



ISSN: 0975-833X

Available online at <http://www.journalcra.com>

International Journal of Current Research
Vol. 15, Issue, 06, pp.24915-24918, June, 2023
DOI: <https://doi.org/10.24941/ijcr.45419.06.2023>

**INTERNATIONAL JOURNAL
OF CURRENT RESEARCH**

REVIEW ARTICLE

NOTARY'S AUTHORITY IN THE DIGITAL ERA: FROM ELECTRONIC DEEDS TO CLOUD COMPUTING PUBLIC DOCUMENTS STORAGE

***I Dewa Gede Agung Putra Diatmika, Ni Ketut Supasti Dharmawan and Putu Aras Samsithawrati**

Faculty of Law Universitas Udayana-Bali

ARTICLE INFO

Article History:

Received 19th March, 2023
Received in revised form
12th April, 2023
Accepted 16th May, 2023
Published online 24th June, 2023

Key words:

Notary Public; Electronic Authentic Deed; Cloud Computing.

*Corresponding Author:

I Dewa Gede Agung Putra Diatmika

ABSTRACT

This study aims to elaborate on cyber notary arrangements related to notary services in making electronic authentic deeds and the urgency of storing them through cloud computing. This study uses normative legal research methods with primary, secondary, and tertiary sources of legal materials, and uses the snowball technique in tracing legal materials with argumentative descriptive analysis. The results of the study show that making electronic authentic deeds and storing them in cloud computing is not included in the scope of a cyber notary in the context of other notary authorities as stipulated in Article 15 paragraph (3) of the Notary Official Law. Thus, a notarial deed made electronically is not perfect evidence. Electronic-based notary services play an important and necessary role in supporting business transactions that are more effective and efficient and have legal certainty in the digital technology era, as well as storing minutes of deeds through cloud computing is relevant to be regulated in relation to physical storage loads that require space and operational costs avoiding physical damage to the minutes of deed documents due to termites or humidity in the storage room. Transformation of the concept of a cyber notary in a broader context includes the making of deeds electronically, both Remote Online Notary and Hybrid Notary, as well as storage of minutes of deeds with cloud computing based on the security of important electronic document data based on rules that have legal certainty.

Copyright©2022, I Dewa Gede Agung Putra Diatmika et al. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Citation: I Dewa Gede Agung Putra Diatmika, Ni Ketut Supasti Dharmawan and Putu Aras Samsithawrati. 2022. "Notary's authority in the digital era: from electronic deeds to cloud computing public documents storage". *International Journal of Current Research*, 14, (06), 24915-24918.

INTRODUCTION

The development of digital technology which is often also known as electronic-based civilization is developing so rapidly, entering almost all lines of human life. Everyone can be connected to everyone and to an unlimited amount of digital content, anywhere and anytime. Thus, this is the world of digital hyper-connectivity. Utilization of technology and information is important and needed both in daily life, business processes, and the government sector. Therefore, the use of digital technology in the public area also affects the authority of a notary as a public official. Notaries as Public Officials in carrying their authority, position, and profession are required to provide professional services to members of the public, both those who are able and those who cannot afford it (Muhammad Nur Irsan, Kn Hasan, and Kms Hamid, 2021). Notaries have the authority to make Authentic Deeds and other authorities based on Article 15(3) of Law Number 2 of 2014 on Amendment to Law Number 30 of 2004 on the Notary Official Law (hereinafter referred to as Amendment to Notary Official Law). The provision of Article 15(3) of the Amendment to Notary Official Law is actually one of the provisions that acknowledge acceptance of electronic-technological developments related to the authority of a Notary, especially through the phrase "Other authorities possessed by a Notary."

However, such provision is not clear enough on cyber notary, specifically, it seems that it is not related to the authority of a Notary in making deed services. Both the provision in Article 15 (3) of the Amendment to Notary Official Law and the Elucidation of that article only stipulate what is meant by "other authorities". It includes, among other things, the authority to certify transactions carried out electronically (cyber notary). The concept of a Cyber Notary in this context is not making deeds electronically. In fact, in the current electronic-digital era, the urgency of the existence of electronic notary services is increasingly needed. Their existence is not only a solution during a pandemic, but also today's era. From the perspective of notary services, advances in digital technology support notary services to be more effective and efficient, including in public document storage services. Related to the authority of a notary to make a deed based on the wishes of the parties as outlined in an authentic deed, the notary is obliged to keep the minutes of the deed as part of the Notary Protocol and provide copies of the deed to interested parties as regulated in Article 16(1)(b) of the Amendment to Notary Official Law. The minutes of the deed are basically the original deed which have the signatures of the parties, witnesses and notary public, so, it is different from the copy of the deed which only has the notary's signature. Pursuant to Article 63(5) of the Amendment to Notary Official Law, the storage of the minutes of the deed shall be submitted to the Regional Supervisory Council (RSC) for safekeeping. RSC is a body that has the authority to supervise and examine notaries in

regional or regency/city areas (YaredHetharie, Merry Tjoanda, and NovytaUktolseja, 2022). Notary services related to notary protocol storage and further storage by the RSC, in practice also encounter obstacles. Those cannot be carried out optimally as mandated by Article 63(5) of the Amendment to Notary Official Law. One of the factors is due to limited storage space owned by RSC. So, the notary protocol is kept by the notary in concerned (Edmon Makarim, 2020). Further, the notaries do not also make and keep minutes of deeds on their office term but are also required to receive and keep protocols from the previous notary whose term of office has ended. As a consequence, more storage space is needed and create big costs to maintain the documents. Therefore, the use of technology can be an alternative both in the process of making deeds and storing minutes of deeds when they are currently stored conventionally. However, both Notary Official Law and Amendment to Notary Official Law have not regulated services for storing minutes of deeds electronically where storage can take advantage of the use of Cloud Computing. Hence, there is still an empty norm. To support more effective and efficient notary services, it is very urgent to regulate electronic-based notary services in a comprehensive manner in Law regulating the Notary Official in Indonesia.

Previous studies related to the elaboration of Cyber Notary, which provides space for the notaries to exercise their authority through an electronic system, have been carried out relatively on the same topic. These studies include the study by: (1) I Dewa Gede Cahaya Dita Darmaangga and I Dewa Ayu Dwi Mayasari in 2021 emphasizes the study of legality and legal consequences of formalizing notary deed based on cyber notary through zoom conference media (IDGCD Darmaangga and IDAD Mayasari, 2021); and (2) Naili Zahrotun Nisa (2020) emphasizes the meaning of authenticity under Indonesian and Dutch civil law, the legality of storing minutes of deeds electronically and the strength of their proof in Indonesian courts (Naili Zahrotun Nisa, 2020). Therefore, the focus of this study is different from previous studies by elaborating on the concept of cyber notary through making authentic electronic deeds including electronic storage and discussing the prospects for making authentic electronic deeds and storing them electronically by utilizing credible cloud computing. Further, it emphasizes the benefits of using electronic system services in notary services and comprehensive arrangements in the future. In addition, this also accommodates the substance of notary services affiliated with electronic systems, currently, the arrangements are scattered in various laws and regulations, including in the Law on Limited Liability Company. The purpose of this study is to analyse the regulation of electronic notary services related to making authentic electronic deeds and storing them electronically in Indonesia using a cloud computing system in the future, as well as to accommodate other notary services that utilize electronic systems in the context of constructing the concept of Cyber Notary in the sense area with legal certainty.

MATERIALS AND METHOD

This study employs normative legal research because the focus is on the existence of empty norms regarding arrangements for making electronic authentic deeds and their electronic storage which are considered very important to be regulated in the future. In addition, statutory and legal concept analysis approaches are used. The sources of legal materials studied in this study are primary, secondary, and tertiary, collected through document and snowball studies, which are then analysed descriptively, qualitatively, and argumentatively.

RESULTS

Arrangements for Electronic Notary Services on Making Electronic Authentic Deeds and Its Electronic Storage in Indonesia: Apart from having the authority to make authentic deeds, a notary as a public official also has other authorities as stipulated in Article 1 Point 1 of the Amendment to Notary Official Law. Furthermore, Article 1 Point 7 of the Amendment to Notary Official Law states that a Deed is an

authentic deed drawn up by or before a Notary in the form and procedure stipulated in this Law. The provision of Article 16 (1) and (11) of the Amendment to Notary Official Law still implies that Authentic Deeds must be made in physical form and then bound in one book. Conventionally, an authentic deed must be made in paper form and the minutes of the deed are stored in a place or room. Even though there is still a strong nuance of the obligation to make Authentic Deeds in physical paper form, in fact, Indonesia has opened its horizons and adopted advances in the digital technology era in relation to the Notary's authority in providing services as stipulated in Article 15(3) of the Amendment to Notary Official Law and its elucidation. The authority of a Notary in relation to digital technology, based on the provisions of Article 15(3) of the Amendment to Notary Official Law is known as "Other authorities possessed by a Notary" which later describes by its elucidation as among others, the authority to certify transactions carried out electronically (cyber notary), make Deeds of waqf pledges, and aircraft mortgages. By looking at such elucidation, actually, the provision regarding Cyber Notary is not related to the authority of a Notary in making Authentic Deeds, but is only limited to the authority to certify electronic transactions. Looking at the above, it is important to understand the context of Cyber Notary is the authority to certify. Syamsul Bahri, Annalisa Yahanana dan Agus Trisaka argue that etymologically certification is "a process, method, making a certificate". Emma Nurita emphasized that certification is a "procedure in which a third party provides a written guarantee that a product, process or service meets certain standard requirements, based on an audit carried out with agreed procedures". Thus, the meaning of certification in relation to a notary is that a notary has the authority to act as a Certification Authority or a Trusted Third Party. Therefore, the notary identifies and verifies the parties to then be able to proceed to the stage of issuing a product in the form of a digital certificate to interested parties (Syamsul Bahri, Annalisa Yahanana, and Agus Trisaka, 2019).

This means that the authority of a notary to certify transactions made electronically (cyber notary) is different from the authority of a notary to make authentic deeds electronically including its electronic storage. Notaries in relation to their authority to certify, act as registration authorities to assist Indonesian certification bodies in registering parties as stipulated in Article 20(1) of the Minister of Communication and Informatics Regulation Number 11 of 2022 on Governance for Electronic Certification. In making an authentic deed, the notary in Indonesia shall refer to Article 38 of the Amendment to Notary Official Law which regulates the anatomy of the deed which consists of the beginning, the body, and the closing part of the deed. The notary confirms the empirical facts submitted by the parties to become legal facts, then puts the will of the parties into an authentic deed. According to Article 16 (1)(m) of the Amendment to Notary Official Law and its elucidation, the notary must be physically present and sign the deed in the presence of the appearers and witnesses. Such physical presence requirement constitutes an obstacle to the practice of making authentic electronic deeds remotely, especially in reading and signing it electronically via video conference. Video conferencing is a technology that allows users who are in different locations to hold face-to-face meetings online via electronic media without having to be in the same location (Rahmat Hidayar, 2020). However, presence via video conferencing should also be interpreted as physical presence, that someone is physically present but through the use of a video conferencing application. However, in practice to avoid problems, reading and signing should still be carried out conventionally, so the notary must be able to provide a tool for electronic signatures, such as notaries in France who have their own electronic signature tools with guaranteed reliability (Edmon Makarim, 2020).

Regarding storage, the notary will make a copy of the minutes of the deed. Such copy is submitted to the parties and the original deed or minute deed will be kept by the notary as part of the notary protocol as stipulated in Article 16(1)(b) of the Amendment to Notary Official Law. The Notary Official Law only stipulates that the minutes of the deed must be kept by the notary and for notary protocols that are 25 years old or more, they are submitted to the RSC for safekeeping (Article 63(5) of the Amendment to Notary Official Law). Therefore,

there is no legal basis for making authentic electronic deeds and no legal certainty to store minutes of deeds/notary protocols electronically both in Notary Official Law and Amendment to Notary Official Law. Gustav Radbruch's theory of legal certainty divides three basic legal values namely justice, benefit, and legal certainty. Legal certainty itself is interpreted as a condition that shows the certainty of the law because there is already a certain force for the law in question (M Jeffri Arlinandes Chandra et al, 2022). To be able to provide legal certainty, it is necessary to provide arrangements for making electronic authentic deeds including their electronic storage as a basis for the notaries to carry out their duties and positions more easily and efficiently. As a comparison for electronic storage, Law Number 43 of 2009 on Archives (Archives Law) already stipulates electronic storage of archives for the creator of the archive and/or archival institution (Article 68(1)). Referring to that, law related to Notary Official should also be able to regulate the storage of deeds in electronic form. In addition, it is important to also look at Law Number 11 of 2008 on Information and Electronic Transactions (IET Law) and Law Number 19 of 2016 on Amendments to IET Law (Amendment to IET Law), *aslex specialis* of the existence of electronic use in Indonesia. Article 5 (1) of the IET Law has determined the existence of electronic information and/or electronic documents as valid evidence. Unfortunately, Article 5(4)(b) of the IET Law states the provision of Article 5(1) of the IET Law does not apply to letters along with their documents which according to the law must be made in the form of a notary deed or a deed drawn up by the official who made the deed. Hence, the existence of Article 5(4)(b) of the IET Law results in an authentic deed made in electronic form not being able to become valid evidence, even though the reasons for interested parties to make an agreement before a notary to make it into an authentic deed are solely for perfect evidence, unless it can be proven otherwise. In today's digital-electronic era, it is hoped that electronic documents such as electronic authentic deeds can become legal evidence, at least starting from the existence of arrangements that allow electronic deeds to be made by a notary in the form of a *relaas* deed.

Relaas Deed is deed made by a notary, in which the notary writes down or records everything that he saw and heard directly that was done by the parties. An example of a *relaas* deed is the deed of minutes of a GMS meeting held by a Limited Liability Company. Other than *relaas* deed, the notary actually has other authority to make *partij* deed. Of the two forms of notarial deed, it seems that what is possible to make in the form of an electronic deed is a deed in the form of a *relaas* deed as a notary seeing and listening in a meeting such as a Limited Liability Company GMS which is held via teleconference still relevant to make it electronically. It is also relevant refer to the other powers of a notary as stipulated in Article 15(3) of the Amendment to Notary Official Law and its elucidation. Holding GMS via teleconference is one example of transactions conducted electronically. Furthermore, certification in the context of Cyber Notary emphasizes the existence of procedures in which a third party, in this case a notary, provides a written guarantee that a product or process meets certain standard requirements, based on an audit carried out with agreed procedures through an identification and verification process carried out by a notary. Presumably from this argument, it is relevant to strengthen the possibility of an authentic deed in the form of a *relaas* made electronically, by withdrawing an important element from a *relaas* deed, namely that a notary hears and records what he hears in line with other authorities of a notary in identifying and verifying a transaction carried out electronically.

Acknowledgment and acceptance of electronic documents as valid evidence, including the electronically made *relaas* deed, is also relevant, referring to the Functional Equivalent Approach Theory, whose approach equates written evidence on paper with electronic evidence. According to Edmon Makarim, by referring to Article 6 of the ITE Law, in essence, it can be understood that in the event that there are provisions other than those regulated in Article 5(4) which require that information must be in written or original form, Electronic Information and/or Electronic Documents are considered valid as long as the information contained therein can be accessed, displayed,

guaranteed for its integrity and can be accounted for so as to explain a situation. By looking at Article 6 of the IET Law and the functional equivalent approach, electronic information is the same as written evidence on paper if it fulfils three basic aspects, namely:

1. Information can be considered written if it can be stored and retrieved;
2. Information can be considered genuine if the information/documents are stored, found, and read back have not changed in substance and can be guaranteed for its authenticity and integrity;
3. Information can be considered signed, if there is information that can explain that there is a legal subject who is responsible for it or there is an authentication system that is reliable explaining the identity and authorization or verification of the party.

Thus, the Amendment to Notary Official Law has opened opportunities for the use of electronic technology related to other Notary authorities as set forth in the elucidation of Article 15(3) of the Amendment to Notary Official Law. However, regarding the making of an authentic *relaas* deed, even though it is possible and relevant to make it electronically because it is in line with the concept of Cyber Notary and in accordance with the needs of making a deed of minutes of a Limited Liability company's GMS held via teleconference, it still requires a firm legal basis and legal certainty as a legal umbrella to support its implementation. With regard to the safekeeping of the minutes of the deed, after the deed has been drawn up, there is also no legal basis for the arrangement regarding its electronic storage. Cloud computing-based storage is an alternative solution in the digital era. In the context of recognizing and accepting the existence of electronic authentic deeds and storing minutes of deeds through cloud computing, it will be important in the future to revise the Law on Notary Official and Law on Information and Electronic Transactions, so that they can support the existence of authentic electronic deeds as perfect evidence.

The Need for Regulating Authentic Electronic Deeds and Their Storage Using Cloud Computing in Indonesia: Notary, in carrying out their duties and positions, should be able to utilize technology and information which are not only limited to their authority to certify transactions conducted electronically (cyber notary), but also in the process of making authentic deeds and storing them electronically. Cloud computing is a technology that makes the internet a center for data management and applications. There is information stored on a server on the internet that can be accessed using the internet network and computer media, as well as other electronic media. Cloud computing is the next evolution from the internet as a provider of matters relating to computing power to computing infrastructure, applications, business processes to collaborations that appear as services that can be accessed when needed with the internet network (Riko Herwanto, Onno W Purbo, and R Z Abd Aziz, 2021). The use of cloud computing can of course provide many benefits or advantages for notaries. However, undeniably, there are also risks that can occur. To maintain security against the use of this technology, it must be balanced with integrity and maximum effort to maintain its security. The Remote Online Notary and Hybrid Notary are ideas that can be used for making electronic authentic deeds in the future. Making authentic deeds using Remote Online Notary essentially emphasizes that the whole/every process is carried out online by a notary by utilizing electronic media. Remote Online Notary has been implemented in the states of the United States such as Alaska, Arizona, Colorado, Florida, Idaho, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin and Wyoming. In terms of security, the Remote Online Notary Platform has strict security protocols using bank-level encryption to maintain privacy (OneNotary Team, 2023). Another concept, Hybrid Notary is the process of making an authentic deed by a notary, where some of the process is done online with electronic media and some is done conventionally, or in other words, is a combination of online and offline implementation.

As example: (1) showing identity documents of the parties or other documents can be done online by sending them electronically to the notary or by meeting and showing them directly to the notary; (2) if one of the parties or both parties cannot meet in person in front of a notary due to a certain matter, if the parties wish and agree, the meeting can be held online via video conferencing; and (3) it shall be noted that the process of reading and signing the deed, the parties are present face to face at the notary's office. This is done so that the notary can see directly and ensure that none of the parties is under pressure or coercion. Based on depth examination, the Hybrid Notary model appears to be in line with and in accordance with the elucidation of Article 16(1)(m) of the Amendment to Notary Official Law in the context of physical presence in reading and signing the deed. This second model is more relevant to be referred to in the context of future notary law reforms in Indonesia.

Making authentic electronic deeds using a hybrid notary process with credible cloud computing brings several benefits. Its benefits can be seen from the following aspects: (1) it can provide convenience, and time efficiency as well as reduces operational costs which are quite large in relation to conventional deed storage; and (2) it will be easier to find stored deed minutes files both those aged less than 25 years or more than 25 years, as well as minimizing the risk of damage to the minutes of the deed either due to natural disasters, being eaten by insects or other impacts so that electronic implementation can be a solution. Even though electronic systems and advances in digital technology provide benefits, they still have risks, such as the possibility of hacking of the minutes of the deed that are stored electronically. Hacking of the deed can lead to misuse of the personal information of the parties and the confidentiality of the notarial deed is violated (Regina Natalie Theixar and Ni Ketut Supasti Dharmawan, 2021). In the transformation of the electronic-based notary law context, the security of electronic documents is naturally a top priority. For example, starting from using credible or trusted cloud computing under government control and using cryptographic encryption to maintain the security of minutes of deed in the form of electronic documents.

In the weakest condition, if a piece of information is obtained by a certain party who is not an interested person who has access rights, then the original information or data cannot be obtained, because it has been disguised by an encryption method. Apart from that, the role of the cloud computing storage manager is also very important with a reliable system that can detect the activity of the stored electronic data or documents and always update the system to newer or better technology. Through maximum efforts with good integration of organizers and managers and the use of cryptographic encryption, then of course data security in the use of credible cloud computing can be stronger. From the aspect of protecting data electronically, fortunately, Indonesia has now regulated it through various provisions such as the IET Law and the Amendment to IET Law, Government Regulation Number 71 of 2019 on Implementation of Electronic Systems and Transactions, as well as Law Number 27 of 2022 on Personal Data Protection. Presumably, these legal institutions can be used as a basis for protection regarding the hacking of data stored in electronic systems.

CONCLUSION

Making electronic authentic deeds and storing them electronically does not yet have a legal basis to support their implementation. Electronic authentic deeds are not valid as electronic documents, so it is necessary to reconstruct the Law on Notary Official and the Law on Information and Electronic Transactions so that they can support the existence of authentic electronic deeds as perfect evidence. Making electronic authentic deeds in the future can be done using Remote Online Notary and Hybrid Notary which can provide convenience, time efficiency, and reduce operational costs. Thus, it will make it easier to find minutes of deeds and avoid damage to minutes of deeds compared to the conventional one. Making authentic electronic deeds and storing them with cloud computing can provide more advantages if using credible cloud computing under government control, using cryptographic encryption, and maximum efforts to maintain the security of electronic data/documents carried out by organizers or related parties.

REFERENCES

- Bahri, Syamsul; Yahanan, Annalisa; and Trisaka, Agus. 2019. Kewenangan Notaris Dalam Mensertifikasi Transaksi Elektronik Dalam Rangka Cyber Notary. *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*:142–157.
- Chandra, M Jeffri Arlinandes; et al. *Teori Dan Konsep Pembentukan Perundang-Undangan Di Indonesia*. Zigie Utama, 2022.
- Darmaangga, IDGCD; and Mayasari, IDAD. 2021. Legalitas Peresmian Akta Notaris Berbasis Cyber Notary Melalui Media Konferensi Zoom. *Acta Comitas: Jurnal Hukum Kenotariatan* 6, no. 01: 185–197.
- Herwanto, Riko; Purbo, Onno W; and Aziz, R Z Abd. *Cloud Computing: Manajemen Dan Perencanaan Kapasitas*. Penerbit Andi. 2021.
- Hetharie, Yared; Tjoanda, Merry; and Uktolseja, Novyta. 2022. Fungsi Pengawasan Majelis Pengawas Daerah Terhadap Penegakan Kode Etik Notaris. *PAMALI: Pattimura Magister Law Review* 2, no. 2: 161–71.
- Hidayat, Rahmat. 2020. New Trend in New Normal, Factors Influencing Continuance Intention to Use Video Conferencing. *Jurnal Ilmiah Poli Bisnis*:1–13.
- Irsan, Muhammad Nur; Hasan, Kn; and Hamid Kms. 2021. Kewajiban Notaris Memberikan Jasa Hukum Secara Cuma-Cuma Kepada Orang Tidak Mampu Di Kota Pangkalpinang. Sriwijaya University.
- Makarim, Edmon. *Notaris Dan Transaksi Elektronik: Kajian Hukum Tentang Cybernotary Atau Electronic Notary*. Rajawali Pers. 2020.
- Nisa, Naili Zahrotun. 2020. Aspek Legalitas Penyimpanan Minuta Akta Notaris Secara Elektronik. *Jurnal Civic Hukum* 5, no. 2: 205–219.
- OneNotary Team, <https://onenotary.us/remote-notarization-states/> Accessed April 27, 2023.
- Theixar, Regina Natalie; and Dharmawan, Ni Ketut Supasti. 2021. Tanggung Jawab Notaris Dalam Menjaga Keamanan Digitalisasi Akta. *Acta Comitas: Jurnal Hukum Kenotariatan* 6, no. 01: 1–15.
