



UDC 34; DOI 10.18551/rjoas.2023-11.06

THE POWER PROOF OF NOTARY PROTOCOL STORED ELECTRONICALLY IN THE CYBER NOTARY CONCEPT

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ABSTRACT

A notarial deed is a strong piece of evidence, as long as it is made in accordance with applicable regulations compared to a private deed. A deed is basically a statement of the will or legal facts desired by the parties, the truth of which cannot be denied by the parties. A notary is a public official who has the authority to make all authentic deeds without exception as long as another official is not appointed by law. A notary is a state official who is not paid by the state, but receives an honorarium from making deeds, the amount of which is determined by law. Through the deed he makes, the Notary must be able to provide legal certainty to the people who use his services. A deed made by or before a Notary Public can be authentic evidence in providing legal protection to any parties who have an interest in deed regarding the certainty that event or legal act was carried out. The Law on Notary Positions requires Notaries to keep all records relating to the Notary's duties and authority, for at least 30 years. This research is normative legal research. Electronic notary storage protocols can be implemented within the scope of deeds made by or before a notary, hereinafter referred to as Cyber Notary. Using a Cyber Notary actually provides many benefits, because it is practical, efficient, and more secure from damage. It's just that in its implementation a lot of supporting infrastructure is needed to ensure security and certainty in the implementation of *cyber notary/e-notary*.

KEY WORDS

Cyber notary, document, evidence, legal research.

A notarial deed is a strong piece of evidence, as long as it is made in accordance with applicable regulations compared to a private deed. A deed is basically a statement of the will or legal facts desired by the parties, the truth of which cannot be denied by the parties. A notary is a public official who has the authority to make all authentic deeds without exception as long as another official is not appointed by law. A notary is a state official who is not paid by the state, but receives an honorarium from making deeds, the amount of which is determined by law. Through the deed he makes, the Notary must be able to provide legal certainty to the people who use his services. A deed made by or before a Notary Public can be authentic evidence in providing legal protection to any parties who have an interest in deed regarding the certainty that event or legal act was carried out. The Law on Notary Positions requires Notaries to keep all records relating to the Notary's duties and authority, for at least 30 years [1].

After the enactment of Law Number 19 of 2016 concerning Information and Electronic Transactions (UU No. 19-2016), it inspired Notaries to store Notary protocols electronically. This law stipulates that: "Electronic documents are declared valid if an electronic system is used in accordance with the provisions regulated in this law." Documents or their printouts are valid evidence, but there is no mention of documents as authentic evidence.

UU no.19-2016 inspired Notaries to store documents and deeds electronically, or what is called a cyber notary. However, electronic storage of Notary protocols invites pros and cons related to their validity as legal evidence. This problem is related to the provisions of Law no.19-2016, especially those stated in Article 5 paragraph (4) letter b of Law no. 19-2016, which determines that electronic documents and/or their printouts are valid legal evidence. However, there are exceptions regulated in the provisions of Article 5 paragraph (4) letter c of Law no.19-2016, which states that letters and documents according to law must be made in the form of a notarial deed or a deed made by a deed-making official. The



formulation of the problem is whether the electronic storage of Notary protocols is based on Law no.19-2016 can be used as legal evidence?

METHODS OF RESEARCH

This research is normative legal research [2].

RESULTS AND DISCUSSION

An authentic deed essentially contains formal truth in accordance with what the parties notified to the Notary. Notaries have the obligation to ensure that what is contained in the notarial deed is truly understood and in accordance with the wishes of the parties, namely by reading it, so that the contents of the notarial deed become clear and provide access to information including access to relevant laws and regulations for the parties signing the deed. An authentic deed essentially contains formal truth in accordance with what the parties notified to the Notary. Meanwhile, the Notary has the obligation to include what the parties want, as well as convey everything contained in the notarial deed and that it is truly understood and in accordance with the wishes of the parties. Thus, the parties can decide freely to agree or disagree with the contents of the Notarial deed they will sign.

In Indonesia, the storage of Notary protocols in the Cyber Notary system raises problems related to the validity of the storage. The problems that arise are mainly related to its validity as evidence that has legal evidentiary power, due to its storage in the Cyber Notary system. In other words, does the storage via the cyber Notary affect the validity of the legal evidence of the Notary's deed, or does the storage not affect the validity of the legal evidence of the Notary's deed? Before discussing this problem, it is necessary to mention the use of cyber notaries in the Continental European legal system and the Common Law System.

Historically, the term "*Cyber notary*" was popularized by legal experts from the common law system tradition, while the term "*Electronic Notary*" was popularized by legal experts from the Civil Law or Continental European tradition [3]. Initially the two terms had differences, because the American Bar Association, Information Security Committee (ABA) popularized the term *cyber notary* by referring to the function of the Certification Authority, namely the institution that verifies digital certificates which are considered notaries in *cyberspace*, so it is called *cyber notary*. Meanwhile, electronic notary was popularized by Trade Electronics Data Interchange System (TEDIS), which is a job in the legal profession that supports electronic notary activities. Then these two terms developed and have become one meaning along with increasing function and role of Notaries in the development of information technology in electronic transactions [4].

In the legal system adopted in Europe, the power of a notarial deed as written evidence has the highest, strongest and fullest place or perfect evidence. This causes the position of the Notary in the Continental European legal system to be very important considering his duties and authority in making authentic Deeds. Notary protocol storage in the *Cyber Notary system* affects the authenticity of the notarial deed. Meanwhile, in *common law system countries*, the use of a *Cyber Notary* will not affect the strength of the Deed [5]. Thus, in countries adhering to the *Common Law System*, the concept of *Cyber Notary* can be widely applied. This is of course different in countries that adhere to the *Civil Law System* where this is due to differences in legal characteristics, especially in this case the differences in the notarial legal system between the two systems.

The use of *cyber notaries in Continental Europe*, cyber notaries have moved towards electronic-based services known as *Cyber Notaries*, several countries have implemented and empowered the functions and roles of Notaries in electronic transactions. The authority of a Notary is very different from the authority of a Notary in countries adhering to the *Anglo-Saxon* legal system. Notaries in the *Anglo-Saxon legal* system do not play a role in making and determining the contents of letters/deeds. Apart from that, to become a Notary in countries adhering to the *Anglo-Saxon* system, on average you do not need to undergo education as a *legal expert (jurist)* and serve for a certain period of time first. A deed which is



a product of a *Latin Notary* has formal, material evidentiary power and for certain legal acts also has executorial power [6].

In Indonesia, a notarial deed is a deed that can be used as strong evidence of the legal actions of the parties who executed it. Authentic deeds made by in presence of a Notary, or their protocols must be kept, and storing minutes of deeds and their protocols is one of the Notary's obligations. The enactment of UUIITE encourages Notaries to deviate electronically, and this storage refers to Article 5 paragraph (4) letter b UUIITE, that electronic documents and/or their printouts are valid legal evidence. Electronic documents and/or printouts are an extension of valid evidence in accordance with the procedural law in force in Indonesia. If the protocol is stored electronically, if it is disputed, it can be used as legal evidence, but its power is only limited to a private deed, because in Article 5 paragraph (4) letter b UUIITE, electronic documents made before a notary have not been recognized as evidence.

The deed that is made and kept is still in the form of an authentic deed which, if used as evidence, has perfect evidentiary power. Regarding the storage of deed protocols in *electronic/cyber* notary form, from an economic perspective it is very supportive because deeds are no longer made in paper form which must be kept as the original deed, but from the perspective of legal certainty, it does not guarantee the authenticity of the deed, if there is a problem until a court hearing. Because the authentic deed is no longer in its original form, it is just a copy, which causes the deed to be degraded from an authentic deed to a deed with legal force, namely binding on the parties who sign the deed.

The electronic storage of notary protocols has not been recognized as an authentic deed as stated in Article 5 paragraph (4) letter b UUIITE, so there is no harmonization of the laws and regulations that regulate it. This harmonization is intended to provide legal protection to the presenter if the notary stores his protocol electronically based on UUIITE, if it turns out that the deed is no longer deemed to be an authentic deed as well as other documents, of course it is vulnerable to lawsuits by the presenter or third parties who suffer losses [7].

Storing notarial protocols as authentic deeds electronically, which if used as evidence in court is excluded as per Article 5 paragraph (4) letter b UUIITE, therefore storing notarial protocols conventionally provides a guarantee of legal certainty for deed protocols as authentic deeds, so that the function of storage of notary protocols if they are used as evidence as derivative evidence, not as original evidence.

If you pay attention to the provisions of Article 5 paragraph (4) letter b UUIITE, an opinion can be expressed that the electronic storage of Notary protocols is not yet recognized as valid evidence. This certainly does not support the government's service acceleration program, especially with issuance of Presidential Regulation Number 91 of 2017 concerning the Acceleration of Business Implementation, which is proof of the government's seriousness in increasing the ease of doing business index in Indonesia, which requires all transactions to be electronic to speed up international transactions. Such conditions create a lack of legal certainty.

The topic raised in the research is related to proving notarial protocols stored electronically in the cyber notary concept, the validity of which has not been recognized, is certainly not in line with existing regulations governing notarial deeds in Law no. 2 of 2014 in conjunction with Law no.30 of 2004, Archives Law and Law no.19 of 2016 in conjunction with Law no.11 of 2008. In the sense that there is no harmony, harmony. As is known, the government seeks to create legal harmony, to realize good governance, through efforts to harmonize and synchronize various legal harmony and harmony activities. The discourse on storing notarial deed protocols in electronic form is constrained by provisions of Article 5 paragraph (4) letter b of Law no. 2 of 2014 in conjunction with Law no. 30 of 2004, that the provisions regarding electronic documents in principle do not apply to letters which according to law must be made in written form; and letters and documents which according to law must be made in the form of a notarial deed or a deed made by a deed-making official [8].

The reason why notary protocol storage in an electronic system (cyber notary) does not have legal validity is based on the reason that the notarial deed is no longer authentic. This is because the notarial protocol that is stored in the cyber Notary is only a copy, not the original



deed, thus affecting the authenticity of notarial deed. Because the Law on Position of Notaries confirms that an authentic notarial deed is a genuine notarial Deed.

The electronic notary protocol storage mechanism can be used by notaries through process of transferring media from printed documents, audio, video to digital or scanning form, the availability of electronic documents produced through this process can be opened when needed and copies made for later use to represent damaged or damaged notary protocols. is lost. The protocol in paper form as original is stored in the Notary's Office, protected from interference that could damage the physical form of paper. If hacking does not occur, electronic documents, namely activities that attempt to illegally access digital devices, such as computers, smartphones, tablets, and even entire networks, need to be protected from hacking.

The use of *cyber notary/e-notary* in Indonesia began with the promulgation of Law no.2 Year 2014 in conjunction with Law no.30 Year 2004, which in Article 15 paragraph (3) determines "In addition to having other authorities regulated in statutory regulations", other authorities regulated in statutory regulations", include, among other things, the authority to certify transactions carried out electronically (*cyber notary*)". Apart from that, in Article 16 paragraph 7 there is an opportunity for *cyber notary/e-notary* to apply to electronic documents, as well as electronic deeds because reading the deed before a notary is not mandatory when the parties choose not to have the deed read out because the parties have read it themselves. Article 68 paragraph (1) Law no. 43 Yr. 2009 concerning Archives, and Article 5 paragraph (4) letter b of Law no. 19-2016, it is interpreted that the minutes of a notary's deed or Notary's protocol can be stored electronically. Many regulations open up opportunities for notaries to store records electronically, this gives rise to a high probability but regarding the creation and storage of minutes of deeds electronically it has not been explicitly regulated in statutory provisions.

Paying attention to the description above, it can be explained that the storage of notary protocols can be done electronically, which refers to the provisions of Article 5 paragraph (4) point b of Law no. 30 Years. 2004 as amended by Law no. 2 (2014) concerning the Position of Notary Jo. UU no. 11 of 2008 as amended by Law no. 19 Yr. 2016 Jo. UU no. 43 Yr. 2009 Regarding Archives, even though there are many inconsistencies, the implementation of an integrated electronic system related to storage of Notary Protocols in its implementation is still hampered by legal umbrellas. Deed authentication can take the form of providing a certain code as a sign and/or a written statement or other sign that can indicate that the archive in question is an archive taken from original data or an original copy.

CONCLUSION

Electronic notary storage protocols can be implemented within the scope of deeds made by or before a notary, hereinafter referred to as Cyber Notary. Using a Cyber Notary actually provides many benefits, because it is practical, efficient, and more secure from damage. It's just that in its implementation a lot of supporting infrastructure is needed to ensure security and certainty in the implementation of *cyber notary/e-notary*. The problem is that if it is only related to the technical implementation of *cyber notary/e-notary*, the government can make rules regarding procedures that can be used by notaries, starting from making the deed to storing it electronically so that strength of minutes in notarial deed remains perfect and can be used as authentic evidence in trial when its storage is transferred to electronic.

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