UDC 34; DOI 10.18551/rjoas.2023-01.06

FORMULATION OF THE IDEAL CYBER NOTARY INSTITUTION FOR NOTARY IN INDONESIA

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ABSTRACT

The development of today's modernization era is indirectly caused by the encouragement of the dynamics of life. One manifestation of the dynamics of life is in the form of highly sophisticated digitalization that can help meet people's needs. Today's digitalization has an important role in all aspects and brings the world closer to reach without limits. The use of technology is encouraged for the benefit of society with fast and rapid business practices. Legal relations do not have to use face-to-face, transactions and legal relations are sufficient to be carried out using internet facilities through computer technology and communication technology, so that the limitations on distance reach can be removed and facilitate innovation in human life. The problem that will arise in the future is whether the notary is then ready to anticipate these changes, can this change make the notary profession become a notary that is flexible in accordance with the demands of the dynamics of life, the notary profession in this case needs to examine the possibility of acknowledging the existence of making and authenticating electronic deeds through an cyber notary mechanism. However, the concept of cyber notary in Indonesia is a matter of debate, because it is contrary to the general concept held by notaries so far. Apart from that, the thing that is being debated next is the responsibility for keeping the State archives, namely the minutes of digital deeds. This research is a legal research using a normative juridical approach, the data used are primary data and secondary data which are analyzed using quantitative analysis. The results of this study, starting from the concept of Cyber notary in making authentic deeds carried out by using electronic means, the notary as a profession in the field of law must be accommodating to the development of globalization and the industrial revolution which requires the use of a digital system which is intended to make it easier for people to do something legal action in particular. Then, regarding minutes of notary deeds in digital form, there should be a special institution to store minutes of digital notary deeds with the aim of providing a form of legal certainty.

KEY WORDS

Reformulation, institutional cyber notary, ideal for notaries, Indonesia.

The development of science is carried out in order to answer the needs of human reality and patterns of life that are increasingly developing, so that it demands the development of science that is in harmony with the development of human life. The demands of society's rapid development have become a challenge for science, thus placing a burden and demand on science to continue to innovate in response to changes in society. According to Thomas Kuhn, the development of science in accordance with changes in society is a form of paradigm shift, namely a shift from an old view to a new view that is carried out scientifically. So that the results will produce new and more scientific truths, the result is a truth that is obtained that is not absolute but in accordance with the development of society. Therefore, science will continue to develop as an accumulation of scientific research that is produced as a form of human adaptation to the development of society.

The reality of shifting paradigms that is evident in everyday life is the change of society towards a modernizing society, in the context of modernization what is meant is a transformation from a less developed traditional situation towards a better life with the hope

of achieving an advanced, developing and prosperous society. So that modernization applies holistically not only with regard to material aspects but also immaterial aspects such as mindsets, behavior and other aspects of life, so that the intended transformation includes modern life which was previously traditional towards prosperity and stability.

At least there are some positive commitments that are obtained when there is modernization in making changes from a traditional society to an advanced society namely[1]:

- There is a compulsion for society to abandon old ways, especially old patterns of relationships where people will abandon traditional family patterns, so that changes in modernization will threaten old interpersonal relationships which will be opposed by developed societies;
- Society will be required to make sacrifices for its personal interests for the development and growth of the country's economy, individuals will be committed to personal welfare rather than long-term economic interests;
- There will be a conflict of interest between one another;
- There are many individual sacrifices for the benefit of the state.

Whereas today's modernization is marked by the development of information and communication technology which encourages people to change from various aspects of life, the development of communication and information makes the boundaries of globalization increasingly narrow where distance and time are not a problem in carrying out social interactions. The development of information and communication encourages people's lives to be more advanced and various functions of life to be more effective and efficient because they are driven by the internet media[2].

With the existence of the internet, it changes society from a conventional way of life towards modernization marked by a digital society, digital modernization is marked by a change from an industrial society towards a new society in the form of silicon, computers and networks[3]. On this matter requires the public to open themselves to the developments and dynamics of life in the era of digital society, where the rotation of production, consumption and distribution of information is increasingly experienced and owned by a new global society system supported by economic strength and expansion, a global information system network that is based on technological devices[4].

The development of society in the digital era with internet-based information and communication instruments ultimately causes political boundaries and boundaries between countries to disappear, thus creating new forms of society called globalization. This globalization is a demand for change from technology that spurs changes in social life and social needs of the community, which previously underwent conventional transaction forms towards an electronic transaction society that is considered more effective and efficient[5].

In the legal context in Indonesia, the use of digital means has begun to experience legal development since the enactment of Law Number 11 of 2008 concerning Electronic Information and Transactions, the existence of this legal rule has made economic and trade developments shift from traditional mechanisms with market facilities shifting to digital-based trade e-commerce. Not only in the economic and trade sector, changes have also occurred in the field of government administration, especially public services that carry out electronic-based services through e-governance.

One aspect of public service, there is a non-government service that is very closely related to the service and implementation of public interests, namely the notary profession. In Law no. 2 of 2014 concerning the position of a notary, it is stated that a notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws. Facing the digital era, the notary profession is required to be more professional in keeping up with the times in order to face the digital era, the professional notary profession must understand the work he is doing well and know the

[1] *Robert H. Lauer, Perspektif Tentang Perubahan Sosial, Rineka Cipta, Jakarta 1993, Hlm 424*
[2] *Sutarman, Pengantar Teknologi Informasi (Cetakan Pertama), PT. Bumi Aksara, Jakarta, 2009, Hlm 7*
[3] *Assa Briggs, A Social History of The Media: From Gutenberg to the Internet. Polity Press, Cambridge, 2002, Hlm 36*
[4] *Ibid*
[5] *Kenichi Omhae, Borderless World: Power and Strategy in the Interlinked Economy, Harver Business, Revision Edited,Harvard, 1999, Hlm 6*

development of his profession in the future. Because the development of the challenges of the future for any profession is entering into a digital networking system which is marked by a digital economic system, interconnected business, and technology as a demand for revolution, changes in people's culture in dealing with problems, digital system privacy and new responsibilities in the business world[6].

The problem that will arise in the future is whether the notary profession is then ready to anticipate the changing times that are happening, can this change make the notary profession become a flexible notary in accordance with the demands of changing times. The notary profession, in this case, needs to examine the possibility of acknowledging the creation and authentication of electronic deeds through a cyber notary mechanism, where notaries must be able to position themselves as a profession supporting and facilitating electronic transactions and being a provider of notary services. In addition, the Notary profession also has an absolute obligation which must store minutes of notary deeds properly and responsibly. Considering the existence of the concept of cyber notary where one of the objectives of the cyber notary is electronic deeds or digitization deeds, then how does the notary profession have to fulfill its responsibilities regarding the storage of minutes of deeds if the concept of cyber notary in Indonesia already applies. It is fitting that as a result of the times in the field of technology that gave birth to the concept of cyber notary, the State must provide a form of legal certainty and legal protection for cyber notary products, namely the storage of digital minutes of deeds made by a notary in a special institution.

The formulation related to the concept of cyber notary and institutions authorized to organize cyber notary in Indonesia is important to formulate, so that in the future in notary practice the work process guarantees the security of perpetrators of electronic transactions and documents through cyber notary institutions that provide mechanisms for making transactions and documents secure. This cyber notary institution that will provide its role in terms of certificate authority services by issuing a deed or digital certificate. This cyber notary institution will certify a digital document in accordance with content security and according to the wishes of the parties involved in the document, the cyber notary institution is here to provide security guarantees in exchanging transaction information and electronic documents, so that it will provide legal certainty and legal protection for the parties involved in digital transactions through internet media, so that it will generate trust for the parties involved in these digital transactions. In addition, cyber notary institutions will provide legal certainty and reduce risks due to digital transactions and also avoid fraudulent and irresponsible actions of the parties in the authentication process in electronic transactions.[7.]

This cyber notary institution will help guarantee the identity of the party conducting electronic transactions through public key infrastructure and provide a mechanism for conducting electronic transactions safely, then will provide services through the institution tasked with providing Certification Authority issued in the form of a digital certificate. which states that the parties transacting in digital agreements or transactions have valid identities as the parties are in accordance with and carry out digital transactions. In this position, the cyber notary institution plays a role in supporting security and securing the exchange of information or messages as well as guaranteeing legal certainty and protecting parties who have legal relations with digital transaction facilities[8].

Whereas the result of the absence of legal regulations related to the implementation of cyber notary and cyber notary organizing institutions in Law no. 2 of 2014 concerning the Office of a Notary will have a broad and deep problematic effect.

METODS OF RESEARCH

The research method used in this study is to use a normative legal approach to discover how the relationship between law and society and the factors that influence the

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[6] *Nanang Sasongko, Profesi Akuntan: Masa Kini and Tantangan Masa Depan, Jurnal Ilmiah Akutansi, Mei 2002, Vol 1, No. 2 Hal 13*
[7] *Opcit dalam Luthvi Febryka Nola, hal 78.*
[8] *Rizal C Kusuma, Analisis Fungsi and Peran Penyelenggara Jasa Tanda Tangan Elektronik Dalam Persfektif Kearsipan and Dokumentasi Perusahaan, Jurnal Hukum and Pembangunan, Tahun 36, No. 3 Juli-September 2006, Hlm 173*

existence of a form of reformulation of the rule of law in Indonesia in order to reflect the ideals of law towards society, as primary data. The second data obtained indirectly through library research. This research specification describes an analysis to describe applicable laws related to legal concepts and positive laws regarding the main research problem. Based on the primary and secondary data, identification, classification, and validation, qualitative data analysis was performed, and the results are presented in a research report.

RESULTS AND DISCUSSION

In the science of law, relating to laws that develop and live in society is a simple illustration of the existence of positive laws that live and develop in a society, so that law can be interpreted as a science of law in a narrow sense that focuses on positive law. Meuwissen provides a legal definition in an explanation, an analysis, a systematic and a legal interpretation that applies in society or that applies in a positive law of a certain country[9]. Another view was put forward by Van Hoecke who stated that law is a broad description of the science of law whose function is to describe and systematize positive law that applies in a certain society and at a certain time in a normative point of view.[10].

Based on the legal understanding above, it can be concluded that the law works not only theoretically, by providing an understanding of the legal system, but also practically. Or in another sense that law is related to a particular problem which then offers alternative juridical solutions. Therefore the law will work from an internal perspective, namely wanting and positioning itself as a participant who speaks in a juridical problem and seeks a way out of this juridical problem.

In the legal science approach, the application of law is closely related to positive law, which is the approach closest to pragmatic law. That is related to a normative and evaluative approach and technical aspects of a rule of law, by Philip M. Hadjon the value of positive law that lives and develops in society is defined as[11]:

1. Studying law from a technical perspective,
2. Talking about the law,
3. Talk about the law from a legal perspective.
4. Talk about concrete problems.

In the application of law in society, the ideal value of law must continue to be analyzed in legal practice. By conducting a legal analysis, it will be found that there are deficiencies in the application of law in relation to the absence of legal norms, incomplete legal norms and conflicts of legal norms. Because in legal practice there are legal events but they have not been regulated by statutory regulations, or have been regulated by statutory regulations but the legal norms are incomplete or have also been regulated but these norms have legal conflicts with other legal rules. If conditions are like this then the empty norms must be completed, the conflicting norms must be resolved and the incomplete norms must be completed. This is done by making legal discoveries so that the empty, conflicting and incomplete legal rules can be applied in society. Thus it will create legal ideals, namely creating laws that have justice, certainty and efficiency[12].

In the Black Law Dictionary, legal formulations are defined as In common-law practice, a set of forms of words used in judicial proceedings. In the civil law, an action[13]. Legal formulation can be interpreted as the process of forming law by legal subjects or actors from the inventor of the law in an effort to apply law to concrete events in society based on legal principles and also legal methods that can be justified and in accordance with the rules of legal science, namely[14]: 1. Interpretation; 2. Reasoning (regenerating); 3. Exposition (legal reconstruction).

[9] *J.J.H. Bruggink, Refleksi Tentang Hukum, Terjemahan Oleh Bernard Arief Sidharta, Citra Aditya Bhakti, Bandung, 1999, Hal. 169*
[10] *Ibid*
[11] *Hadjon, Philipus M., Pengkajian Ilmu Hukum Dogmatik (Normatif), dalam Yuridika Jurnal Hukum Universitas Airlangga Surabaya, No. 6 Tahun IX, November–Desember 1994*
[12] *Bambang Sutiyoso, Metode Penemuan Hukum, Upaya Mewujudkan Hukum Yang Pasti and Berkeadilan, UII Pres, Yogjakarta, 2007, Hlm 28*
[13] *Opcit, Bryan A. Garner, Black Law Dictionary, Hlm 1278.*
[14] *Ibid, Hlm 30.*

Concrete steps in a legal formulation according to Paul Scholten are emphasized in terms of making legal constructions; this effort is carried out by developing legal material in the sense of positive law through logical reasoning so as to achieve what the aims and objectives of the law are to be desired. At this stage legal construction is the withdrawal or further development of the material by using logical reasoning while from the point of view of the construction itself, it cannot escape and ignore the existing legal material[15].

The purpose of this legal formulation is to realize the norms of legislation in relation to the institutional formulation of cyber notaries in Indonesia in order to realize legal certainty for notaries in Indonesia, so in this case it is done by understanding legal texts authoritatively it is also permissible so that it can be understood what the law means itself in legal positivism. But then from this rule of law can be formulated so that integrity is found from an internal point of view. The result will be open differences of opinion regarding the meaning of the rule of law, so that the development of the science of law will contain juridical principles and arguments that are rational in nature to examine the activities and development of the science of law[16].

By formulating law, it is hoped that the law will no longer be stagnant but can function as a means of renewing law in society. Through legal formulation, the position of law is not only as a rule but also as a means of developing a country. The law will position itself as a guide and a stepping stone for development activities to achieve the welfare of a country, so that people are also able to think that law can be a suggestion for people's ways of thinking in a more advanced (progressive) direction. In the end, the community is able to get out of the conservative mindset and is able to develop thoughts that pay attention to the sociological, anthropological and cultural factors of the community it self[17].

The legal formulation will produce law as a means of renewal but must also pay attention to, maintain and maintain order as a classic function of law. This is so that as long as developments and changes occur, order and order are maintained. In other words, the changes and updates that occur do not cause order and regularity to be neglected. The function of law as an effort to uphold the law is a conditio sine quanon for the function of the law itself, namely in the form of matters[18]:

- The directive function, as a guide in development to shape the society to be achieved in accordance with the goals of state life;
- Integrative function, as a builder of national unity;
- Stable function, as a custodian including the results of development, maintaining harmony, harmony and balance in the life of the state and society;
- The perfective function, as a complement to both the attitude of state administration and the attitude of citizens when there is conflict in the life of the state and society.

The corrective function is to correct the attitude of both state administration and citizens when there is a conflict of rights and obligations to get justice.

In formulating a cyber notary institution in order to create legal certainty for notaries in Indonesia, there are at least two (2) basic questions that must be answered relating to the concept of legal policy in terms of institutional formulation of cyber notaries in order to realize legal certainty for notaries in Indonesia. The two (2) fundamental questions are:

With regard to how the institutional formulation of a cyber notary in order to create legal certainty for notaries in Indonesia, the focus of the answer to this question must start from the concept of cyber notary that applies internationally and how the institutional concept is if cyber notaries are to be enforced in Indonesia. Therefore it is necessary to formulate a cyber notary institution in order to realize legal certainty for notaries in Indonesia, opportunities for cyber notaries in Indonesia.

Regarding what can be done to formulate a cyber notary institution in order to create legal certainty for notaries in Indonesia.

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[15] *Satjipto Raharjo, Imu Hukum, Aditya Bakti, Bandung, 2006, Hlm.103*
[16] *Bernard Arief Sidartha, Ilmu Hukum Indonesia, Genta Publishing, Yogyakarta, 2013, Hlm 28-29*
[17] *Ibid*
[18] *Ibid*

In connection with the provisions above, the aim of implementing a cyber notary institutional formulation in order to realize legal certainty for notaries in Indonesia is expected to be able to achieve the goal of forming the law itself, where the legal formulation is intended to create regulations in the field of law that are in accordance with the needs, circumstances and situations at the time and place for the future. Therefore the legal formulation of this law is intended to carry out legal policies which also hold elections to achieve the best legislation, in the sense of fulfilling the requirements of justice and efficiency[19].

In the context of legal formulation as a legal policy, the formulation of a cyber notary institution for the sake of realizing legal certainty for notaries in Indonesia is closely related to legal reform, in this context, according to that, legal reform must be carried out with a policy-oriented approach (policy oriented approach).) and at the same time a value-oriented approach (value-oriented approach), so that the resulting legal formulation is a legal reform whose review and approach is policy-oriented (policy-oriented approach), one of the results of which is legal reform in the field of legal substance in order to enforce the law[20].

The purpose of legal formulation in terms of renewal of legal substance in the context of providing legal certainty in terms of cyber notary institutional formulation in order to realize legal certainty for notaries in Indonesia, this is in accordance with the philosophy and meaning of legal formulation itself which means the process of forming law by legal subjects or perpetrators of legal discoverers in an effort to apply law to concrete events in society based on legal principles and also legal methods that can be justified and in accordance with the principles of jurisprudence. In carrying out formulations later in law science requires that there are content requirements for something to be formulated, these conditions are[21]:

a. Formulation or repair with something that has never existed before (reviving).
b. Formulation or renewing something that has expired (patchwork).
c. Formulation or updating with completely new forms/creations/innovations.

In relation to the formulation of the cyber notary institution for the sake of realizing legal certainty for notaries in Indonesia, the legal formulation in relation to legal reform is linked to aspects of legal substance, so this legal formulation must also pay attention to the concept of forming legislation that applies in Indonesia. . This is done so that in the formation of statutory norms it can be said to be good (good legislation), legal according to law (legal validity) and effective because it can be accepted by the community in a reasonable manner and is valid for a very long period of time, therefore the meaning of reconstruction The law must be based on the objectives and foundation of statutory regulations[22].

In the modern view of law today, it is endeavored to make a law so that it can accommodate all new developments. Therefore the law must always exist simultaneously with the events that occur, the law does not only function as a justification or legitimacy for everything that happens after society has changed, but the law must appear simultaneously with the events that occur and even appear first and then the events that follow it. Law must play an active role as a tool for social engineering (law a tool of social engineering). In this form, legal changes must be desired (tended change) and must be planned (planned change) in such a way as expected. Changes in this model are active in nature, meaning that the authorities actively plan and direct so that the concept of legal renewal can work effectively[23].

In Adi Sulistiyono's view, legal development has a more comprehensive and fundamental meaning compared to the term legal development or legal renewal. Legal development refers more to efficiency in the sense of increasing legal efficiency. Legal renewal implies compiling a legal system to adapt to changes in society[24].

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[19] *Ibid, hlm 161*
[20] *Opcit Barda Nawawi Arief, Hlm 3*
[21] *Ahmad Syafiq, Rekonstruksi Pemidanaan Dalam hukum Pidana Islam (Fersfektif Filsafat Hukum), Jurnal Pembaharuan Hukum, Vol 1 No. 2 Mei-Agustus 2014, Hlm 179*
[22] *I Gde Panca Astawa and Suprin Na'a, Dinamika hukum and Ilmu Perundang-Undangan, Alumni, Bandung, 2008, Hlm 77*
[23] *Abdul Manan, Aspek Pengubah Hukum, Cetakan Ketiga, Kencana Prenada Media, Jakarta, 2009, Hlm 7*
[24] *Adi Sulistiyono, Reformasi Hukum Ekonomi Indonesia, UPT Penerbitan and Percetakan UNS, Surakarta, 2008, Hlm. 69*

In historical developments, thoughts about institutions and institutions go hand in hand with the development of power organizations, power in the context of a state begins to develop through a long history. Likewise with the variations in the structure and functions of organizational institutions, where organizational institutions develop in many varieties and variations depending on each country. The development of variations and functions of these state institutions develops in various styles, forms, buildings and organizational structures, while the development of variations and types of institutions in each country is very dependent on the conditions of political power which organizes various interests in the society concerned[25].

The development of state institutions before the 19th century showed a pattern of state institutions with very strong royal power, where the king's power was dominant and absolute. This happened during the time of the institutions of power in the Ancient Greek and Roman eras, the conception of state institutions then continued to develop as a result of the emergence of revolutions that demanded wider freedom for the people in dealing with the authorities. In the early Middle Ages, the concept of a night watch state (nachwachatersstaat) developed, in which the state's only duty was to maintain security and order. It was only later in the 19th century that a broader view emerged that required a bigger role for the state to deal with welfare issues for the community. This is where the concept of the welfare state (welvaartsstaat) emerges.

The concept of a welfare state according to Bernard Arif Sidarta is that there is a state institution that runs and organizes its government system that must be carried out based on and based on legal rules. The rule of law originates from and is rooted in a set of starting points of normative law, namely rules in the form of basic principles where these principles later become guidelines and criteria for assessing government institutions and the behavior of government officials as the implementing organs of law and government.[26].

From the explanation above, it can be understood that this is intended to limit the power of the state which is very dominant (absolute) in using its power to oppress its people (abuse of power/abuse de droit). Therefore, the term commonly known as rechstaat or rule of law, the concept of rechtsstaat is termed as a more revolutionary character compared to the concept of rule of law which was born from the development of jurisprudence, here it can be interpreted that the concept of rechtsstaat is more associated with the context of the struggle against absolutism of law is interpreted as the development of jurisprudence from court decisions[27]. The law must be present to regulate society and in the form it must be regulated by written law. This shows that the law functions as a means for every human being to be allowed and to defend himself and claim his rights with recognition of his equality before the law and through a legal process that is truly fair (due process of law)."[28].

The obligation to respect the written law is an obligation for political entities that have sovereignty based on the highest authority or the supreme political authority, namely written law that regulates human behavior[29], so that these rules serve as guidelines for every human being regarding what is permissible according to law and not permissible according to law and all of these things can only be widely known if the law is formed in writing[30]. In the modern era, the conception of written law as part of the rule of law concept was functioned to avoid the existence of a staatstype polizei state which is famous for its motto "principle legibus" which can be interpreted as only the king who makes laws for the country, or only the king who can manage the country[31].

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[25] Jmly Assidiqie, Perkembangan and Konsolidasi Lembaga Negara Pasca Reformasi, Mahkamah Konstitusi RI, Jakarta, 2006, Hlm.8
[26] Bernard Arif Sidarta, Kajian Kefilsafatan Tentang Negara Hukum, Jurnal Hukum Jentera, edisi ke-3 Edisi Tahun III, 2004, Hlm123
[27] I Dewa Atmaja, Hukum Konstitusi: Problem Konstitusi Indonesia Sesudah Perubahan UUD 1945, Setara Press, Malang, 2010, Hlm 157.
[28] Paul Siegart, The Lawful of Mankind (An Introduction to The International Legal Code Of Human Right), Oxford University Press, Oxford, 1986, hlm 134
[29] G Jeffrie Murphy and L. Jules Coleman, Philosphy of Law, Westview Press, San Fransisco and London, Boulder,1990, Hlm 33
[30] N.E Algra, Mula Hukum, Jakarta, Bina Cipta, 1983, hlm 44
[31] This incident was the disappearance of democratic ideas in western countries, this was due to the defeat of the Roman nation by western European countries and then Christianity controlled the country and built a government and oppressed its people, it was then that the idea was developed that the social and spiritual life of the people must obey and subject to the power of the church and the power of religious officials, and political life must fully comply with the absolute command of the king, see Miriam Budiarjo, Dasar-Dasar Ilmu Politik (cetakan VII), Gramedia, Jakarta, 2004, hlm 53-55

The reality of awareness of this rule of law then gave birth to Monarchomachen thought which taught hatred of absolute royal power, this teaching very firmly rejected the existence of arbitrary kingly power and orders. So that the people and the king are required to make a written agreement where the agreement shows the existence of an equal position and social status/equal between the people and the king who stand in the same position high and sit the same low[32].

Then the rules and the concept of equality of position are outlined in an agreement called the social due contract, the principles in the social due contract are a reaction to the arbitrary ancien regime in the 18th century in France which gave rise to legal uncertainty, legal inequality and injustice in the implementation law. The conception of thinking of this thought movement is that law must be placed systematically and focuses on legal certainty, from this conception an indeterministic view emerges regarding the freedom of human will where legal responsibility is imposed on people who violate the law and the law and its formulation must be in the law written laws and avoid unwritten laws[33].

At this time, a rule of law state is synonymous with a democratic country, this is because the law has been able to break absolutism and move towards a democratic state so that the power of the state and government must be limited. Based on this thought, then state power must be separated into several areas of power, this is intended to create a democratic state so that law must be separated and to deal with certain fields.

In historical developments, thoughts about institutions and institutions go hand in hand with the development of power organizations, power in the context of a state begins to develop through a long history. Likewise with the variations in the structure and functions of organizational institutions, where organizational institutions develop in many varieties and variations depending on each country. The development of variations and functions of these state institutions develops in various styles, forms, buildings and organizational structures, while the development of variations and types of institutions in each country is very dependent on the conditions of political power which organizes various interests in the society concerned[34].

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From the explanation above, it can be understood that this is intended to limit the power of the state which is very dominant (absolute) in using its power to oppress its people (abuse of power/abuse de droit)[36]. Therefore, the term commonly known as rechstaat or rule of law, the concept of rechtsstaat is termed as a more revolutionary character compared to the concept of rule of law which was born from the development of jurisprudence, here it can

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[32] According to Jimly Asshiddiqie, the use of state power that is too large has the potential to violate people's rights, especially basic rights (hams), this is in accordance with the Lord Action adegium, namely Power tends to corrupt and absolute power corrupts absolutely. Therefore, moral power should not be left to the intentions or personal characteristics of someone who holds that power, but power must still be regulated and limited. In Jimly Asshiddiqie, Format of State Institutions and Shifts of Power in the 1945 Constitution, FH UII Press, Yogyakarta, 2005, Hlm 37.
[33] Muladi and Barda Nawawi Arief, Teori-Teori and Kebijakan Hukum Pidana (Edisi Revisi), Alumni, Bandung, 1992, Hlm 25
[34] Jmly Assidiqie, Perkembangan and Konsolidasi Lembaga Negara Pasca Reformasi, Mahkamah Konstitusi RI, Jakarta, 2006, Hlm.8
[35] Bernard Arif Sidarta, Kajian Kefilsafatan Tentang Negara Hukum, Jurnal Hukum Jentera, edisi ke-3 Edisi Tahun III, 2004, Hlm123
[36] Munir Fuadi, Teori Negara Hukum (rechstaat), Refika Aditama, Bandung, 2009, Hlm 2

be interpreted that the concept of rechtsstaat is more associated with the context of the struggle against absolutism of law is interpreted as the development of jurisprudence from court decisions[37].

The law must be present to regulate society and in the form it must be regulated by written law. This shows that the law functions as a means for every human being to be allowed and to defend himself and claim his rights with recognition of his equality before the law and through a legal process that is truly fair (due process of law)[38].

The obligation to respect the written law is an obligation for political entities that have sovereignty based on the highest authority or the supreme political authority, namely written law that regulates human behavior[39], so that these rules serve as guidelines for every human being regarding what is permissible according to law and not permissible according to law and all of these things can only be widely known if the law is formed in writing[40]. In the modern era, the conception of written law as part of the rule of law concept was functioned to avoid the existence of a staatstype polizei state which is famous for its motto "principle legibus" which can be interpreted as only the king who makes laws for the country, or only the king who can manage the country[41].

The reality of awareness of this rule of law then gave birth to Monarchomachen thought which taught hatred of absolute royal power, this teaching very firmly rejected the existence of arbitrary kingly power and orders. So that the people and the king are required to make a written agreement where the agreement shows the existence of an equal position and social status/equal between the people and the king who stand in the same position high and sit the same low[42].

Then the rules and the concept of equality of position are outlined in an agreement called the social due contract, the principles in the social due contract are a reaction to the arbitrary ancien regime in the 18th century in France which gave rise to legal uncertainty, legal inequality and injustice in the implementation law. The conception of thinking of this thought movement is that law must be placed systematically and focuses on legal certainty, from this conception an indeterministic view emerges regarding the freedom of human will where legal responsibility is imposed on people who violate the law and the law and its formulation must be in the law written laws and avoid unwritten laws[43].

At this time, a rule of law state is synonymous with a democratic country, this is because the law has been able to break absolutism and move towards a democratic state so that the power of the state and government must be limited. With this in mind, then state power must be separated into several areas of power, this is intended to create a democratic state so that law must be separated and to deal with certain fields.

In relation to the cyber notary institution in Indonesia, it is a manifestation of the existence of the state in exercising state power on a mandate in the field of information development and adaptation to changes in the digital world for the notary profession in Indonesia, cyber notaries must actually be useful for society. In this context, the cyber notary must prioritize the interests of the community in dealing with technological and information developments for the notary world, the government must then realize that cyber notary is a step to accommodate the aspirations and needs of the community. Therefore, in the formulation of cyber notary institutions, the government must guarantee freedom for the

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[37] I Dewa Atmaja, Hukum Konstitusi: Problem Konstitusi Indonesia Sesudah Perubahan UUD 1945, Setara Press, Malang, 2010, Hlm 157.
[38] Paul Siegart, The Lawful of Mankind (An Introduction to The International Legal Code Of Human Right), Oxford University Press, Oxford, 1986, hlm 134
[39] G Jeffrie Murphy and L. Jules Coleman, Philosphy of Law, Westview Press, San Fransisco and London, Boulder,1990, Hlm 33
[40] N.E Algra, Mula Hukum, Jakarta, Bina Cipta, 1983, hlm 44
[41] This incident was the disappearance of democratic ideas in western countries, this was due to the defeat of the Roman nation by western European countries and then Christianity controlled the country and built a government and oppressed its people, it was then that the idea was developed that the social and spiritual life of the people must obey and subject to the power of the church and the power of religious officials, and political life must fully obey the orders of the absolute king, see Miriam Budiarjo, Dasar-Dasar Ilmu Politik (cetakan VII), Gramedia, Jakarta, 2004, hlm 53-55
[42] According to Jimly Asshiddiqie, the use of state power that is too large has the potential to violate people's rights, especially basic rights (hams), this is in accordance with the Lord Action adegium, namely Power tends to corrupt and absolute power corrupts absolutely. Therefore, moral power should not be left to the intentions or personal characteristics of someone who holds that power, but power must still be regulated and limited. In Jimly Asshiddiqie, Format of State Institutions and Shifts of Power in the 1945 Constitution, FH UII Press, Yogyakarta, 2005, Hlm 37.
[43] Muladi and Barda Nawawi Arief, Teori-Teori and Kebijakan Hukum Pidana (Edisi Revisi), Alumni, Bandung, 1992, Hlm 25

people to express their aspirations and participate in the framework of implementing cyber notary institutions in Indonesia in the future.

In the formulation of cyber notary institutions in Indonesia, in the context of state institutions, the government must be able to ensure which institutional form the cyber notary institution enters into. This is important because this institutional form will become the legal basis for enforcing cyber notaries in Indonesia. In practice, state institutions in Indonesia are subject to two models that are commonly used, namely in the form of state institutions, namely: 1. State institutions regulated by the 1945 Constitution; 2. State institutions that are not regulated by the 1945 Constitution.

In addition, the government must also ensure how the formulation of implementing regulations for the establishment of cyber notary institutions in Indonesia is related to:

- Regulations regarding cyber notary as a state institution;
- Requirements for establishing a cyber notary as a state institution;
- What is the mechanism for determining and selecting members of the cyber notary institution;
- How will the responsibility of the cyber notary institution be carried out to whom.

Providing an appropriate legal basis for cyber notary institutions will guarantee legal certainty and legal clarity for cyber notary institutions within the framework of state institutions in Indonesia, because according to Lukman Hakim within the framework of state institutions "every formation of state institutions is always related to the constitutional system within a country in which contained, among other things, the functions of each state institution formed[44].

Providing a legal basis for cyber notary institutions will later synchronize cyber notary institutions with other state institutions, this is in line with Sri Soemantri's opinion which states that a state institution must form a unified process that is interconnected with each other in the framework of carrying out state functions or actual governmental processes"[45]. Thus the cyber notary institution must have good coordination and cooperation between state institutions and state institutions regulated by the 1945 Constitution and also coordination with state institutions that are not regulated by the 1945 Constitution.

CONCLUSION

The formulation of cyber notary institutions in Indonesia is that they must make laws as their own legal basis declaring cyber notary institutions as independent institutions, this is a very easy formulation compared to formulating cyber notary institutions as state institutions regulated in the 1945 Constitution. The institutional formulation of a cyber notary in the form of a special law is in line with the notary office law. The second formulation is to stipulate implementing rules of the cyber notary law in the form of government regulations and presidential regulations which regulate specific rules and implementing regulations in the implementation of cyber notaries in Indonesia.

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