

Jurnal Notariil

Jurnal Notariil, Vol. 9, No. 2, 2024; 97-101

P ISSN 2540 - 797X

Available Online at <https://ejournal.warmadewa.ac.id/index.php/notariil>

E ISSN 2615 - 1545

LEGAL CERTAINTY OF NOTARY POSITION REGARDING AUTHORITY TO CERTIFY ELECTRONIC TRANSACTIONS

Ida Bagus Wirya Dharma, Putu Andhika Kusuma Yadnya, I Wayan Antara and I Kadek Adi Surya*
Faculty of Law, Universitas Tabanan, Indonesia
Email: suryaadysurya@gmail.com

How To Cite:

Dharma, I. B. W., Yadnya, P. A. K., Antara, I. W., & Surya, I. K. A. (2024). Legal Certainty of Notary Position Regarding Authority to Certify Electronic Transactions. *Jurnal Notariil*, 9 (2), 97-101, Doi: <https://doi.org/10.22225/jn.9.2.2024.97-101>

Abstract

Article 15 paragraph (3) UUJN states that Notaries have other regulated authorities apart from those contained in Articles (1) and (2) which are regulated in statutory regulations. In the Elucidation to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public, it is stated "What is meant by other authority regulated in statutory regulations", among other things, the authority to certify transactions carried out electronically (cyber). notary), making deeds of waqf pledges, and airplane mortgages. The author found that there is a vagueness of norms (vague van normen). This condition of norms, which is called vagueness of norms, occurs because statutory regulations are available but the formulation of the words or sentences is not clear, giving rise to multiple interpretations. The research method used is normative legal research using primary legal material sources and secondary legal material sources. Legal materials obtained from library materials are analyzed qualitatively using the deductive method of analysis. The research results obtained are that the legal position of electronic transaction certification is a function of electronic legalization of private deeds. Certification of transactions carried out electronically only refers to private deeds that are legalized by a Notary, therefore certification of electronic transactions will still be recognized in law, but the legal force in court is weakened because it is limited to private deeds only.

Keywords: Certainty; Notary Position; Certification; Electronic Transactions

1. INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the State of Indonesia is a State of Law (Arifian & Kusriyah, 2021). These provisions are a constitutional basis, the law is placed as a rule that limits the interests of society, nation and state. Authentic written evidence regarding circumstances, events or legal actions is required to provide legal certainty to the public (Miskiyya et al., 2021; Rahim et al., 2022; Saputra, 2023). The position of a notary is held or its presence is required by legal regulations with the aim of helping and serving the public who need authentic written evidence regarding the circumstances of events or legal actions (Adjie, 2008). Based on the provisions in Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law

Number 30 of 2004 concerning the Position of Notary (State Gazette of the Republic of Indonesia of 2014 Number 5491) (hereinafter referred to as UUJN-P), jo. Law Number 30 of 2004 concerning the Position of Notary (State Gazette of the Republic of Indonesia of 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432) (hereinafter referred to as UUJN) determines "A notary is a public official who is authorized to make authentic deeds and has other authorities as intended in this Law or based on other laws". Based on the provisions of this article, a Notary is a public official whose main task is to make authentic deeds.

The provisions regarding authentic deeds themselves can be seen in Article 1868 of the Civil Code (KUHPPer), which essentially means an authentic deed is a deed made in a certain form according to

law, made by or in the presence of an authorized official around his/her jurisdiction. Based on these provisions, an authentic deed must fulfill the elements specified in the provisions contained in Article 1868 of the Civil Code (Krisyanto et al., 2019; PUTU SEKARWANGI SARASWATI, 2023). These elements are that the deed must be made according to law, the second element is made by an authorized official, and the third element is that the authorized official must pay attention to the area of authority.

Furthermore, based on the provisions in Article 15 paragraph (3) of Law Number 2 of 2014, Amendment to Law Number 30 of 2004 concerning the Position of Notaries, it reads "in addition to the authority as intended in paragraph (1) and paragraph (2), Notaries have other authorities regulated in statutory regulations" (Kaff et al., 2021). In the Elucidation to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public, it is stated "What is meant by "other authority regulated in statutory regulations", among other things, the authority to certify transactions carried out electronically (cyber). notary), making deeds of waqf pledges, and airplane mortgages" (Tan et al., 2024).

In Article 16 paragraph (2) Law no. 28 of 2014 concerning Copyright determines "Copyright can be transferred or transferred, either in whole or in part because: a. inheritance; b. grant; c. endowments; d. will; e. written agreement; or f. other reasons that are justified in accordance with the provisions of laws and regulations" (Indradewi, 2021). In the Explanation of Law no. 28 of 2014 concerning Copyright, which is meant by "other reasons that are justified in accordance with the provisions of statutory regulations" include, among other things, transfers caused by court decisions that have obtained permanent legal force, mergers, acquisitions, or dissolution of companies or legal entities where there is a merger or separation of company assets (Mashdurohatun et al., 2022).

The author found that there is a vagueness of norms (vague van normen). This condition of norms, which is called vagueness of norms, occurs because statutory regulations are available, but the formulation of the words or sentences is not clear, giving rise to multiple interpretations. Based on the ambiguity of

these norms, the author is interested in raising the title of the thesis in this research, with the title "Legal Certainty of Notary Positions Regarding Authority to Certify Electronic Transactions"

2. METHOD

The research method used is normative legal research, namely examining problems, especially those relating to the legal certainty of notary positions related to authority in certifying electronic transactions by using legal material sources, namely primary legal material sources, namely in the form of relevant laws and regulations applicable in Indonesia as well as sources secondary legal materials in the form of expert research results, scientific works and books. Legal materials obtained from library materials were analyzed qualitatively using the analytical method used, namely the deductive method (Arnawa et al., 2024; I. W. K. J. Utama, 2022; I. W. K. J. U. Utama, 2019).

3. RESULT AND DISCUSSION

In law, there are various methods of interpreting laws. These interpretation methods include (grammatical or literal interpretation or Literal Rule), (purposive or teleological interpretation or Golden Rule), and the Lawyer's Toolbox (Hage & Akkermans, 2014). The Lawyer's Toolbox is a technique that legal decision makers use as a basis for making decisions. First, a formal technique in which legal decision makers refer to the decisions of other people such as legislators or judges, and avoid giving value to their own decisions. Second, substantive techniques in which decision makers engage in argumentation about what would be a good rule. He creates values for his decisions and bases his interpretation of the rules on those values.

Grammatical interpretation is the meaning of (written) legal provisions or rules interpreted as interpreted by ordinary people using ordinary (everyday) language, meaning that researchers in this case can refer to the Big Indonesian Dictionary (KBBI) to be able to look for the meaning of a word (Kusumaatmaja & Sidharta, 2000).

In the cyber notary concept, especially in Article 15 Paragraph 3 of the 2014 Notary Law, it is explained that the cyber notary concept also includes electronic certification, where this is explained further in the explanation of article 15

paragraph 3 of the 2014 Notary Law.

In carrying out duties based on the Elucidation of Article 15 paragraph (3) UUJN 2014, what is meant by "other authorities regulated in statutory regulations", includes, among others, the authority to certify transactions carried out electronically (cyber notary), make waqf pledge deeds, and mortgage aircraft. Regarding other authorities specifically regarding the authority of notaries in certifying transactions carried out electronically (cyber notary) as the focus of this research, even though it is contained in the Explanation of the Notary Position Law, there is still a blurred meaning or also called Vague Norm and does not provide a clear understanding. In the matter of the authority to certify transactions carried out electronically (Cyber Notary), one must first understand the issue of certifying, electronic transactions and cyber notary.

The terms used in the Explanation to Article 15 paragraph (3) of the amended Notary Position Law itself use the term certification. In the Big Indonesian Dictionary, the definition of certification is "certification which means a process, method, making a certificate", the result of the certification is a certificate which has the meaning "a written or printed sign or certificate (statement) from an authorized person that can be used as proof of ownership or an event".

The new authority related to certifying electronic transactions given to notaries through the 2014 UUJN is an additional new authority in carrying out their position to welcome changes in technological advances that are rapidly affecting various fields, including the legal field. Not only information, humans also move some of their activities from the physical world to the virtual world. Online transactions no longer recognize borders (borderless), simply using a smartphone or computer connected to the internet, everyone can search and find what they want through a search engine (browser), communicate via video call (video call). without the need to meet face to face, and make payments electronically (e-money or e-payment). This is what makes online transactions have the advantage of being practically easier, and of course saving a lot of costs.

Juridical problems regarding the authority of notaries in certifying electronic transactions, where in this case we will try to explain where the juridical problems lie regarding the authority of notaries in

certifying electronic transactions. If we examine more deeply the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 11 of 2018 concerning the Implementation of Electronic Certification Article 1 Number 4, which reads: "Organization of Electronic Certification is the activity of providing, managing and operating the infrastructure for Electronic Certification Organizers, and/or provide and audit Electronic Certificates".

In the provisions of Article 16 Paragraph 1 Letter m of Law no. 2 of 2014 concerning the Position of Notary, in making a deed, there are a minimum of 2 (two) witnesses, or 4 (four) special witnesses for making a Deed of Will under the hand, and it is signed at that time by the presenter, witness, and Notary. Meanwhile, the electronic certification provisions do not contain the elements of this article.

The notary's authority to certify transactions carried out electronically is the same as the notary's authority to carry out legalization. In line with this authority, the form of responsibility of a notary in carrying out certification is also the same as the form of responsibility of a notary in carrying out legalization, so that in carrying out certification the notary's responsibility lies in the truth contained in the electronic certificate, the truth in question is the signature contained in the certificate. , so that the signing of the certificate is not carried out by another person or person who is not the party authorized to provide the signature. Also, the date used by the notary is the date when the parties signed the electronic certificate (Jaya et al., 2022).

Regarding the legal certainty of the notary's authority in certifying electronic transactions, the notary only has the function of legalizing private deeds. The notary as a third party is only tasked with ensuring the Electronic Signature; Identity and status of the parties; Date of Electronic Certificate, this is in accordance with the Notary's authority in article 15 paragraph 2 letter a of Law No. 2 of 2014 concerning the Position of Notary. which gives the Notary the authority to certify the signature and determine the exact date of the underwritten letter by registering it in a special book.

4. CONCLUSION

The legal status of electronic transaction certification is a function of

electronic legalization of private deeds. Regarding the legal power of certification of electronic transactions carried out by a notary, because the function of electronic certification is similar to legalization, it can be concluded that the certification of transactions carried out electronically only goes to private deeds which are legalized by a Notary, therefore electronic transaction certification This will still be recognized in law, but the legal force in court will be weak because it is limited to private deeds only.

The provisions regarding electronic transaction certification are not yet clearly regulated in the UUJN, and in the ITE Law the explanation is still incomplete, therefore there is a need for a further role from the state as a regulatory function, to create separate implementing regulations for transaction certification. This electronic form is intended to provide legal certainty and not conflict with other laws. It is true that designing and ratifying new regulations requires a lot of money and a lot of time, but the state should have thought carefully about the provisions for implementing electronic transaction certification, so that the provisions for electronic transaction certification by notaries have a legal umbrella and strength. clear law, so that it can be directly applied by notaries throughout Indonesia. Of course, the existence of this electronic certification provision has a positive impact both from the side of the notary and the parties who are entering into an agreement as technology develops. The meaning of the phrase due to other reasons can cause vague norms (vague norms) which result in legal uncertainty regarding the regulation of article 16 letter f. The recommendation is that a revision of the provisions of Article 16 letter f of Law no. 28 of 2014 concerning Copyright, especially in the Explanatory Chapter.

REFERENCES

- Adjie, H. (2008). *Hukum Notaris Indoensia, Tafsir Tematik Terhadap UU No.30 Tahun 2004 Tentang Jabatan Notaris*. PT. Refika Aditama.
- Arifian, A. D., & Kusriyah, S. (2021). The Investigation on Criminal Acts of Corruption in the Jurisdiction of Rembang Police. *Law Development Journal*, 3(3), 460. <https://doi.org/10.30659/ldj.3.3.460-466>
- Arnawa, I. M., Kosasih, J. I., & Utama, I. W. K. J. (2024). Pembatalan Land Lease Agreement yang dialihkan kepada Pihak Ketiga. *Jurnal Ilmu Hukum, Humaniora Dan Politik*, 4(6). <https://doi.org/https://doi.org/10.38035/jihhp.v4i6.2565>
- Hage, J., & Akkermans, B. (2014). *Introduction to Law*. Springer.
- Inradewi, A. A. S. N. (2021). Legal Regulations Copyright Transition At Perspective Ius Constituendum. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9(1). <https://doi.org/https://doi.org/10.23887/jpku.v9i1.32725>
- Jaya, J. A., Zulaeha, M., & Suprpto, S. (2022). Kewenangan Notaris dalam Mensertifikasi Transaksi Elektronik ditinjau dari Undang-Undang No. 2 Tahun 2014 tentang Jabatan Notaris. *Notary Law Journal*, 1(2), 131-144. <https://doi.org/10.32801/nolaj.v1i2.19>
- Kaff, F. Al, Muhaimin, M., & Haq, L. M. H. (2021). Comparative Study of the Legal Position of Notary in Indonesia and the United Arab Emirates. *International Journal of Multicultural and Multireligious Understanding*, 8(1). [http://dx.doi.org/10.18415/ijmmu.v8i1.2374](https://doi.org/http://dx.doi.org/10.18415/ijmmu.v8i1.2374)
- Krisyanto, T. H., Daulay, Z., & Beatrix, B. (2019). Strength of Evidence of Notarial Deed in the Perspective of Cyber Notary in Indonesia. *International Journal of Multicultural and Multireligious Understanding*, 6(3), 775. <https://doi.org/10.18415/ijmmu.v6i3.906>
- Kusumaatmaja, M., & Sidharta, B. A. (2000). *Pengantar Ilmu Hukum: Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum*. Alunni.
- Mashdurohaturun, A., Gunarto, G., & Susilo, A. B. (2022). The Transfer of Intellectual Property Rights as Object of Fiduciary Guarantee. *Jurnal Akta*, 9(3), 378. <https://doi.org/10.30659/akta.v9i3.26756>
- Miskiyya, C. Z., Gunarto, G., & Ma'rif, U. (2021). Implementation of Notary Responsibility for Loss of Assets Due to Notary Error. *Sultan Agung Notary Law Review*, 3(1), 241. <https://doi.org/10.30659/sanlar.3.1.241-249>
- Putu Sekarwangi Saraswati, I. N. S. (2023). Cyber Notary Juridical Review In The Legal System In Indonesia. *Russian Law Journal*, 11(8s). <https://doi.org/10.52783/rj.v11i8s.1378>
- Rahim, Y., Syafrinaldi, S., Thamrin, S., & Susanti, H. (2022). Legal Protection of Notary Officials according to Indonesian positive law. *Technium Social Sciences Journal*, 28, 344-355. <https://doi.org/10.47577/tssj.v28i1.5468>
- Saputra, R. A. H. (2023). The Legal Protection for Notaries against Civil Efforts on Authentic Deeds That Have Been Published. *Sultan Agung Notary Law Review*, 5(3). <https://doi.org/http://dx.doi.org/10.30659/sanlar.5.3.111-132>
- Tan, W., Agustini, S., & Situmeang, A. (2024). The Urgency of Implementing a Cyber Notary in Indonesia: A Comparative Study with The United States. *SASI*, 30(3), 274. <https://doi.org/10.47268/sasi.v30i3.2258>
- Utama, I. W. K. J. (2022). Empowerment Of

- Bupda Reform Access In Village Land Asset Management In Bali. *NOTARIIL Jurnal Kenotariatan*, 7(1), 9–12.
- Utama, I. W. K. J. U. (2019). Tanggung Gugat Notaris Selaku Pejabat Umum Dalam Pembuatan Perjanjian Kredit Perbankan. *DiH: Jurnal Ilmu Hukum*, 15(1), 9–19. <https://doi.org/10.30996/dih.v15i1.2261>