

Notary Authority in Certifying Electronic Transaction Documents

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Abstract:

Purpose - Electronic transaction certification is another form of authority a notary possesses, and more study still needs to be done on this matter. Hence, this research attempts to examine this matter in more depth. The rapid development of technology has given birth to convenience for human life, including in law, especially notaries. The existence of a cyber notary formulated in Article 15 paragraph (3) of the Notary Office Law gives a notary the authority to certify transactions electronically.

Methodology – The method chosen for this research is normative legal research by analyzing and interpreting legal and social facts.

Findings - This authority still needs clear guidelines, so it is necessary to have a formulation regarding its regulation.

Implication - Based on the theory of authority, a notary has the right to certify transactions electronically which is included in attributive authority and is a derivative of the law. It is appropriate that the authority to certify electronic transactions is further regulated so that later it will facilitate the work of notaries and follow utilitarian theory, where good law can provide the broadest possible benefits for society.

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INTRODUCTION

The era that is growing day by day brings rapid changes in the field of telecommunications in the field of information and communication technology (from now on, referred to as the development of ICT). The development of ICT has made human life more accessible, more effective, and more efficient. The media used are computers, gadgets, and other devices that can be accessed, obtained easily, and connected to the internet. The fields affected by the development of ICT are not only in the electronics sector but also sociocultural, economic, educational, including law. Everything that is done by humans using the media from the development of ICT is known as electronics, such as *e-learning* (electronic learning system) in the field of education, *e-banking* (electronic banking system), and *e-commerce* (electronic commerce) in the field of economics, *e-notary* or *cyber notary* (electronic notary system) in the field of law, and so on.

E-notary is better known in countries with *Continental European* legal systems, while *cyber notaries* are used in countries with *Common Law* legal systems. Based on this, if traced from the legal system adopted by Indonesia, the term commonly used is *a cyber notary*. In essence, the *cyber notary* framework is considered the use of technology and information to carry out the authority or tasks that arise because of the position held by a notary (Nurita & Ayu, 2012). Emma Nurita provides a simple concept regarding *cyber notary* as a concept that makes it easy for parties who want to meet or appear before the notary not to have to meet physically; it can also be said that the appearers are not within reach of the notary's domicile so the meeting is held online (Nurita & Ayu, 2012). Freddy and Leny stated that it is necessary to make a distinction between *cyber notary* and the use of cyber technology in notary activities; a *cyber notary* refers to a notary who can certify an electronic document, while a notary who uses *cyber* technology is a situation when a notary uses tools that utilize ICT such as holding meetings online to exercise its authority (Harris & Helena, 2017).

Cyber Notary is formulated in Article 15 paragraph (3) of Law no. 2 of 2004, which was renewed through Law no. 30 of 2014 concerning the Position of Notary (from now on referred to as UUJN-P), which regulates the powers other than those mentioned above that are owned by a notary and are regulated in laws and regulations. It is explained in Article 15 paragraph (3) UUJN-P that the power in question is carrying out electronic transaction certification, making waqf pledge deeds and also aircraft mortgages. However, there is no detailed explanation regarding the authority to certify electronically. An agreement made by people using electronic media to exchange information related to trade is known as an electronic transaction (Edmon, 2003). Lexically, electronic transactions in Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions (from now on referred to as the ITE Law) Article 1 Number 2 is a behavior that individuals legally carry out by utilizing computer networks, computers, and other electronic media. Electronic transaction actors need legal certainty to get legal protection and justice. So far, the e-transactions that have been certified by a notary are in the form of making a deed of establishment of PT, CV, and Foundation, making a deed of minutes of GMS based on Meeting Resolution Statement (PKR), which is done with the help of a computer following Article 77 paragraph (1) of Law no. 40 of 2007 concerning Limited Liability Companies (from now on referred to as UUPU), as well as the fiduciary registration system.

Transactions that are certified with the help of information technology (electronic) by this notary are carried out following the approval of the transacting parties. These parties certainly want legal certainty for transactions carried out with authentic evidence. So as a public official with the competence and authority to authentically notarize according to what is formulated in Article 15 paragraph (1) UUJN-P, the notary is given the authority to certify transaction documents carried out with the help of IT. In line with the theory of utilitarianism put forward by Jeremy Bentham, the law must lead to the placement of individual rights over the needs of society (Darmodiharjo, 1995). Darji Darmodiharjo and Sidharta also provided their understanding of utilitarianism that the ultimate goal of the law is to create (the greatest happiness for the most significant number of people) (Darmodiharjo, 1995). Based on the above, this paper tries to formulate the problem of the notary's authority in certifying transaction documents with technology's help.

METHODS

Verifying transactions carried out electronically by a Notary, regulated in the Elucidation in Article 15 Paragraph (3) UUJN-P, blurring legal norms. The vague norms referred to are the word certify and the unclear programs or arrangements that limit the authority to certify electronic transactions by a notary. To discover and analyze this information, researchers use normative legal research methods. It involves examining the connections between legal tools and legal and societal realities that aid in studying legal science. The approach adopted is a sociological and juridical approach, a statutory approach, and a conceptual approach. Sources of legal materials are divided into three, namely primary, secondary, and tertiary legal materials. For this legal research titled "Authorities of Notaries in Certifying Electronic Transaction Documents," qualitative techniques and interpretation methods were used to analyze legal sources and materials lawfully.

RESULT AND DISCUSSION

A notary is a person who has the right to formalize an authentic deed for every action, approval, and decision required by general regulations and by a person who wants to obtain a deed in an authentic deed to guarantee certainty and maintain and issue the authentic deed, he is given a copy, Grosse and the citation as long as the making is not delegated to other officials (Adjie, 2008). Lexically, the definition of a notary is formulated in Article 1 point 1 UUJNP, namely, a notary is an official with the competence and authority to say authentically and other powers according to and stipulated in this law and other supporting laws. These two definitions provide a common thread that a notary is an official who legally has the authority to write an official or authentic deed. The authority of a notary is more clearly explained through the formulation of Article 15 UUJN-P. In one of the paragraphs in Article 15 UUJN-P, namely paragraph 3, another authority a notary has is formulated: certifying transactions carried out electronically. This authority is an additional authority for notaries to be involved in the development of ICT in the field of law.

There are two variables regarding the authority of a notary to certify electronic transactions, namely certification and electronic transactions. Certification, in general, is formulated in Article 1 point 9 of Law no. 20

of 2014 concerning Standardization and Conformity Assessment (from now on referred to as the Standardization and Conformity Assessment Law) is a series of fairness assessment activities related to providing written guarantees that every item, service, system, line or person has complied with applicable rules and standards. Further elaborated in Article 33 paragraph (1), the certification in question can be in the form of certification of goods, services, systems, processes, personnel, and others intended to certify compliance with SNI (Indonesian National Standard). Based on the formulation of the article, certification is the process, method, or act of recording something in the form of a certificate or letter explaining in writing from a party that has the authority and has the power as proof of ownership or event (birth, death, marriage), for example, a certificate building ownership rights as a sign of building ownership; proof of birth which is better known as a birth certificate as a sign of someone's birth.

The second variable is that electronic transactions are defined in the ITE Law Article 1 point 2 as legal actions that utilize computer devices or other electronic media. The result of an electronic transaction certification will give birth to a certificate in electronic form (from now on, referred to as an electronic certificate). *An e-Certificate*, as defined by Article 1 point 9, is an electronic certificate containing signatures and electronic identities showing the transacting parties' legal status. Electronic certificate providers issue electronic certificates.

Based on the elaboration of the two variables above, an understanding is found that electronic transaction certification is a legal action in which a transaction is given an e-certificate containing the signatures and identities of the parties intended to certify its conformity with SNI. Parties that can certify transactions electronically are legal entities that have the power and are eligible to issue and check the validity of electronic certificates and are regulated through Article 1 Point 10 of the ITE Law. PSE PERMEN No. 11 of 2018 states that the organizer can appoint a notary as the registration authority, meaning that the notary is given authority in the form of a delegation from the organizer of electronic certification. Notaries are not specifically statutory in certifying electronic transactions; this position is authorized, regulated by law for specific purposes, and is sustainable as an environment (Yusuf et al., 2015).

The notary profession is a job that focuses on skilled abilities and specificity in the field of doing deeds; the quality of knowledge in serving the applicant (client); working independently; in carrying out their duties bound by the rules of law that govern it; and are required to master all applicable laws and regulations. Civil law includes some of the tasks that a notary can perform. Notaries are considered qualified as public officials who have the authority to say legally, in which the deed is a written form of the will of the parties regulated in UUJN-P. In certifying electronic transactions, the notary has to carry out checks regulated in Article 27 of the PSE Ministerial Regulation, that such checks include checking the correctness of identities, checking the completeness of documents, and based on Article 24 paragraph (1), the identity of the owner of the electronic certificate must contain the name; identification number (NIK), passport number, or business entity NPWP number; Electronic mail address (electronic mail); phone number; answers to security questions; biometric data with the consent of the identity owner.

So far, the certification of electronic transactions submitted to a notary is the registration of fiduciary guarantees and registration of legal entities and business entities. The following is the process of making deeds carried out with an electronic transaction certification system before a Notary:

1. The process of making the Deed of Establishment of a Limited Liability Company (PT) in the form of checking documents related to doing deeds such as KTP, NPWP, and KK of Shareholders and Management, Company Name, Business Field, Domicile Certificate, Founder's E-mail Address, Telephone Number (Founder and PT), Composition of Management and Shareholders, Deposit Capital and Authorized Capital. A Notary checks these documents to determine whether they are following the process of establishing PT. The certification authority here is limited to ensuring that the documents provided follow the original if given electronically.
2. The process of making the Deed of Establishment of Commanditaire Vennootschap or Limited Partnership (from now on referred to as CV), which is in the form of checking the documents related to doing the deed such as KTP, NPWP and KK of the Founder, Company Name, Line of Business, CV Domicile, CV E-mail Address, Phone Number CV, Persero Composition (Active and Limited). The authority to certify here is the same as certifying a PT Deed, which is limited to adjusting that the documents provided follow the original if provided electronically.
3. The process of making a Foundation Deed is the same as PT and CV, which is limited to ensuring the conformity of the documents according to the original received from electronic media such as the KTP and

NPWP of the Founder, Company Name, Business Field, Foundation Domicile, Foundation E-mail Address, Foundation Telephone Number, Foundation Management Structure.

4. The process of making the Deed of Minutes of GMS based on the Statement of Meeting Resolutions (PKR) made electronically following Article 77 Paragraph (1) of Law Number 40 of 2007 Concerning Limited Liability Companies (from now on referred to as the Limited Liability Company Law) stipulates that: "(1) GMS following Article 76, GMS is held through online media, virtual meetings, or other similar means that provide space for each GMS participant to participate in the meeting. The purpose of the certification process is that when the teleconference was held, a notary did a deed using a digital signature. However, the deed was private, and then the underhanded deed was returned to an authentic deed. Even then, it was limited to KPR, which only changed the name and position of the PT if selling fixed assets was not possible. The notary's position in the teleconference only witnessed and confirmed the parties conducting the GMS in making the PKR.

Several notaries in the Bali region, Eric Basuki, who is based in Denpasar City, stated that they did not dare to certify electronic transactions due to the unclear rules and guidelines for exercising this authority; I Made Pria Dharsana, who is domiciled in Badung Regency stated that he agrees and is ready to carry out electronic transaction certification because it is part of other authorities regulated in UUJN-P; Prof. Gusti Kade Oka, who is domiciled in Tabanan Regency, stated that according to his understanding, a notary must work based on the *Tablelionis Officium Fideliter Exercebo* Principle (notaries must work traditionally) so that he does not dare to carry out the authority to certify electronic transactions. Based on several statements by notary officials in the Bali region, especially SARBAGITA (Denpasar, Badung, Gianyar, Tabanan), it can be stated that the certification of electronic transactions still has its pros and cons. Pros of the situation that requires notaries to be literate in technology and work effectively and efficiently with existing ICT developments and cons because there are no clear guidelines and procedures regarding the certification of electronic transactions.

Notaries are given the authority to certify electronic transactions, which are attributive powers because they are derived directly based on Article 15 paragraph (3) UUJN-P. However, unfortunately, the authority to certify electronic transactions does not yet have clear guidelines. The unclear regulation regarding the authority to certify electronic transactions makes notaries reluctant to carry it out. The authority to certify electronic transactions is still only a discourse, so it is necessary to update the regulations and legal provisions that govern it. The ITE Law explains that electronic documents are legally recognized as evidence before the law (Adjie, 2017). Notaries must be able to authenticate and certify through matching electronic transaction documents to assist the transacting parties in obtaining a *certificate of authority*. Therefore, a clear synergy and study are needed regarding the division of notary authority to certify electronic transactions and documents by comparing the contents of the ITE Law and other business and civil laws (Sitompul, 2012).

The certification of electronic transactions carried out by a notary manifests in Article 3 of the ITE Law, which states that ICT is used according to the principles of legal certainty, profit, conservativeness, good faith, and freedom of choice of technology or technology neutrality. This principle of legal certainty means that the legal basis for the use of information technology and electronic traffic, as well as everything that supports its implementation, is subject to judicial and extrajudicial approvals; The principle of benefit means that the principle of supporting the information process and thereby increasing the welfare of society is pursued through the use of information technology and electronic transactions; The precautionary principle means that the rationale is that the parties must consider all aspects that can harm themselves or others when using information technology and electronic transactions.

In line with this, the certification of electronic transactions is also related to the theory of utilitarianism. The theory of utilitarianism explains that the reference for legislators is for laws to provide broad benefits to society. The initial concept of classical utilitarianism is straightforward: maximizing efficiency to achieve the highest utility (*benefit, advantage, pleasure, exemplary, or happiness*). Besides that, maximizing efficiency is also expected to prevent pain, not violence, and other feelings of unhappiness. Jeremy Bentham then included the role of law, known as legal utilitarianism. Bentham looks deeper into the reasons for pleasure and pain, which serve as touchstones for evaluating events and phenomena (Duignan & West, 2023). The certification of electronic transactions will make the parties involved in the transaction happy because the parties obtain a certificate authority that guarantees that the transaction will not deviate.

As a person holding a public position, a notary can bear civil responsibility for the material validity of a deed made before him when the deed is an unlawful act and creates losses for other parties, and the loss has associations. In certifying electronic transactions, the notary acts only as an intermediary who records all the parties' data to the certificate. The issuance of electronic transaction certificates remains under the auspices of the Ministry of Law and Human Rights. The responsibility of a notary in certifying electronic transactions is classified into three types, namely administrative, civil, and criminal responsibilities. Administrative responsibility is based on the UUJN-P; the notary may be subject to a written warning, temporary inactivity, or honorable and dishonorable discharge. Civil liability in the form of compensation. Criminal liability is an individual's responsibility when a notary commits a criminal act.

As the party responsible for the correctness of the transaction is nominal, the notary must be conservative in certifying transactions electronically. It is because the conventional certification process is still often carried out for forgery, let alone the certification process is carried out electronically. The power of a notary to authenticate electronic transactions is a type of power granted by the government to a notary to help resolve civil law issues. As a public office holder whose main task is to certify public documents, a notary has the right and authority to certify electronic transactions. Transaction authentication is a form of truth verification that provides legal certainty for legal relations created in transactions following SNI (Makarim, 2013).

CONCLUSION

Notaries are competent individuals with the power to authenticate and have other authorities as stipulated in Article 15 paragraph (3) UUJN-P, one of which certifies electronic transactions. The authority of a notary to certify electronic transactions is an attributive authority born from the formulation of Article 15 paragraph (3) UUJN-P. This electronic transaction certification manifests the existence of ICT developments that require notaries to work efficiently and effectively by using increasingly advanced technology. As a public official who serves the community, the authority of a notary to certify electronic transactions has implemented utilitarian principles where the impact of this action is to make the parties to the transaction (society) feel happy. However, unfortunately, the certification of electronic transactions carried out by notaries has not been explained by precise legal arrangements, so there is still confusion regarding its implementation.

Suggestion. Suggestions addressed to notaries are expected to apply the precautionary principle and be more thorough in the process of certifying electronic transactions because, in fact, even in making conventional certificates, fraud can still occur, especially when it is done electronically; Legislators are expected to formulate rules in the form of laws and implementing regulations regarding the certification of electronic transactions and electronic transaction documents by comparing the contents of the ITE Law and other business and civil laws.

REFERENCES

- Adjie, H. (2008). *Hukum Notaris Indonesia: Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris*. Refika Aditama.
- Adjie, H. (2017). Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global. *Jurnal Hukum Respublica*, 16(2), 201-218. <https://doi.org/10.31849/respublica.v16i2.1436>
- Darmodiharjo, D. (1995). *Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia*. Gramedia Pustaka Utama.
- Duignan, B., & West, H. R. (2023). Utilitarianism. Retrieved from Encyclopædia Britannica website: <https://www.Britannica.Com/topic/utilitarianism-philosophy>. diakses pada 24 Juli 2023.
- Edmon, M. (2003). *Kompilasi Hukum Telematika*. PT Raja Grafindo Persada.
- Harris, F., & Helena, L. (2017). *Notaris Indonesia*. PT. Lintas Cetak Djaja.
- Makarim, E. (2013). *Notaris dan Transaksi Elektronik*. Jakarta: PT. Raja Grafindo Persada.
- Nurita, E., & Ayu, R. (2012). *Cyber Notary: Pemahaman Awal dalam Konsep Pemikiran*. Refika Aditama.
- Sitompul, J. (2012). *Cyberspace, Cybercrimes, Cyberlaw: Tinjauan Aspek Hukum Pidana*. PT Tatanusa.
- Yusuf, W. O. F., Sumardi, J., & Paserangi, H. (2015). Peran Notaris dalam Proses Penerbitan Sertifikat Elektronik Berdasarkan Undang-Undang Informasi dan Transaksi Elektronik. *Jurnal Universitas Hasanuddin*, 4(1), 67-73.