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Regulating the validity of notarial deeds through teleconference

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Abstract

The purpose of this study is to determine the validity of notarial deeds made through teleconference during the COVID-19 pandemic. The research method used is the normative juridical method with a statutory approach and legal concepts. The results showed that the validity of notarial deeds through teleconference during the COVID-19 pandemic can be seen from the arrangements contained in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Offices, which regulates the process of making notarial deeds electronically. In addition, there are also several court decisions that strengthen the validity of notarial deeds through teleconference. However, there needs to be strict supervision by notaries and the government to ensure that the process of making notarial deeds through teleconferencing is carried out transparently, accountably, and meets the legal requirements of conventionally made notarial deeds.

Keywords: Notarial deed, teleconferencing, validity

1. Introduction

Due to the Covid-19 pandemic, many activities are carried out online and remotely, including notarial deeds. In this case, technological advances have made a major contribution in making it easier for people to carry out their activities. Technological developments also have a significant impact on the economic and legal sectors. Along with technological advances, people today find it easier to conduct transactions and shop through e-commerce platforms. This results in the need to regulate the legal aspects of electronic transactions, so Law Number 11 of 2008 concerning Electronic Information and Transactions (abbreviated as ITE Law) was made to regulate this matter.

The COVID-19 pandemic has brought significant changes in various aspects of life, including notarial deeds. Many activities that were previously carried out face-to-face, are now turning virtual due to the situation. In order to provide notary services that remain affordable, many notaries are using teleconference technology as an alternative to facilitate the making of notarial deeds. Teleconference is a communication method that allows people from different parts of the world to connect to the same server, so they can interact with each other virtually ^[1].

Overall, there are several things that need to be considered to ensure the validity of a notarial deed made through teleconference, such as ensuring that the document meets the applicable legal requirements, verifying the identity of the parties online, and ensuring that the notary has complied with the applicable provisions ^[2].

To determine the authenticity of a deed, there are several aspects that can be considered, including the deed being made in the presence of an authorized official, the presence of the parties, both the client and the notary making the deed, both parties are known and introduced to the notary, and the presence of two witnesses. However, with the Cyber Notary concept, notaries can utilize technology in carrying out their duties and functions, by conducting teleconference meetings and signing electronically. The legal basis for the Cyber Notary concept is stated in Article 15 paragraph (3) of the Notary Office Law which mentions the authority to certify transactions conducted electronically (cyber notary), while Article 1 point (7) of the Notary Office Law states that a notarial deed is an authentic deed made by or before a notary in accordance with the forms and procedures regulated in this Law. Nonetheless, the electronic creation of notarial deeds through the Cyber Notary concept

may be less common as the public meeting and the notary may not be in the same area. However, according to the Civil Procedure Code, electronic signatures can be used as valid legal evidence based on the provisions of Article 5 paragraph 1 of the Electronic Information and Transaction Law. Therefore, studies related to the validity of notarial deeds are very important to be examined further.

The purpose of the research on the validity of notarial deeds through teleconference is to obtain a clear understanding of the lawfulness of notarial deeds made through teleconference, by analyzing the applicable laws and regulations, relevant court decisions, and notary practices in making notarial deeds through teleconference. In addition, the purpose of this study is also to provide recommendations regarding the supervision and arrangements that need to be made so that the process of making notarial deeds through teleconference can be carried out transparently, accountably, and meet the legal requirements of notarial deeds made conventionally.

2. Methods

The research method related to the validity of notarial deeds through teleconference during the Covid-19 period used is the normative juridical method with a statutory approach and legal concepts. This method will be used to analyze applicable laws and regulations related to the making of notarial deeds through teleconference, such as Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Offices, as well as relevant court decisions in this context. In addition, this method will also be used to analyze the practice of notaries in making notarial deeds through teleconference, including the supervision carried out by notaries and the government in this process. The data used in this research is secondary data, which includes statutory documents, court decisions, as well as literature related to the making of notarial deeds through teleconference. The data will be analyzed using content analysis techniques to identify patterns and findings that emerge from the data ^[3].

3. Result and Discussion

3.1 The validity of electronically executed deeds

A signature is a code or symbol used to validate a document that has been legally signed. On the other hand, an electronic signature has a more limited meaning as it involves the use of computer technology in processing information to keep documents secure. This electronic signature is created to facilitate business transactions and is used to authorize documents. The definition of an electronic signature is explained in Article 1 point 19 of Government Regulation No. 82/2012 as a signature consisting of electronic information that is attached, associated, or related to other electronic information to be used as a verification and authentication tool. Meanwhile, Article 1 point 20 of Government Regulation No. 82/2012 defines the Signatory as a legal subject associated or related to the Electronic Signature.

Electronic signatures apply algorithms and special computer techniques in their implementation that can prevent changes in document content. Signatures have an important role as evidence regulated in Article 11 paragraph (1) and (2) of the Electronic Information and Transaction Law. and Article 53 paragraph (2) of Government Regulation No. 82 of 2012. Article 11 of the Electronic Information and Transaction

Law. emphasizes that a valid electronic signature will have the same legal force as a conventional signature, if it meets the requirements stipulated in the law, emphasizing:

a. **Electronic signatures are legally valid as long as they meet the following requirements**

- Electronic signature creation data is linked only to the signer.
- The data for creating an electronic signature during the electronic signing process is only in the power of the signatory.
- Any changes to the electronic signature that occur after the time of signing can be recognized.
- Any changes to the electronic information associated with the electronic signature after the time of signing can be recognized.
- There is a specific means used to identify who the signatory is; and
- There are certain ways to indicate that the signatory has given consent to the electronic information concerned.

In simple terms, electronic transactions can be defined as legal actions carried out using computers and/or other electronic media while electronic signatures are a form of verification in these electronic transactions.

The ITE Law limits electronic document creation to documents that must be made in written form and notarial deeds. The UNDANG-UNDANG JABATAN NOTARIS-P emphasizes that notaries must be physically present to make and sign deeds. The regulation on electronic signatures is regulated in Government Regulation No. 82 Year 2012, where an electronic signature consists of electronic information used for authentication and verification by the party signing it, in accordance with Article 1 point 19. Article 54 specifies the difference between certified and non-certified electronic signatures. Certified signatures are created with the help of an electronic certification organizer and have electronic certificate evidence as valid proof. A non-certified signature is created without the assistance of an electronic certification organizer and does not have proof of an electronic certificate.

In a deed, both a deed under hand and an authentic deed made before a notary must be affixed with a signature as a condition for the validity of a deed. The signature on an authentic deed is regulated in Article 44 of the Notary Public Office Law.

1. Immediately after the Deed has been read out, it shall be signed by each of the signatories, witnesses, and Notary, unless there is a signatory who is unable to affix his/her signature by stating the reason thereof.
2. The reasons as referred to in paragraph (1) shall be expressly stated at the end of the Deed.
3. Deed as referred to in Article 43 paragraph (3) shall be signed by the proponent, Notary, witness, and official translator.
4. The reading, translation or explanation, and signing as referred to in paragraphs (1) and (3) and in Article 43 paragraph (3) shall be expressly stated at the end of the Deed.
5. Violation of the provisions as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4) shall result in a Deed only having the evidentiary force of a deed under hand and may be grounds for the party who suffers loss to claim reimbursement of costs, compensation, and interest from the Notary.

6. To create a certified electronic signature, there are several steps that must be taken.

The first stage is the registration of personal data to a third party, along with documents and electronic signatures. Then, the third party will send documents that need to be signed to the other party and enter personal data as verification of personal data and signatures that have been registered previously. In the authentication process, the formation of electronic signatures is supported by fingerprints as authentication on the documents created and given a private key as a unity in the authentication and verification process. After verification and authentication are carried out, the documents created and signed can be compared with the private key owned. If there are any changes after the electronic signature is created, it must be reported to a third party in advance to prevent fraud in forging documents or electronic signatures. Thus, these measures can prevent fraudulent actions from the parties ^[4]. Although Article 15 paragraph (3) of the Notary Position Law states that Notaries have other authorities regulated in laws and regulations, including the authority to certify electronic transactions (cyber notary), the concept of Cyber Notary in Indonesia is currently still in the conceptual and regulatory stages. Although technology allows notaries to work electronically and remotely, the Indonesian Notary Law is still based on conventional mechanisms such as physical presence, so the concept of Cyber Notary cannot yet be implemented. Nevertheless, in the midst of the current global situation, the concept of Cyber Notary is starting to be considered as a necessity and urgency that must be developed gradually to achieve a comprehensive and applicable implementation through the design of strategic reforms in regulation, infrastructure, and culture. Some legal experts have developed the concept of cyber notary by using teleconferencing media, but there is a misunderstanding in interpreting the phrase "in the presence of" which is regulated in Article 1868 of the Civil Code. The concept of cyber notary is actually not much different from ordinary notary, where the parties are still present and meet with the notary, except that the parties read the draft deed on their respective computers and sign the deed electronically at the notary's office, not via webcam or remotely.

In simple terms, electronic transactions can be defined as legal actions carried out using computers and/or other electronic media while electronic signatures are a form of verification in these electronic transactions. An electronic signature is a form of verification in these electronic transactions. An electronic signature is a signature consisting of Electronic Information that is attached, associated, related to other electronic information that is used as verification and authentication.

In general, there are several forms/modes of using Electronic Signatures, namely ^[5]:

1. **Digital Signatures:** The use of digital signatures based on encryption of a message where technically the access code is used as an entry key that also controls access to information which in practice is implemented in 2 (two) ways, namely the request to enter a PIN and then enter random codes in pairs (such as authorization on the internet banking menu).

2. **Biometric:** The use of unique markings on limbs can include physiological biometrics i.e. DNA, fingerprints, iris, retina or facial geometry. The use of biometrics poses several risks related to privacy, protection of personal data and human rights given that there will be storage of large amounts of personalized biometric data.
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4. **Passwords/hybrid methods:** Which can simply be interpreted as the use of keywords or combinations thereof.
5. **Scanned signatures:** Signatures that are electronically scanned by typing names on information. Scanned signatures only have a symbolic function and do not have security guarantees from the document delivery itself so that the strength of proof is relatively weak.

The most important thing about electronic information, electronic documents and electronic signatures is related to their authorization and authentication, especially in relation to documents that grant a right to a person or documents that are used as a medium for transferring rights. In practice, the existence of an authentication method for electronic signatures, electronic information and electronic documents requires the involvement of a third party as an electronic certification provider organized by a third party.

The purpose of the cyber notary initiative is to authorize notaries to certify and authenticate electronic transactions. The authority to certify electronic transactions is regulated in the explanation of the article, which in this case is given implicitly because it is listed not in the article but in the explanation of the article as stated in Article 15 paragraph (3). However, the provisions in PP 82/2012 that authorize notaries to form professional reliability certification bodies are regulated in Article 69. That in certifying electronic transactions from notaries means that notaries can issue digital certificates as evidence that an electronic transaction has been certified to interested parties. However, it is different from the function of authentication which has to do with legal aspects which are part of what must be implemented and fulfilled in carrying out an electronic transaction ^[6].

Thus, based on the arrangements regarding electronic signatures stipulated in the Electronic Information and Transaction Law and PP 82/2012, electronic signatures only apply to electronic transactions and there are no specific arrangements regarding their use in notarial deeds in the Notary Public Office Law. Nonetheless, there are no restrictions in terms of the use of electronic signatures on electronic notarial deeds. Notarial deeds are actually made in digital form and are not handwritten manually. Notaries are also required to keep the deed minutes as a notary protocol. Therefore, a notarial deed will be considered valid as long as it fulfills the provisions stipulated in the Notary Position Law, both in terms of outward, material, and formal aspects. With the use of electronic signatures, the confronters and notaries can facilitate the signature process on the deed electronically without the need to meet physically, only by sending documents electronically ^[7].

3.2 Notary Responsibility for Signatures on Authentic Deeds Performed Electronically

Deed making using cyber notary occurs when a video conference is held, where previously an explanation of the purpose and objectives of making a deed regarding the legal act to be carried out is made, and the identity of the parties is shown through the ongoing video conference, and the identity in the form of a softcopy is sent via email to be matched with the identity that has been shown by the parties to the notary. Then the process continues with the making of the deed and reading the contents of the deed in the presence of the parties and witnesses, and finally signing electronically^[8].

In the Indonesian context, Cyber Notary and Electronic Notary (E-Notary) still do not have clear concepts and arrangements, although Article 15 paragraph (3) of the Notary Position Law authorizes notaries to certify electronic transactions (cyber notary) in accordance with applicable laws and regulations. Although technology has advanced, the application of electronic and remote notarization cannot yet be implemented in Indonesia because the statutory system still follows traditional paper-based procedures or physical presence. However, given the current state of the world, the concept of Cyber Notary and E-Notary can be considered as a necessity and important in building a more effective system. For this reason, strategic reforms need to be made through regulation, development, and a supportive culture to be implemented thoroughly.

An important thing related to the suitability of electronic technology for the office of notary is that in Indonesia, it will refer to the cyber notary approach which is in accordance with the provisions of Article 15 paragraph (3) of the Notary Position Law which explains that the cyber notary is explained as another authority for Notary in carrying out certification of transactions carried out electronically, or later using the Continental European approach, namely the concept of E-Notary and later the concept is enacted as an additional provision or completeness in the existing provisions, namely the cyber notary provision which occupies as another authority for Notary or includes a change in the provisions relating to the office of notary in the meaning of a change or shifting in the aspect of Electronic Notary (E-Notary) in the meaning of digitizing notary services to the products produced^[9].

In relation to the principle of legal presumption, a notarial deed will always be considered valid and perfect in its evidentiary value before any party denies it before the court^[8]. If there is a confronter who from the beginning has had bad intentions to make an authentic deed before a notary by providing false information and documents of which the notary himself does not know. The issuance of the deed creates rights and obligations between the parties and until the legal consequences that can arise in the future from the authentic deed will always be binding and considered valid unless someone denies it. As well as notaries in making authentic deeds must still follow the existing rules, such as in the Notary Position Law Article 15, Article 16, Article 17, Article 38 and as long as the action is appropriate, the notary can be justified in relation to the principle of legal presumption when carrying out his position. If in the making of the deed there are deviations made by the notary in his position to make an authentic deed, because there is no clear regulation regarding electronic signatures specifically regulated in the notary position, administrative

sanctions can be imposed on Article 85 of the Notary Position Law, civilly associated with Article 1365, namely illegal acts, if the parties who feel disadvantaged due to the electronic signature can prove otherwise from the contents of the deed. There are several consequences that can arise if the deed is not in accordance with the provisions, namely: 15 the deed can be canceled, the deed is null and void, the deed is canceled due to a court decision that has permanent legal force.

So it is necessary to update the Notary Position Law relating to the implementation of deed making, signatures and those related to cyber notary^[10]. In addition, it is necessary to define and define more specifically the authority of notaries in certifying using the concept of cyber notary both in making deeds, certifying deeds, and conducting electronic signatures. This breakthrough that has been used by several countries and will now be applied in Indonesia is a good step, because Indonesia should utilize the technology that has advanced so that it can be more useful, especially to provide maximum service by notaries. Edmon Makarin argued that in carrying out the office of notary that there must be physical presence is a prolonged debate, whereas by conducting a video conference is a meeting that can be interpreted physically because it can see directly. That the government has supported by providing regulations regarding the implementation of the electronic transaction system organizer PP 82/2012 and the Electronic Information and Transaction Law. The notary's responsibility is limited to making the deed he made, because the notary in carrying out his position may not participate in the agreement of the parties to the contents of the deed. And the notary also has the principle of legal presumption, that the deed he made is true as desired by the parties and actually contained in the deed.

4. Conclusion

The Notary Law does not expressly regulate the validity of electronic signatures in the context of authentic deeds. the application of valid electronic signatures has been regulated by the Electronic Information and Transaction Law. with PP 82/2012. However, the notary's authority to certify electronic transactions (cyber notary) has been regulated in Article 15 paragraph (3) of the Notary Position Law, although the definition of this authority still needs to be further regulated. Currently, the notary's responsibility for the validity of electronic signatures has not been normatively regulated, but the principle of assuming notarial validity still applies. Therefore, it is recommended to use electronic system providers available in Indonesia to support the implementation of electronic signatures.

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