

PROBLEMATICS OF THE POSITION OF NOTARY IN TECHNOLOGY DEVELOPMENT AND INFORMATION

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Abstract

In the development of technology and information, digitalization needs to be carried out to support the duties and positions of a notary. As a way of adaptation, notaries can implement cyber notaries with positive benefits. Cyber Notary is a concept of utilizing technology that can assist notaries in carrying out their duties. Although there are many positive benefits, there are also obstacles to its application in Indonesia. The goal to be achieved in this research is to find out the problems faced by notaries in going digital, in order to find solutions in an effort to support the notary's duties. The method used is a normative juridical method, with an approach to related laws, and a conceptual approach. From the research results obtained, it is concluded that there are statutory constraints that are still contradictory in implementing Cyber Notary if it is implemented, it can lead to legal conflicts for notaries. As a solution, harmonization of applicable laws is needed.

Keywords: *Problematics; Position of Notary; Technology Development and Information*

INTRODUCTION

In the current era, the development of technology and information allows a new change or adaptation in every field of the profession. It is no exception in the notary profession. In this increasingly rapid development of technology and information, digitalization needs to be carried out to seek convenience in carrying out their duties and authorities as a notary who is sworn in to serve the community.

As stated in the UUJN regarding the authority of a notary (1) A notary has the authority to make authentic deeds regarding all actions, agreements, and stipulations required by laws and regulations and/or which are desired by interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of manufacture the deed, keep the deed, provide Grosse, copy and quote the deed, all of that as long as the

making of the deed is not also assigned or excluded to other officials or other people determined by law. (2) In addition to the authority referred to in paragraph (1), the Notary also has the authority to: a. legalize the signature and determine the certainty of the date of the letter under the hand by registering it in a special book; b. record private letters by registering in a special book; c. make a copy of the original letter privately in the form of a copy containing the description as written and described in the letter concerned; d. verify the compatibility of the photocopy with the original document; e. provide legal counseling in connection with the making of the Deed; f. make Deeds related to land; or g. make a deed of minutes of the auction. (3) In addition to the authority referred to in paragraph (1) and paragraph (2), the Notary has other authorities regulated in the laws and regulations.

As a notary who is given the responsibility of serving, a notary is expected to serve the community within the scope of his/her area of office as well as possible, as referred to in the UUJN notary has the following obligations:¹ a. act honestly, thoroughly, independently, impartially, and protect the interests of the parties involved in legal actions, b. make a deed in the form of Minutes of Deed and save it as part of the Notary Protocol, c. issue grosse deed, copy of the deed, or excerpt of deed based on minutes of the deed, d. provide services in accordance with the provisions of this Law, unless there is reason to refuse it, e. keep everything confidential regarding the deed he made and all information obtained in order to draw up the deed in accordance with the oath/pledge of office unless the law determines otherwise, f. bind the deed made in 1 (one) a month into a book containing no more than 50 (fifty) deed, and if the number of deeds cannot be contained in one book, the deed can be bound into more than one book, and record the number of minutes of deed, month and year of manufacture on the cover of each book, g. make a list of deeds of protest against non-payment or non-receipt of securities, h. make a list of deeds pertaining to the will according to the order in which the deed was drawn up every month, i. send the list of deeds referred to in letter h or the list of nil pertaining to the will to the Central List of Testaments of the Ministry whose duties and

¹ Agustin Rifiana, Yetniwati Yetniwati, and Diana Amir, "Kewajiban Notaris Dalam Pembuatan Akta Guna Mewujudkan Notaris Yang Berintegritas Di Era Globalisasi," *Wajah Hukum* 6, no. 2 (2022): 193-200, <https://doi.org/http://dx.doi.org/10.33087/wjh.v6i2.812>.

responsibilities are in the notary sector within 5 (five) days in the first week of each month thereafter, j. record in the repertoire the date of sending the testament list at the end of each month, k. has a seal/stamp bearing the state symbol of the Republic of Indonesia and in the space surrounding it is written the name, position and domicile of the person concerned, read the deed before the appearers attended by at least 2 (two) witnesses and signed at the same time by the appearers, witnesses and Notary, m. accept notary candidate apprentices.

In its obligations, as a notary, it is stated that a notary is required to provide services in accordance with the provisions of this Law, unless there is reason to refuse it.² In that article, it is written that the notary is obliged to make a deed requested by the people who need it and is not allowed to refuse in accordance with what is mandated by law except with strong reasons to refuse it in order to maintain his authority as meant in that the notary is obliged to act honestly, thoroughly, independent, impartial, and safeguarding the interests of the parties involved in legal actions.³

In order to support the duties and obligations that must be fulfilled by a notary in carrying out his position, the role of technology in its development is considered important when faced with an era that is getting easier and faster. In the field of notary, it is important to adapt as much as possible to the times and technology by taking positive benefits from the development of technology and information.

As a way of notarization adaptation, the notary sector can implement cyber notary with positive benefits, quoted from the news on the BRIN website, Abdul Salam explained, to welcome Industry 4.0 and Society 5.0, for the sake of trust in economic values, legal trust is needed. The trust in question is Cyber Notary as a trusted third party and a service that can eliminate the possibility of fraud and counterfeiting in an electronic transaction. Abdul added "Cyber Notary is not a Disruption of Conventional Notaries but rather enhances its function and role in the digital era. This is because Cyber Notary

² Imentari Siin Sembiring and Pujiyono Pujiyono, "Bribery In the Private Sector as A Corruption Offense Policy," *Al-Risalah Jurnal Ilmu Syariah Dan Hukum* 21, no. 2 (2021): 126–38, <https://doi.org/https://doi.org/10.24252/al-risalah.v21i1.24908>.

³ Edwar Edwar, Faisal A Rani, and Dahlan Ali, "Kedudukan Notaris Sebagai Pejabat Umum Ditinjau Dari Konsep Equality Before The Law," *Jurnal Hukum & Pembangunan* 49, no. 1 (2019): 180–201.

is an important part of National Cyber Security and Resilience.”⁴ In this description, it can be said that Cyber Notary needs to be done in improving its function and role in the digital era.

Cyber Notary itself is a concept of utilizing technology that can assist notaries in carrying out their duties.⁵ the definition of the cyber notary, namely shifting the steps in notary tasks manually (face to face) to steps and tasks, in this case, using modern methods (performed without face to face) and using technological advances at the moment.⁶

In implementing it in Indonesia, there are problems and obstacles that must be overcome to carry out this electronic-based notary. Therefore, in this study, a study will be presented that will discuss the problems faced by notaries in carrying out their positions in this era of information and technology development, with the aim of being able to find out the problems faced by notaries to go digital in order to find solutions in an effort to support the notary's duties.

METHOD

The method applied in this study is the normative juridical method, with an approach to related laws, and a conceptual approach. Legal materials will use primary data with relevant legislation in force in Indonesia, secondary data, namely from previous studies in the form of journals and others, and tertiary data as a support can be in the form of citations contained in news or websites which are then analyzed in detail. descriptive.

RESULT AND DISCUSSION

⁴ Humas BRIN, “Cyber Notary Dapat Meningkatkan Fungsi Dan Peran Praktik Hukum Di Indonesia,” Badan Riset dan Inovasi Nasional, 2022, <https://ipsh.brin.go.id/2022/05/30/cyber-notary-dapat-meningkatkan-fungsi-dan-peran-praktik-hukum-di-indonesia/>.

⁵ Fadli Andi Natsif, “Perlindungan Hak Asasi Manusia Dalam Perspektif Negara Hukum Indonesia,” *Al-Risalah: Jurnal Ilmu Syariah Dan Hukum* 19, no. 3 (2019): 148–58.

⁶ Simon Reinaldo Marlin and Mohamad Fajri Mekka Putra, “Pentingnya Penerapan Cyber Notary Sebagai Upaya Terciptanya Keamanan Praktik Bisnis Di Indonesia,” *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 6, no. 3 (2022): 10172–79, <https://doi.org/https://doi.org/10.24843/AC.2020.v05.i01.p16>.

1. Roles and Functions of Notary Officials

In the 4.0 Industrial and 5.0 Society Era, every individual is required to be adaptive and participate in the rapid flow of technological and information development so as not to be left behind in every aspect and field, including in the profession as a notary who is given a mandate as a notary to help society. in making an authentic deed. the elements of a notary's duties as a public official, including:⁷

- a) Public Official does not mean that the notary is a civil servant referred to in Law No. 43 of 1999 concerning Staffing Principles, but the positions referred to in Article 1868 of the Civil Code. Notaries are not civil servants from an employee corps which is structured with a hierarchical working relationship (meaning the order of levels or levels of office or rank of office; those who are paid by the government). The position of a notary is not a paid position. A notary does not receive a salary from the government but receives an honorarium from those who request the services of a notary.
- b) Authentic deed, according to Article 1868 of the Civil Code, is a deed in the form according to the provisions of the law made by or before a public official who is authorized to do so at the place where the deed was made.
- c) To guarantee the certainty of the date, it should be interpreted as the actual date the deed was drawn up and signed.
- d) Keeping the deed requires notaries to keep minuta Deeds, Repertorium, Book of Privately Registered Deeds, Klapper, Book of Protests, Book of Wills, Book of other registers that must be kept by a notary. And it must be store carefully or thoroughly in a proper and safe place.
- e) Grosse Deed has the same executorial power as that given to the judge's decision (verdict) at the top of which reads "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD". The main authority possessed by a notary is to make an authentic deed so that the authenticity of a notarial deed originates from Article 15 of the Notary Office Law and also Article 1868 of the Civil Code.

⁷ Rizka Nurliyantika et al., "Studi Komparasi Tugas Dan Wewenang Notaris Di Indonesia Dan Malaysia," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 11, no. 2 (2022): 196-207, <https://doi.org/http://dx.doi.org/10.28946/rpt.v11i2.2471>.

From this description, it can be seen that the duties of a notary in the related law are public officials who are given the authority to make authentic deeds, then guarantee the certainty of the date, and store the deeds safely.

In carrying out his duties as a notary, a notary is given special authority in his position as a notary who is authorized to serve the public. Authority of a notary in fulfilling his duties and positions is the authority to confirm an authentic deed as a strong legal tool for the community or parties who need it to obtain legal certainty to obtain their rights.⁸

The description above has explained that the position of a notary is a position outside the government that is given special authority as a maker of authentic deeds in carrying out their duties to serve the community with obligations that must be applied as well as a code of ethics that must be implemented as a notary. If a notary is found to have violated the code of ethics, the notary will be given sanctions as stipulated in UUJN and the notary's Code of Ethics.

2. Position of Notary in Technology and Information Development

In the era of technological and information development, every activity cannot be separated from the use and utilization of the internet network as a tool to simplify and streamline time and distance. Indonesia as a democratic country does not close its eyes and tries to always follow the steps of technological and information developments. In the making of the Company law it has been regulated regarding General Meetings of Shareholders (GMS) which can be made physically, as well as in Article 77 paragraph (1), namely GMS can also be held via video conference, teleconference media and Other electronic media may be used by all members of the GMS to be able to listen and see directly as well as take part in the meeting. Furthermore, in Article 77 paragraph (4) it is stipulated that in each implementation of the GMS as meant in paragraph (1) minutes of the meeting must be made which is signed and approved by all participants of the GMS, in the elucidation of the article a statement is given which means "approved and signed"

⁸ Maharani Putri Intan Nurhaliza and Waluyo, "Tinjauan Sanksi Pelanggaran Kode Etik Jabatan Notaris Dalam Teori Penyusunan Produk Hukum Yang Baik," *Sovereignty* 1, no. 3 (2022): 436–48, <https://doi.org/https://doi.org/10.13057/sovereignty.v1i3.152>.

is signed and approved electronically and physically.⁹ The provisions of Article 77 of the Company Law indicate that in order to conduct a GMS, the law allows for a GMS to be held via video, media and other electronic means, you don't need to sign physically but can sign electronically.

Technological and digital developments enable shareholders to access and be directly involved through visual electronic media without having to be physically present at the venue. With the enactment and implementation of the GMS through digital video media that can connect 1 individual to another individual it is considered positive which in practice can help and provide benefits for shareholders to attend the GMS remotely considering the distance that must be traveled to the meeting place.

Article 7 paragraph (2) PP No. 21 of 2015 states that the fiduciary guarantee certificate is signed electronically by officials at the fiduciary registration office. The presence of this electronic fiduciary guarantee registration service can certainly help the Notary's work.¹⁰ The electronic system in supporting the performance of notaries. The presence of this electronic system helps and provides convenience for notaries in improving their services related to the registration of this fiduciary guarantee. The notary performs fiduciary registration electronically based on the fiduciary guarantee deed he made. The registration is ready in just "7 minutes" so that the notary can print the certificate after payment of the fiduciary registration fee is complete.¹¹ With this, there is a disruption of information and communication technology in the registration of

⁹ Genesis Hardina Memah, "Jabatan Notaris Dalam Era Perkembangan Teknologi Informasi Dan Komunikasi," *ACTA COMITAS Jurnal Hukum Kenotariatan* 5, no. 1 (2020): 186-203, <https://doi.org/https://doi.org/10.24843/AC.2020.v05.i01.p16>.

¹⁰ Pipit Saputri Utami, Isis Ikhwansyah, and Ranti Fauza Mayana, "Kepastian Hukum Regulasi Tugas Dan Wewenang Jabatan Notaris Dikaitkan Dengan Disrupsi Teknologi Informasi Dan Komunikasi," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 4, no. 1 (2020): 133-51, <https://doi.org/https://doi.org/10.23920/acta.v4i1.478>.

¹¹ Tari Kharisma Handayani, Sanusi Sanusi, and Darmawan Darmawan, "Ketepatan Waktu Notaris Dalam Pendaftaran Jaminan Fidusia Secara Elektronik Pada Lembaga Pembiayaan," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 2 (2019): 220-36, <https://doi.org/https://doi.org/10.24843/JMHU.2019.v08.i02.p06>.

fiduciary guarantees.¹² Those who initially registered through the conventional way by visiting the office are now switching to electronic registration.

Another registration requires the use of an electronic system related to deeds that are still made conventionally by Notary. The registration in question is the registration of a limited liability company.¹³ Article 7 paragraph (1) of the Company Law states that a company is founded by 2 (two) more people with a Notary deed drawn up in the Indonesian language. Article 9 paragraph (1) of the Company Law essentially regulates that in order to obtain a ministerial decree regarding the ratification of a company legal entity, the founders jointly submit an application via information technology services to the Minister of electronic legal entity administration systems. Republic of Indonesia has required a program or system, namely OSS (Online Single Submission) is an electronic system that contains business licenses issued by OSS agencies for and on behalf of ministers, institutions, governors, or regents/mayors. to business people.¹⁴ The OSS Institution is a development of the One Stop Integrated Service (PTSP).

Application of the cyber notary concept can be a breakthrough in terms of making PJB deeds in society and providing opportunities for digital notary services in order to realize the efficiency of fast and practical services in accordance with technology advances.¹⁵ Broadly speaking, in the description of technological and information developments in supporting the duties of a notary, a notary can be said to have indirectly implemented a cyber notary because there is no legality in the laws governing its implementation. This is one of the obstacles in the notary sector to go digital by utilizing current technology and information.

3. Problems of Notary Position in the Development of Technology and Information

¹² Muhammad Sabir and Rifka Tunnisa, "Jaminan Fidusia Dalam Transaksi Perbankan; Studi Komparatif Hukum Positif Dan Hukum Islam," *Mazahibuna: Jurnal Perbandingan Mazhab* 2, no. 1 (2020): 80-97, <https://doi.org/10.24252/MH.V2I1.14284>.

¹³ Made Widyari et al., "Akibat Hukum Pendaftaran Jaminan Fidusia Dalam Sistem Online" (Udayana University, 2017).

¹⁴ Aris Yulia, "Profesi Notaris Di Era Industrialisasi Dalam Perspektif Transendensi Pancasila," *Law and Justice* 4, no. 1 (2019): 56-67, <https://doi.org/https://doi.org/10.23917/laj.v4i1.8045>.

¹⁵ Erlan Ardiansyah, Mohammad Saleh, and Rahmia Rachman, "Batasan Tanggungjawab Notaris Terhadap Akta Autentik Yang Dibuatnya," *Recital Review* 4, no. 2 (2022): 432-51, <https://doi.org/https://doi.org/10.22437/rr.v4i2.18867>.

In carrying out his duties and functions as a notary public in the era of globalization and the development of renewable technology and information, it is hoped that he will use this technology to make his work easier.¹⁶ However, in the Republic of Indonesia, there are no detailed regulations governing the implementation of the office of a notary using electronic media or a Cyber Notary. Disruption of information and communication technology has occurred in the position of Notary.

Notaries who are public officials who have duties and authority in providing services to the general public in the civil field, are required to adapt to increasingly widespread digitalization. However, there are reasons that are the background for concern in implementing Cyber Notary.¹⁷ Namely regulations that require physical evidence of deeds and not electronically,¹⁸ as stipulated in the UUJN and Article 5 paragraph 4 of the ITE Law which excludes notarial deeds as legal evidence in the context of electronic documents so that if it continues to be implemented it can lead to legal conflicts for notaries, both civil, administrative and criminal.

Article 15 Paragraph (3) of the new UUJN regarding the authority of a Notary in certifying transactions carried out electronically (Cyber Notary), but the Explanation of this Article conflicts with the norm of another Article, namely Article 1 Number 7 of the new UUJN which states that the Notary Deed is an authentic Deed drawn up by or before a Notary in accordance with the form and procedure stipulated in the Notary Office Law. That is, juridically the use of the words facing, facing, facing, and before in Article 1 Number 7 of the new UUJN is a real presence.¹⁹

The statement states that the presence is real, which means that the applicant is required to face the notary face to face. The obstacle in implementing the Cyber Notary

¹⁶ Muh. Fiqri Kadir and Rahmatiah HL, "Land Acquisition for Jenelata Dam Building in Gowa; A Comparative Study," *Mazahibuna: Jurnal Perbandingan Mazhab* 3, no. 1 (2021): 14-34, <https://doi.org/10.24252/MH.V3I1.19550>.

¹⁷ Rita Alfiana, "Notaris Dan Digitalisasi Di Masa Pandemi Covid 19," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 9, no. 2 (2022): 423-32, <https://doi.org/http://dx.doi.org/10.31604/jips.v9i1.2022.423-432>.

¹⁸ Alexander S Rich et al., "Public Attitudes Value Interpretability but Prioritize Accuracy in Artificial Intelligence," *Nature Machine Intelligence* 2, no. 1 (2020): 2-9, <https://doi.org/https://doi.org/10.1038/s41467-022-33417-3>.

¹⁹ Deny Fernaldi Chastra, "Kepastian Hukum Cyber Notary Dalam Kaidah Pembuatan Akta Autentik Oleh Notaris Berdasarkan Undang-Undang Jabatan Notaris," *Indonesian Notary* 3, no. 2 (2021): 248-67, <https://scholarhub.ui.ac.id/notary/vol3/iss2/17/>.

is that there is a requirement for appearers to sign the deed and if the appearers cannot sign it, they must state the reasons according to Article 44 paragraph (2) UUJN. In this case, the electronic signature is not recognized the same as a valid conventional signature.

The constraints in implementing Cyber notaries that were previously described can be a bridge to begin the transition from conventional notaries to digital notaries. The constraints that have been described and discussed can be used as a problem that must be solved and as a basis for evaluating the position of a notary so that it can adapt to the times. Need for an update to the Law on the Position of a Notary, especially with regard to the process of making a deed in ai as wide as possible and making a deed in Cyber Notary in particular. In addition, it is also necessary to explain the meaning of certification using a Cyber Notary or making a deed using a Cyber Notary is the same as making a notarial deed.²⁰

This is intended so that in carrying out his duties, a notary can use technological sophistication without having to violate the laws governing the implementation of his duties and other laws related to this matter. According to the author, the procedure for making a notarial deed by Cyber Notary has the same procedure as making a notary deed that has been carried out so far. Further studies are needed regarding the possibility of making notarial deeds using electronic media, with various approaches, especially with a statutory approach. The legal substance in making electronic deeds has not been accommodated and the regulations have not been fully provided either in the UUJN, UUJNP, UUPT, or in the ITE Law.²¹

Implementation of Cyber Notary one day in order to support the functions and positions of notaries, by stating, Even though technological advances make the application of notary positions electronic and remote (online and remote), For Indonesia, this cannot be implemented now because the main study on the basis of UUJN was built

²⁰ Dwi Tubagus, Raffles Raffles, and Syamsir Syamsir, "Kekuatan Hukum Terhadap Akta Yang Dibuat Secara Elektronik (Cyber Notary) Dalam Prespektif Peraturan Perundang-Undangan," *Recital Review* 5, no. 1 (2023): 151-73, <https://doi.org/https://doi.org/10.22437/rr.v5i1.19299>.

²¹ Adrian Raka Wiranata, "Analisis Pembuatan Akta Notaris Secara Elektronik," *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan* 19, no. 1 (2021): 408-21, <http://ejournal.kopertais4.or.id/tapalkuda/index.php/qodiri/article/view/4307>.

referring to conventional procedures, namely paper-based documents and the existence of a physical presence.²² The implementation of a cyber notary and e-notary can start with a perspective as a necessity and the implementation of digitalization through the stages towards a comprehensive implementation and is used in a strategic innovation design in regulatory, infrastructure, or cultural aspects so that it can be used effectively.

CONCLUSION

As an effort to support the function and position of a notary as an authentic deed-making official in order to fulfill his duties and authorities in serving the public in this era of technological and information development, cyber notaries are still hampered by statutory constraints that are still conflicting and overlapping between laws. So that if it continues to be implemented it can cause legal conflicts for notaries, both civil, administrative and criminal. This creates problems for notaries to apply technology which in fact has many positive benefits in supporting the performance of notaries. As a solution to the problems faced by notaries in order to implement Cyber Notary which essentially supports the duties and functions of their position. It is necessary to harmonize applicable laws with further studies regarding the possibility of making notarial deeds using electronic media, with various approaches, especially with a statutory approach. And if necessary, special law updates are carried out with details regarding the application of Cyber Notary technology in detail as a transition from a notary to a notary who goes digital.

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²² Desy Bungdiana and Arsin Lukman, "Efektivitas Penerapan Cyber Notary Dengan Meningkatkan Kualitas Pelayanan Notaris Pada Era Digital," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7, no. 1 (2023): 309-18, <https://doi.org/http://dx.doi.org/10.58258/jisip.v7i1.4216>.

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