniformity is needed so that there is no overlap in the application of the law.

b. Notary Authority in Conducting Electronic Registration in the Technological and Digital Era

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (Notary Office Act) in a general explanation states that the philosophical basis for establishing the Notary Office Act is to realize the guarantee of legal certainty, order, and legal protection, which is based on truth and justice. The state gives several authorities to Notaries to provide legal certainty to the community, and one of these authorities is the authority to certify transactions carried out electronically; this authority has been described in the explanation of Article 15 paragraph (3) of the Notary Office Act. Certification of transactions carried out electronically (cyber notary) shows that the government is trying to provide legal certainty to the perpetrators of transactions conducted electronically with a Notary intermediary as the provider of certification of transactions conducted electronically.

There are several kinds of notary authority in electronic registration, including:

1. Fiduciary Registration
2. Registration of Legal Entities and Business Entities
3. Registration of Amendments to the Articles of Association of PT

4. Will Registration

Notaries have responsibility for establishing a Limited Liability Company from the provisions regarding the establishment of a Limited Liability Company which is an agreement made and stated in a notarial deed. Article 7 paragraph (1) of the Company Law stipulates that the company consists of 2 (two) or more persons with a notarial deed drawn up in the Indonesian language. Following the provisions in Article 1868 of the Civil Code determines as follows:

"Authentic deed is a deed made and inaugurated in form according to law, by or before public officials, who are authorized to do so, where the deed was made."

Notaries can make legal innovations on their deeds in order to make legal discoveries. Innovation, according to Law Number 18 of 2002 concerning the national system, research, development, and application of science and technology, is a research, development, and engineering activity that aims to apply practically new values and contexts of science or new ways to apply science and technology in legal products. So, that notaries can make legal innovations on their services but must comply with the provisions of the law. Three reasons can cause a notary to make legal innovations: notaries make innovations because there have not been regulations in law, and innovations are carried out because the laws and regulations are unclear. Innovations are made because the laws and regulations are incomplete. So that innovation made by a notary is allowed as long as the innovation does not conflict with other laws and regulations and is still within the scope of the notary's obligations. The notary is fully responsible for establishing a Limited Company because, the notary is considered to understand and understand and agree to the provisions set by the Directorate General of AHU, which contained in the form of an electronic statement in establishing a PT. The notary is fully responsible for the data entered. The notary is ready to accept all forms of sanctions if it is proven that the notary violates the provisions of the law. The notary's accountability can be requested if carrying out his position causes harm to the rights of the interested party. The notary can be penalized; sanctions against the notary have been regulating in Articles 84 and 85 of Law Number 2 of 2014 concerning Notary Positions.

Not much different from a registration made by the Notary to the PT into the online AHU application, the Fiduciary Deed made by the Notary based on the request of the Creditor against the occurrence of a loan by the debtor with collateral in the form of movable and immovable goods, for the

loan other than the credit agreement issued by the Creditor. , also did a fiduciary deed registered with the Ministry of Law and Human Rights of the Republic of Indonesia. The implementation of the registration of a fiduciary deed by a Notary in the Directorate General of AHU system is by entering the deed data to obtain approval that the fiduciary deed has already registered (Johari, 2000).

A will is a deed made by a person during his lifetime to surrender and give all of his assets, both movable assets and immovable assets, which is carried out by his will when the testator dies. The will may be revoked by the testator and may change the contents of the will as long as the testator has not died. A Notary carries out the registration of wills through the online system of the Directorate General of AHU into the Will Register Center. The will list center contains the deed number, the Notary who did the deed, and the testator's name has been recording in it (Suryawan:489). The AHU Online System is a Computerized System in the Process of Legalizing the Deed of Establishment of a Limited Liability Company and Approval of Amendments to the Articles of Association of a Limited Liability Company. AHU Online is a form of Service to the Community provided by the Ministry of Justice and Human Rights of the Republic of Indonesia, especially the Directorate General of General Legal Administration in Processing Applications for Legalization of Deeds of Establishment and Applications for Approval and Acceptance or Reports on Amendments to the Articles of Association of Limited Liability Companies, which can do online which can be accessed online—accessed by all Notaries on the <http://www.ahu.go.id> site.

AHU Online is a computerized system as a form of collaboration between internet service providers, the Ministry of Law, and Human Rights. Every Notary who will access AHU Online must register himself with the Ministry of Law and Human Rights. After that, the Notary gave a User and Keyword or password consisting of series of Letters or Numbers which can change accordingly to the wishes of the Notary concerned. In addition, the Notary is also equipping with a user ID or the name of the user, usually the name of the Notary himself, to use in opening or starting access to the AHU website, which a located at <http://www.ahu.go.id>. Therefore, the only person who can apply for ratification of Notary Deeds is the Notary himself. No longer can the Service Bureau or other people and even people within the company take direct care of the Ratification Process (Suryawan, 2020).

Legal responsibility is an obligation to do something or behave in a certain way, not deviate from existing regulations. The notary's responsibility

here is a form of public service by the morals and ethics of the profession and the law. According to Abdulkadir Muhammad in his theory of responsibility for violating the law (tort liability) is divided into several theories, namely: (Muhammad, 2010)

- a. Responsibility due to unlawful acts committed intentionally (intentional tort liability), the defendant must have committed an act in such a way as to harm the plaintiff or know that what the defendant did would result in a loss.
- b. Liability due to unlawful acts committed due to negligence (negligence tort liability) is based on the concept of fault related to intermingled morals and law (intermingled).
- c. Absolute responsibility for violating the law without intentionally or unintentionally questioning the fault (strict Liability) based on his actions.

From the theory above, the responsibilities of a notary both in all legal actions and their authority in making, ratifying, and registering, there are 4 (four) important points, namely:

- a. Liability in civil form for the material truth of the deed he made;
- b. Criminal responsibility for the deed he made;
- c. Responsibilities of a Notary under Notary Office Act;
- d. Responsibilities based on the Notary Code of Ethics.

The responsibility of the Notary in registering the deed, legal entity, and business entity with the online AHU system if there is an error in the process and the data entered by the Notary does not match the contents contained in the deed. The Notary will make administrative improvements at the expense of the Notary; regarding this, there must still be cooperation and communication from the applicant regarding the data required for the registration process.

2. The validity of the Digital (electronic) Deed made by a Notary as Evidence as seen from the Perspective of Indonesian Law

Evidence is anything that can get used to prove. Civil procedural law, based on Article 164 HIR, Article 1866 of the Civil Code, and Article 164 HIR, stipulates that evidence includes written evidence, evidence with witnesses, allegations, confessions, and oaths. Article 1867 of the Civil Code states that there are two types of written evidence: private deeds made by the parties (private deeds) and authentic deeds made by authorized officials (authentic deeds). Of the two types of a deed, there is evidence where the authentic deed has perfect proving power. Furthermore, in the explanation of Law Number 2 of 2014 concerning

the Position of Notary, it is stated that an authentic deed is considered perfect because it contains a formal truth. However, it should also be realized that Article 1869 states that a deed which because of the inability or incompetence of the employee referred to above, or because of a defect in its form, cannot be required as an authentic deed. It only has the power of proof as written underhand if the parties sign the deed. Furthermore, Article 1877 of the Civil Code also states that if an authentic deed, in any form, is suspected to be false, then its executive power can be suspended according to the provisions in the Regulation of Civil Procedure (Makarim, 2013).

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Evidence is significant in civil cases, and all transactions, both conventional and electronic; electronic information is not only limited to how the system works, but it must contain matters relating to the parties, contents, and signatures in digital and digital form. /or electronics. Electronic evidence, as stated in Article 5 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, states that:

- 1) Electronic Information and Electronic Documents and printouts are valid legal evidence.
- 2) Electronic Information and Electronic Documents and their printed results, as referred to in paragraph (1), is an extension of valid evidence by the applicable procedural law in Indonesia.

- 3) Electronic Information and Electronic Documents are declared valid if they use Electronic Systems by the provisions stipulated in this law.
- 4) Provisions regarding Electronic Information and 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; (which includes but is not limited to securities, and letters used in the process of enforcing civil, criminal, and state administrative, procedural law); and
 - b. The letter and its documents must be made in the form of a notarial deed or a deed made by the official doing the deed according to the law.

The explanation of paragraph 1 explains that:

That the existence of Electronic Information and Electronic Documents is binding and recognized as legal evidence to provide legal certainty to the Operation of Electronic Systems and Electronic Transactions, especially in evidence and matters relating to legal actions carried out through the Electronic System.

Then in the explanation of paragraph 4 letter a, it explains that:

“According to the law, letters that must be made in writing include but are not limited to securities, securities, and letters used in the process of enforcing civil, criminal, and state administrative, procedural law”.

Article 6 mentions other provisions other than those stipulated in Article 5 paragraph 4, that:

If there are other provisions other than those regulated in Article 5 paragraph (4), which requires that information must be in written or original form, Electronic Information, and Electronic Documents are considered valid as long as the information contained therein can be accessed, displayed, guaranteed its integrity, and can be held accountable for to explain a situation.

From what has been explained above, according to the author that in the general form of electronic evidence is in the form of electronic information and electronic documents that can be accessed, displayed, and guaranteed for their integrity and can be accounted for, which legally can be used as evidence in the process of action. Civil law. For now, the validity of electronic evidence in the legal world, especially civil cases in evidence related to cyberspace, especially those involving electronic transaction arrangements, is legally valid and can be recognized as evidence because it has been stated and explained in the Act. - IT law. An essential element in the proof is the parties' signature; in electronic transactions whose products are in the form of electronic certificates and electronic documents, there must be an electronic and digital signature.

Written evidence is regulated in Article 1866 of the Civil Code, then in Article 1867; there are two types of written evidence, namely:

1. private deeds made by the parties (private deeds);
2. authentic deeds made by authorized officials (authentic deeds).

An underhand deed is different from an authentic deed in terms of proof; an underhand deed, as long as the parties do not deny the deed, is still valid and has perfect evidence and an authentic deed. The author will describe in a diagram below how an underhand deed acts as valid legal evidence in an electronic transaction when viewed from the perspective of the Civil Code:

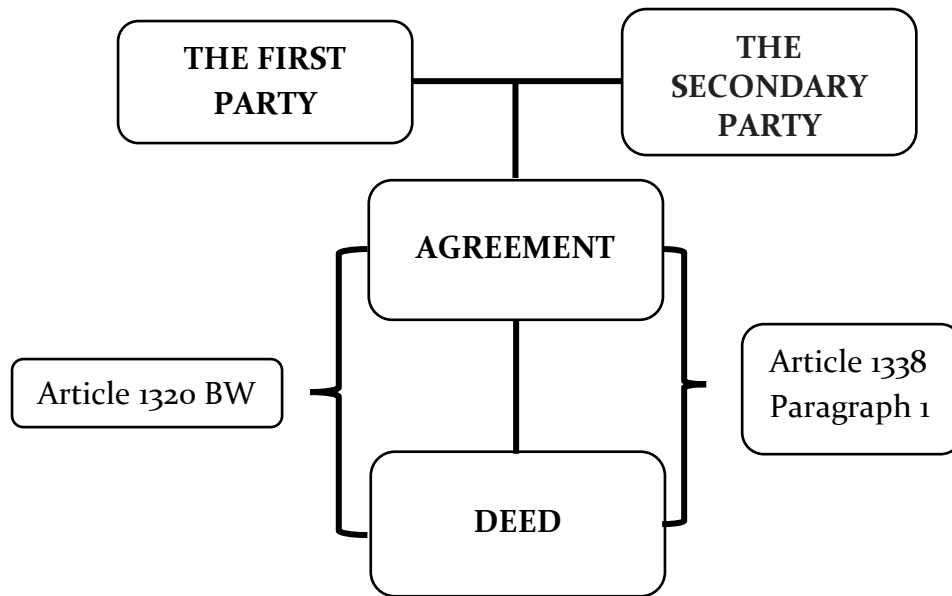


Diagram: deed under the hand of BW

According to the author, from the diagram above, because the deed under the hand was not made by or before an authorized official, as long as the parties agree and do not deny the contents of the agreement, the deed is valid as a perfect piece of evidence. However, because the deed was not made and by a notary, it is better if the making and signing of the deed must also present witnesses. It aims to strengthen the evidence because, with the presence of witnesses who witnessed and saw the agreement process as outlined in writing, the parties could not deny the existence of the deed. Article 1320, in conjunction with article 1338 paragraph (1) is a form of the principle of consensuality, where the fundamental principles or principles by which agreements can occur because of the agreement of the will (consensus) of the parties in which the agreements can be made freely form, and this an emphasized in Article 1338 paragraph (1) that all agreements made legally shall apply as law for those who make them.

As stated in Article 1867 of the Civil Code, an authentic deed has perfect evidentiary power; this is confirmed in Article 1 point 7 that a Notary deed is an authentic deed made by or before a Notary according to the form and procedure stipulated in this Law. To more clearly understand the form and conditions of an authentic deed, the author will describe it in a diagram below when viewed from the perspective of the Civil Code:

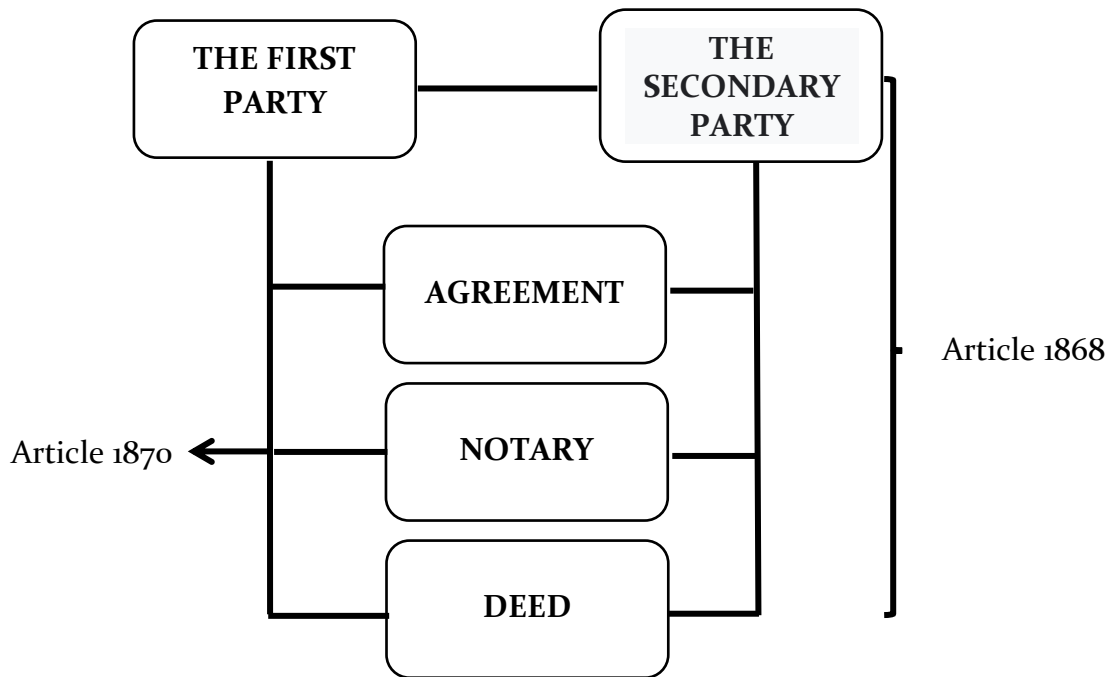


Diagram: Authentic Deed According to BW

The diagram above shows that an authentic deed can only be done by and or before an authorized public official, a Notary, as contained in Article 1868 of the Civil Code. An authentic deed is a deed made in a specified form, by and or before a public official authorized to do so at the place where a deed has been done. Article 1870 of the Civil Code emphasizes an authentic deed in that article, explaining that an authentic deed provides perfect evidence of what is contained for interested parties and their heirs or for people who have rights from them.

The law on the position of a notary in determining the terms and validity of an authentic deed has several differences with what be explained in the BW, namely regarding witnesses who must be present in condition for the validity of an authentic deed. When viewed from the Notary Position Act and positive law in Indonesia, authentic deeds will an explained in the diagram below.

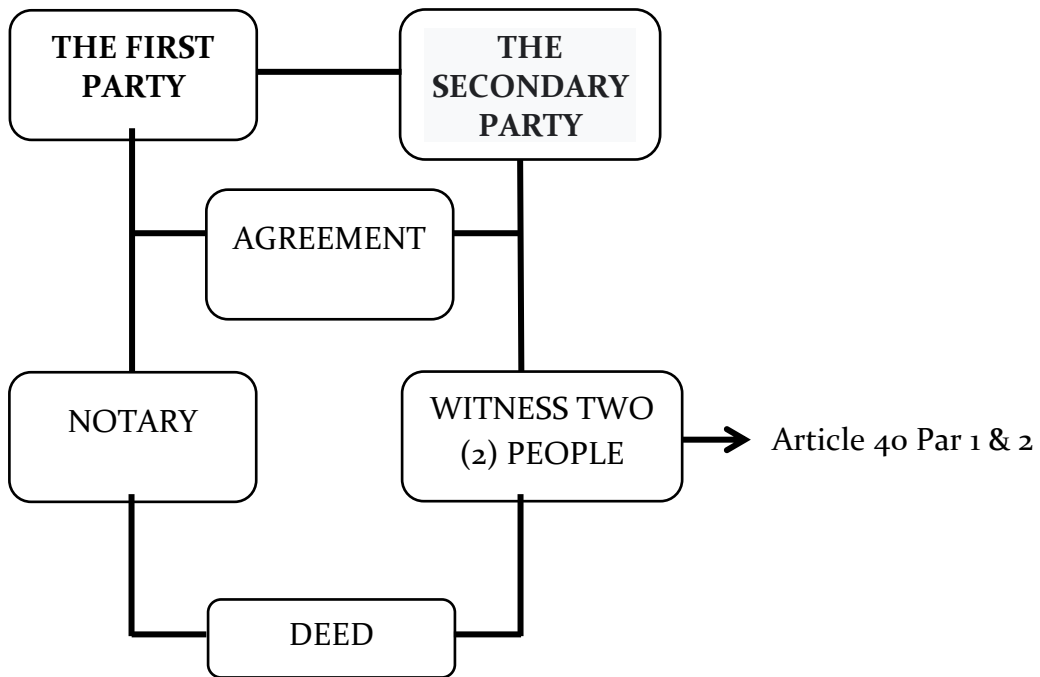
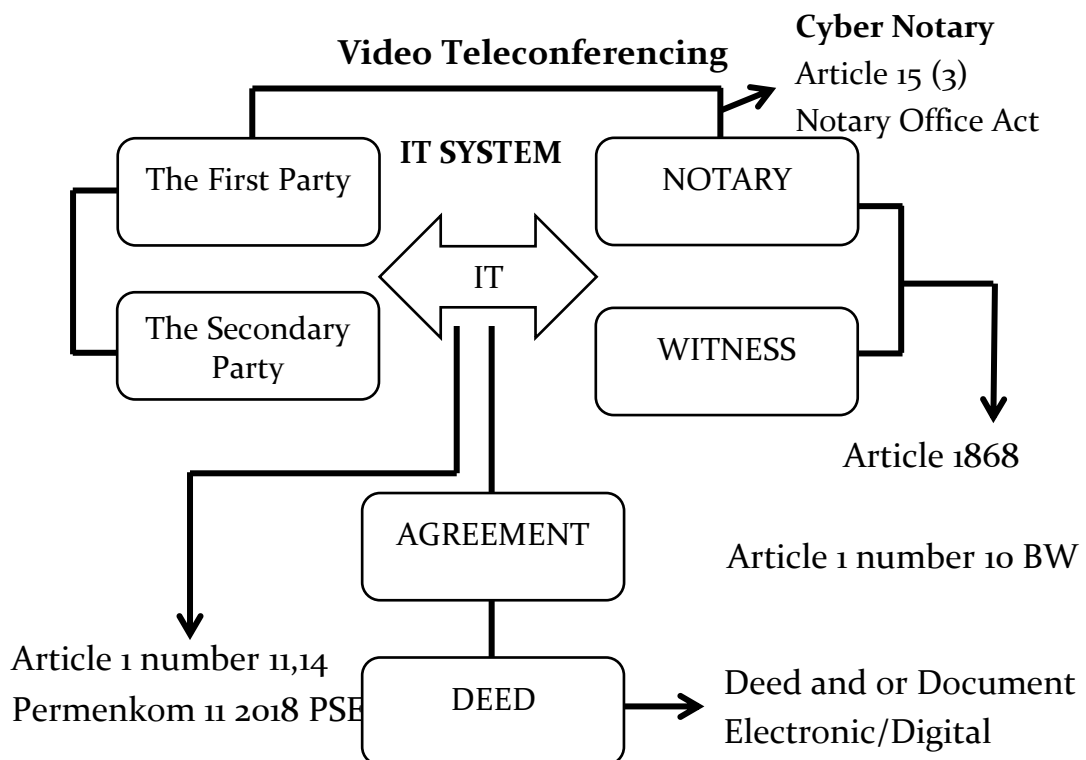


Diagram: NOTARY OFFICE ACT Authentic Deed

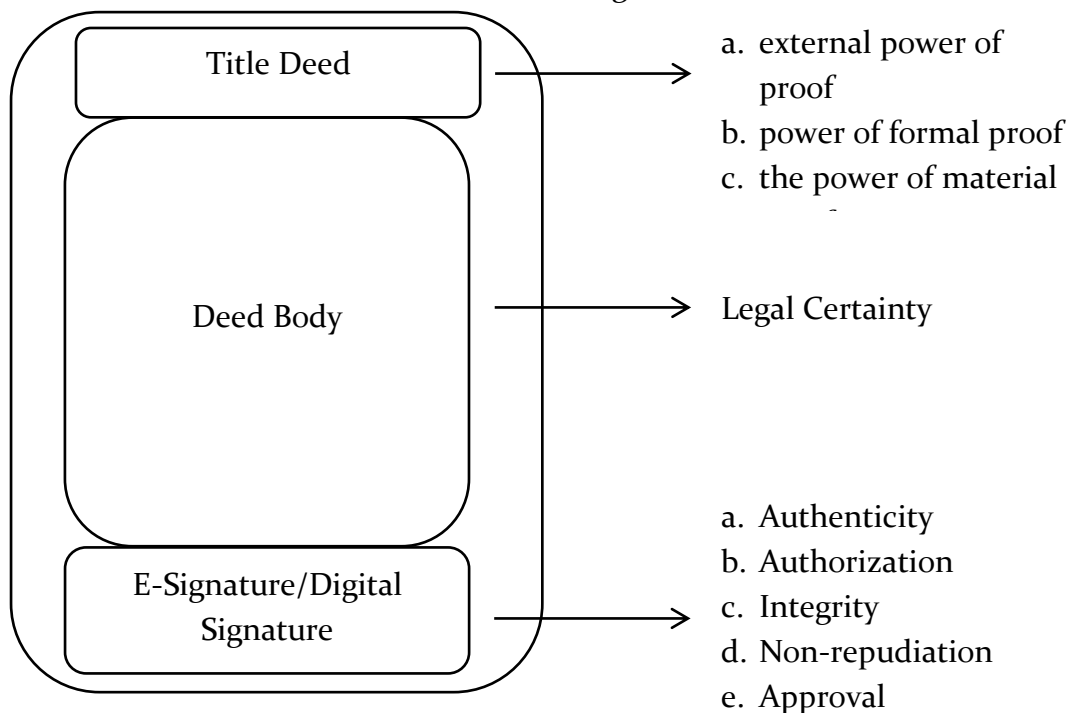
From the explanation above, several regulations are still debatable regarding the age of dealing. What if the Notary takes legal action, especially about electronic transactions that produce an electronic and digital deed based on the current regulations. The author will describe in the diagram below:

How to deal with Virtual through electronic facilities and infrastructure:



Based on the diagram above, the deed made before a notary through electronic media in the form of video teleconference and or other media, the requirements for an authentic deed, one of which is to be present before and or made before an authorized public official, in this case, a notary. The Civil Code, as mentioned in the chart above, is regulated in Article 1868 BW. However, in this article, there is still confusion in understanding it, namely "face to face" and or "in front of," dealing directly with both conventional and electronic media in the conditions and global situation of the era of technology and technology. Digital technology is something that is commonplace and is already relevant to current legal and technological developments. Then regarding the party authorized to do an authentic deed, the Notary is one of the authorized and trustworthy parties to make and carry out legal actions, namely certifying electronic transactions, as regulated in Article 1 number 1 Notary Office Act and Article 1 number 26 of Regulation number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, which reads, Reliability certification agency is an independent institution established by professionals who are recognized, ratified, and supervised by the Government with authority to audit and issue Reliability Certificates in Electronic Transactions.

The Law on Notary Positions is not stated or explained that a deed must be made in written form to ensure its validity as an authentic deed. Hence, a notarial deed made electronically, and electronic document remains as evidence, the author will describe in the diagram below this:



Article 7 of the Law also strengthens the legal basis regarding the validity of an electronic transaction system, which reads:

Everyone who declares rights strengthens existing rights or rejects the rights of others based on the presence of Electronic Information, and Electronic Documents must ensure that the Electronic Information and Electronic Documents available to him/her come from an Electronic System that meets the requirements based on the Laws and Regulations.

The explanation of the article, namely, this provision, is intended that Electronic information and Electronic documents can be used as the reason for the emergence of a right.

An authentic deed made by a notary contains three proofs, namely:

a. The Power of Outward Proof

The power of outward proof means the ability of the deed itself to prove itself as an authentic deed. According to Article 1875 of the Civil Code, the power of outward evidence does not exist in a private deed. An underhand deed is only valid for whom the deed is used if the party mentioned in the deed acknowledges the truth of his signature. Authentic deeds prove their validity. This means that a deed that meets the requirements and has a form like an authentic deed is valid and considered as original (*Acta public probate sese ipsa*) until there is evidence to the contrary. With the strength of the outward proof of an authentic deed, the problem of proving it is only about the authenticity of the official's signature on the deed. According to Article 138 RiB/164 RDS (Article 148 of the Civil Code), proof to the contrary by the opposing party is only allowed by using letters, witnesses, and experts. The power of outward proof of an authentic deed is complete proof, applies to everyone, and is not limited to the parties as evidence. The specialty of an authentic deed (deed of officials and the parties) lies in the strength of its outward proof. A notarial deed of perfect outward form, valid and binding on everyone as an authentic deed because it is made and signed by a state official authorized for it.

b. The Power of Formal Evidence

An authentic deed that has the power of formal proof means guaranteeing the truth and certainty of the date of the deed, the truth of the signature contained in the deed, the identity of the people present (comparator), and the place where the deed was done. By not reducing the evidence to the contrary, the formal proof of the authentic

deed is complete evidence, where the strength of the proof of the official deed and the deed of the parties is the same, meaning that the official statement contained in both classes of deed and the statements of the parties in the deed has the power of formal proof and applies to everyone.

c. The Power of Material Proving

The strength of proof of authentic deed material is a certainty that the parties do not only appear and explain to the notary but also prove that they have also done what is stated in the deed material. The power of proof of a notary deed according to Articles 1870, 1871, and Article 1875 of the Civil Code provides perfect and binding proof of the truth contained in the deed for the parties concerned, heirs and recipients of rights, with exceptions if what is stated in the deed is merely a narrative or not. have a direct relationship with the deed.

With the descriptions above, it can be concluded that a notary deed as an authentic deed has the nature and strength of outward proof, the power of formal proof, and the power of material proof. A notarial deed has perfect proving power unless it can be proven that the deed is fake. Therefore, if used as evidence in court, the judge must accept the notarial deed as perfect evidence. Electronic deeds and electronic documents made before a Notary through electronic media and or teleconferences after the author described above are only evidence under the hand and only have formal, material proof power and have the same form and position or are equal to an authentic deed, as long as the parties do not deny the truth.

An authentic deed is a valid document and can be used as evidence perfect. Perfect here means that the judge considers everything stated in the deed is genuine unless there is other evidence that can prove that the contents of the first deed are not accurate (Wiranata, 2020). Legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties. These rules have a juridical aspect that can guarantee legal certainty that the law functions as a regulation that must be obeyed. We will see how legal certainty works for digital deeds made through a cyber notary system, through a current regulation, and through an authentic deed requirement that the author has described above. A digital deed made through a cyber notary becomes evidence. Legally valid and appropriate to be equated with an authentic deed made conventionally.

Conclusion

Based on the discussion carried out in previous chapters, conclusions are obtained as described below:

1. The authority of a Notary in making and certifying a deed electronic is the attribution authority granted by the Law through Law Number 2 of 2014 concerning the Position of a Notary through Article 15 paragraph 3, which in the explanation is related to other authorities regulated in Article 15 paragraph 3, namely what is meant by 'other authorities regulated in-laws and regulations, among others, the authority to certify transactions conducted electronically (cyber notary), which contains the waqf pledge deed, and aircraft mortgages. This authority is to provide legal certainty to Notaries in carrying out their official duties, in addition to the authority to make and certify electronic transactions regulated in-laws and regulations; Notaries are authorized to return to the registration process for all legal actions, both business entities and legal entities that have been regulated through regulations—Minister of Law and Human Rights and other Ministries related to Electronic Transaction Systems.
2. An electronic deed and electronic document made before a Notary through electronic media and or teleconference becomes legally valid evidence but only becomes an underhand deed and only has formal and material evidentiary power, namely if the signature on the deed is recognized. Along with the contents of the deed, which means that the statement contained in the deed is recognized and justified, as long as the private deed is not denied or denied by the parties, the private deed has the same legal force as the authentic deed.

Suggestions

1. The need for affirmation of Article 15 paragraph 3 of Law Number 2 of 2014 concerning the Position of a Notary, regarding certifying transactions electronically (cybernotary) in whether the article has fulfilled all the authorities given to Notaries the ITE Law which regulates Transactions Electronically. There must be more explicit designations in terms of the authority possessed by a Notary in carrying out his duties and the need for separate regulations regarding reliability certification bodies mentioned in the ITE Law and PPSTE. The government as the executive agency and the DPR as the legislature in formulating a regulation must be by (modern) developments, regulations that are understood by the public, and by the direction and goals of the nation and state.
2. Regarding electronic and digital deed evidence, in addition to the provisions regarding the legal terms of an agreement which also applies to electronic

transactions, in terms of proving an electronic and digital deed, there is a need for stricter regulations regarding this matter. With the existence of Article 15, paragraph 3 of the Law on Notary Positions and related regulations, it does not necessarily make the Notary's safety guaranteed in all future lawsuits against the deed he makes; it is necessary to affirmation in the form of legislation. This strengthens the legal basis for Notaries to make and ratify electronic transactions (cyber notaries) whose legal products are deeds and electronic documents.

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