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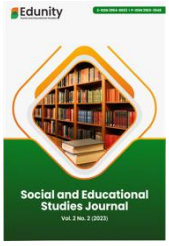

ANALYSIS OF LEGAL CERTAINTY AND PROOF STRENGTH OF DEEDS CYBER NOTARY

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ABSTRACT

Abstract : The phenomenon of authentic deeds in digital form which is a product of cyber notary It is interesting for the author to analyze the aspects of legal certainty that will be obtained by the parties listed in the deed and the extent to which the deed has evidentiary power in the eyes of the law in force in Indonesia. The problem that will be analyzed in this research is legal certainty and the strength of deed evidence notary. This research aims to determine the legal certainty and evidentiary strength of the deeds made by notary. The research method used in this research is normative juridical research with a statutory approach and a conceptual approach. The research results show a contradiction between two regulations governing digital documents such as deeds cyber notary. The UUJN clearly states that an authentic deed must be made in the presence and presence of the parties concerned, whereas the ITE Law pays attention to this element by replacing it with an online presence. The conclusion from this research is the legal certainty of deeds cyber notary bias and evidentiary strength of the deed Cyber notary weak because there is no legal umbrella to regulate explicitly.

Keywords: Legal Certainty; Power of Proof; Cyber Notary

Introduction

During the transition period from 1999 to 2000, countries in various parts of the world entered a new era called the Millennium era, where there were lots of significant updates taking place in various aspects of life and the scientific field, the most striking progress is in the field technology and informatics. As time goes by development development grows and continues to change very quickly. Until In the current era, namely the 4.0 era, without realizing it, work is being carried out and integrated into a system, that is global.

The information technology sector has grown so fast. To offer a variety of facilities, what we can feel most is how easy it is today to weave communication with other people over long distances, even between hemispheres Even on earth, we can

communicate. Related to conveniences There is also the impact of the threat of danger caused by advances in technology and information.

Indonesia is one of the countries in the world. Those who experience developments in technology and information do not escape feeling the consequences of progress and entry into information technology. This makes Indonesia and all its elements must immediately adapt and continue to follow developments that occur, especially in The development of information technology is currently growing very rapidly to be able to balance the development of the times so as not to be stamped again as a backward country. The development of information technology has a positive as well as a negative impact. One impact The, negative result is an increase in a person's opportunities to carry out unlawful acts using technology and informatics.

These digital-based practices are quickly spreading to various fields of work. Nowadays almost every profession is obliged to use computers and store all types of work data in one system. Send letters and data via the internet, carrying out buying and selling transactions electronically, and many other things that can be done involve the use of information technology. The threat of crime that arises from the impact of advances in technology and This information encourages the House of Representatives (DPR) and the government as a legislator to form laws and regulations that can cover every legal subject's rights, so that they are safe and not mutually exclusive conflict, then on April 21 2008 Law Number 11 of 2008 concerning Electronic Information and Transactions which was later amended with Law Number 19 of 2016 (UU ITE).

In connection with the development of information and communication technology that uses the internet, this affects the implementation of tasks and the authority of a Notary. Notaries who have been carrying out their duties using traditional methods (still implementing direct face-to-face-to-face in front of him and the fronting data is given to the Notary, and then The notary makes minutes of the deed, and then a copy of the deed is made for the presenters, the deed made and certified in the form of a physical document) in making authentic deeds Where The deed has legal force perfect by the parties who require perfect proof towards electronic Notary services in carrying out notary functions known as a cyber notary. A cyber notary is someone who has specialized skills in the fields of law and computers (Makarim, 2011), by starting to develop a cyber notary the notary profession within its authority can make deed products in digital form a new phenomenon. There is an authentic deed in digital form which is a product of cyber notary becomes interesting in the analysis from the aspect of the extent of legal certainty that will be obtained by the parties listed in the deed and the extent to which the deed has the power of proof in the eyes of the law that applies in Indonesia. Based on the phenomenon background, the author tries to highlight questions about: Analysis of legal certainty and Power of Proof Act Cyber Notary".

Based on the background description, the problem formulation will be researched and analyzed in this research is How Legal certainty and strength of Evidence Act which is made cyber notary.

It is hoped that the results of this research can be used as input for the development of knowledge in the field of notarial law in Indonesia. It is hoped that this research can also provide very valuable input for various parties involved in carrying out the office of notary digital.

Framework Theory in this research are theories that are related to the variables contained in the research title or included in the research paradigm according to the results of the problem formulation. This theory is used as an analysis knife in research on the variables to be studied to answer the problem formulation. The theories used as analytical tools for this research are the theory of legal certainty and the theory of evidence.

a. Legal Certainty Theory

In a legal regulation, there are legal principles on which it is formed. Satjipto Rahardjo said that legal principles can be interpreted as the "heart" of legal regulations (Julyano & Sulistyawan, 2019) so to understand a legal rule, a legal basis is required. In other words, Karl Larenz in his book Methodology of the Juris prudence conveyed that legal principles are ethical legal measures that provide direction to the formation of law (Atmadja, 2018). Because legal principles contain ethical demands, legal principles can be said to be a bridge between legal regulations social ideals, and the ethical views of society. In forming legal rules, the main principle is established to create clarity regarding legal regulations, this principle is legal certainty. The idea of the principle of legal certainty was originally introduced by Gustav Radbruch in his book entitled "Introduction to Law". Radbruch wrote that in law there are 3 (three) basic values, namely (Agiyanto, 2018): (1) Justice (justice); (2) Benefits (expediency); and (3) Legal Certainty (Legal certainty). Returning to the discussion regarding the principle of legal certainty the existence of this principle is interpreted as a situation where the law is certain because of the concrete strength of the law in question (Julyano & Sulistyawan, 2019).

The existence of principle of legal certainty is a form of protection for justifiable (seeking justice) against arbitrary actions, which means that someone will and can obtain something that is expected under certain circumstances (Mertokusumo, 2014) .This statement is in line with what Van Apeldoorn said that legal certainty has two aspects, namely the ability to enact laws in concrete terms and legal security. Hal means that the party seeking justice wants to know what the law is in a particular matter before he starts a case and protection for those seeking justice. Furthermore, regarding legal certainty, Lord Lloyd said that (Faried, 2022). "…law seems to require

a certain minimum degree of regularity and certainty, for without that it would be impossible to assert that what was operating in a given territory amounted to a legal system" From this view, it can be understood that without legal certainty, people do not know what to do and ultimately uncertainty arises (uncertainty) which will ultimately lead to violence (chaos) due to the indecisiveness of the legal system. So, legal certainty refers to the application of law that is clear, permanent, and consistent, where its implementation cannot be influenced by subjective circumstances (Prayogo, 2016).

b. Proof Theory

Article 163 HIR (289)RBg) as well as Article 1865 of the Civil Code states that: "Every person who postulates that he has a right, or to confirm his right or dispute another person's right, refers to an event, is obliged to prove the existence of that right or event." Therefore, proof can be defined as an effort to provide certainty in meaningkehukuman, providing a sufficient basis for the judge regarding the validity of an incident brought forward by the litigant in a formal manner, meaning it is limited to the evidence presented at the trial (Saepullah, 2018).There are 3 (three) theories for judges when justifying the evidence put forward by the parties:

1) Free Evidence Theory

The following theory wants as much freedom as possible for judges in justifying evidence. Judges are not bound by legal provisions, or at least the amount of binding by legal provisions must be limited to as small as possible. Wanting broad freedom means giving trust to judges to be impartial, honest, full of responsibility, act with expertise, and not be influenced by anything or anyone.

2) Negative Proof Theory

This theory wants binding provisions, which are negative. This provision limits judges by prohibiting them from doing anything related to evidence. So judges are prohibited by exception. (Article 306RBg/169 HIR, Article 1905 Civil Code) (Amiruddin & Hasyim, 2014). Article 306 RBg/169 HIR states: "The testimony of a single witness, without any other evidence, cannot be trusted in law." Article 1905 of the Civil Code states: "The statement of a single witness, without any other evidence, may not be trusted before a court."

3) Positive Proof Theory

Apart from the existence of prohibitions, the following theory is desirable presence of an order to the judge. Judges are required but with conditions (Article 285RBg/165 HIR, Article 1870 Civil Code) (Putra & Yahya, 2022).

Article 285 RBg/165 HIR states:

"Authentic deed, namely a letter made according to the provisions of the law by or in front of a public official who has the power to make the letter, providing sufficient evidence for both parties and their heirs and all people who have rights from it, regarding all matters what is stated in the letter, and also what is stated in the letter as

a notification only, but what is then only notified is directly related to the subject matter mentioned in the deed."
Article 1870 of the Civil Code states: "An authentic deed provides between the parties as well as his heirs or those who derive rights from them, a perfect proof of what is contained in it".

From this explanation, it can be concluded that the law of evidence includes, among other (Krisnawaty, 2015):
a) Formal proof, regulates procedures related to providing proof as stated in the RBg/HIR.
b) Material evidence, regulates whether or not evidence can be accepted with a certain amount of evidence in the trial along with the evidentiary strength of that evidence.

Research Method
The research method used is a normative juridical research method. Normative juridical research is also called doctrinal legal research, research Normative juridical is a process of finding a legal rule, legal principles, and legal doctrines to answer legal issues faced (Purwati, 2020).
The type of research used is normative legal research. Normative legal research is research carried out by examining library materials or secondary data (Astuti, 2018) .

Generally, there are 5 approaches used in legal research, namely the statutory approach(statute approach), case approach(case approach), historical approach(historical approach), comparative approach(comparative approach), and finally a conceptual approach(conceptual approach) (Suhaimi, 2018).The approach used is a statutory approach (statute approach) and approach-conceptual (conceptual approach).

Type The data in this research is secondary data, namely, data obtained from empirical materials. In this research, the data analysis used is qualitative analysis. Qualitative analysis is data analysis that does not use numbers, but rather provides verbal descriptions of the findings, and therefore prioritizes the quality of the data, and not quantity (Lubis, 2020).

Result And Discussion

Analysis of Deed Legal Certainty Cyber Notary
Discourse will cyber notary This has been discussed for a long time in Indonesia, but has not been fully implemented because there is no more specific legal umbrella. Then, after the ITE Law was formed, planning began notary This is discussed again, several examples of activities that can be carried out by notary is holding a General Meeting of Shareholders (GMS) teleconference and certifying electronic documents as has been done by PT. Berlian Laju Tanker, Tbk at the Annual GMS and Extraordinary GMS last

August 2020. Launching from the website official PT. Indonesian Central Securities Depository, PT. From the beginning of April 2020, KSEI has started to facilitate issuers who will hold a general meeting of shareholders (GMS) through the means of live streaming (teleconference).

Cyber Notary itself is a concept that utilizes technological advances for notaries to create authentic deeds in cyberspace and carry out their duties every day. For example: the electronic signing of deeds and electronic General Meeting of Shareholders teleconference (Amrullah, 2019).Cyber notary intended to facilitate or speed up the implementation of the Notary's duties and authority in making authentic deeds regarding all agreements or provisions that are required by law or that interested parties wish to be stated in authentic deeds (Listiyani, 2022).

This is stated in Article 15 paragraph (3) of Law Number 30 2004 which has been updated with Law Number 2 of the Year 2014 Concerning the Position of Notary (UUJN). The article states that; "Besides the authority as intended in paragraph (1) and paragraph (2), the Notary has other authorities regulated in statutory regulations."3, authority Other matters referred to in this article include, among other things, the authority to certify transactions carried out electronically (cyber notary), make a deed of pledge waqf, and airplane mortgages.

Formally, in the UUJN, Notaries are given the right to do so carry out certification electronically. This authority is also regulated in law Number 11 of 2008 concerning Electronic Information and Transactions. article 1 numbers 9 and 12 of the ITE Law provide an understanding of electronic certificates and electronic signatures, with that understanding implicitly going hand in hand with what is meant by article 15 paragraph 3 UUJN. The certification referred to in this article is a method by which The notary provides a written guarantee for the document containing the results agreement between the parties regarding the authority provided by law to her. Not only certifying, but the Notary is also responsible for authentically content contained in the document. This is a characteristic typical form of notary responsibility in countries adhering to the legal system of civil law, different from notaries in countries that adhere to the legal system of common law, Where notaries are usually called public notaries and have no responsibility for perfect evidence.

In efforts to implement article 15 paragraph (3) UUJN, it is not as effective as imagined, apart from the notary's ability to use it Electronic technology turns out that there are also several formal rules that become an inhibiting factor in the implementation of services cyber notary. The same law is in the next article, article 16 paragraph (1) letter m UUJN explains the elements of how a document becomes an authentic deed. The following is the sound of article 16 paragraph (1) letter m; "Reading the deed in front of the audience with the least number of people present 2 (two) witnesses, or 4 (four)

special witnesses for making the deed the will under the hand, and signed at that time by the person present, witnesses, and Notaries."

According to this article, the provisions for attending face-to-face are for the parties, to read it directly, and the Notary and the parties signing the document at that time is an absolute requirement the document changes its power to become an authentic deed. From the description of the article, This author concludes the electronic certification of a deed ignores the essence of Article 15 paragraph (3) regarding the authority to certify documents electronically, where all certification processes are carried out electronically which means eliminating physical meetings, not like the base in the explanation of article 16 paragraph (1) letter m UUJN.

Legal certainty of authentic deeds Cyber notary According to the author, it is biased because there are two mutually contradictory legal umbrellas. Law number 11 of 2008 concerning electronic information and transactions in Article 5 paragraphs 1, 2, and 3 of Law number 11 of 2008 concerning electronic information and transactions reads: (1) Electronic Information and/or Electronic Documents and/or their printouts is valid legal evidence. (2) Electronic Information and/or Electronic Documents and/or printouts as intended in paragraph (1) are an extension of valid evidence by the Procedural Law in force in Indonesia. (3) Electronic Information and/or Electronic Documents are declared valid if the Electronic System is used by the provisions regulated in this Law. Deed cyber notary Conceptually, it is included in the category stated in Article 5 paragraphs 1, 2, and 3 of Law number 11 of 2008, namely electronic documents, and given legal certainty as legal evidence by the procedural law in force in Indonesia.

If it is related to the theory of legal certainty where legal certainty has two aspects, namely the ability to enact the law in concrete terms and legal security then the deed-cyber notary does not yet have legal certainty because the deed-cyber notary becomes less concrete and vulnerable to legal security for the parties. This is because a document becomes an authentic deed by fulfilling the elements according to Article 16 paragraph (1) letter m of Law Number 30 of 2004 in conjunction with Law Number 2 of 2014. This article clearly states that the document will become a deed. authentic and has legal certainty provided that it fulfills the following elements: "Reading the deed in front of an audience in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for making a testamentary deed under the hand, and signing it at that time. by the presenter, witnesses, and Notary." In this article, the deed must be read in the presence of the presenters, in front of the presenters this means being physically present while the deed-cyber notary's in-person attendance is replaced by the online presence and the signing of the deed is done in person digital signature.

Due to the contradiction between Law Number 11 of 2008 and Law Number 30 of 2004 together Law number 2 of 2014 regarding deed documents cyber notary If it is not

explicitly in line then legal certainty can be said to still be biased because the concept of legal certainty refers to the application of law that is clear, permanent and consistent where its implementation cannot be influenced by subjective circumstances. Deed cyber notary is vulnerable to subjectivity if they are still under legal umbrellas that contradict each other.

Analysis of the Proof of Deed Cyber Notary

When reviewed more deeply about the authentic act done by cyber notary seen through the lens of article 1868 of the Civil Code. Then the deed generated by a means cyber notary cannot yet be declared as an authentic deed, because it does not fulfill the elements of the authentic deed itself. Furthermore, Looking at Article 5 paragraph 1 of Law Number 11 of 2008 which reads: "Electronic Information and/or electronic documents and/or printed results is valid legal evidence." That way, it explains what the deed is resulting from the method of a cyber notary, its position is equated to document electronics, electronic certificates, and others. The conflict between articles in one Law Number 2 of 2014 concerning Notary Positions, namely article 15 paragraph (3) and article 16 paragraph (1) letter m are more than enough to hinder Notary services with the system notary.

The evidentiary power attached to electronic evidence is stated by the ITE Law which states that electronic documents are equivalent to documents made on paper. In this case, the idea can be drawn that the evidentiary power of electronic documents in civil case practice is equated with the power of written evidence (letters). Even though electronic evidence has so far been recognized as valid evidence, its evidentiary value does not yet have perfect evidentiary value (Pratama, 2023) .

In concept cyber notary, there is the term electronic signature. In this case, the signing of the deed is not carried out directly but uses an electronic signature or what is better known as a digital signature (digital signature). The recognition of an electronic signature as valid evidence can be seen from the provisions of Law No. 11 of 2008 concerning Information and Technology. Inside ITE Law (Electronic Information and Transactions) Article 5 which reads:

(1) Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence.
(2) Electronic Information and/or Electronic Documents and/or printouts as referred to in paragraph (1) are an extension of valid evidence by the Procedural Law in force in Indonesia.
(3) Electronic Information and/or Electronic Documents are declared valid if the Electronic System is used by the provisions regulated in this Law.
(4) Provisions regarding Electronic Information and/or Electronic Documents as intended in paragraph (1) do not apply to:

    a. letters which according to the law must be made in written form; And

b. letters and documents which according to the law must be made in the form of a deed notarial or a deed made by the deed-making office.

So a form of electronic document can have the power of genuine and authentic evidence if it uses an electronic system safely, reliably, and responsibly. Based on positive law in Indonesia, related to electronic authentic deeds for enforcement cyber notary This has not been recognized as electronic evidence. Because based on the provisions of Law no. 11 of 2008 concerning Information and Technology, which explains that electronic signatures have legal force so they can be used as valid evidence in court, as long as they meet the applicable requirements. However, if it is related to signing an electronic authentic deed with a concept cyber notary If the signer uses an electronic signature, the power of the digitally signed notarial deed does not have perfect proof like an authentic deed, this is because the notarial deed is based on cyber notary where the authentic deed is in electronic form (electronic deed) and signing the deed using an electronic signature does not meet the requirements for the authenticity of a deed. So the deed cyber notary is equivalent to a private deed because it does not have perfect proof like an authentic deed.

According to the author, this is because the authentic deed is based on a notary and does not meet the element of authenticity, the deed will be authentic when it meets the conditions according to the applicable rules. An authentic deed is said to be perfect when the deed is made with the testimony of a public official. The form and content of the deed must comply with the provisions of the law. The deed must be made by an official who has authority by applicable regulations. Of these three conditions, the deed-cyber notary cannot fulfill all the requirements for making an authentic deed, because the deed-cyber notary is not made with direct testimony by authorized officials or parties listed in the deed. The requirement for direct testimony in making a deed by an official or the listed parties is an element that is regulated in Law Number 2 of the Year 2014 Concerning the Position of Notary (UUJN) article 16 paragraph (1) letter m UUJN which states read the Deed in front of the presenter in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for making a Deed of Will privately, and signed at that time by the presenter, witness and Notary. The meaning in the article Article 16 paragraph (1) letter m which states "in the presence of an audience and being attended" clearly means physical presence, not presence that can be replaced online.

If it is connected to the theory of evidence where evidence is defined as an effort to provide legal certainty, provide a sufficient basis for the judge regarding the validity of an event, and evidence presented by the litigant party in a formal way to the judge in the trial then it can be said to be a deed. cyber notary has weak evidentiary force. Because the need for cyber notary does not yet have a clear legal umbrella either in the law on notary positions or the law on information and electronic transactions.

Conclusion

Legal certainty of deeds cyber notary biased because there is a contradiction between Law Number 11 of 2008 and Law Number 30 of 2004 together with Law number 2 of 2014 regarding deed documents cyber notary which is not yet explicitly aligned. The concept of legal certainty refers to the application of law that is clear, permanent, and consistent where its implementation cannot be influenced by subjective circumstances. Deed cyber notary is vulnerable to subjectivity if they are still under legal umbrellas that contradict each other. In Law, number 2 of 2014 (UUJN) article 16 paragraph 1 point m states that the deed must be read in front of the audience in the presence of two or four witnesses in the sense of being physically present, whereas in Law number 11 of 2008 (UU ITE) the document Electronic documents such as deeds or electronic certificates are declared valid with online presence and digital signature.

The strength of proof of deed cyber notary is weak because it does not fulfill the theory of evidence which requires legal certainty, providing a sufficient basis for judges regarding the validity of an incident and the evidence presented by the litigants in a formal manner. Apart from that, the deed cyber notary does not yet have a clear legal umbrella either in the law on notary positions or the law on information and electronic transactions.

Bibliography

agiyanto, U. (2018). *Penegakan Hukum Di Indonesia: Eksplorasi Konsep Keadilan Berdimensi Ketuhanan*.

Amiruddin, A., & Hasyim, S. (2014). Keberadaan Alat Bukti Saksi Dalam Perkara Perceraian (Studi Penelitian Pada Mahkamah Syar'iyah Jantho). *Jurnal Ilmu Hukum*, *2*(2).

Amrullah, R. (2019). *Kekuatan Pembuktian Perdata Akta Risalah Rapat Umum Pemegang Saham Yang Dilaksanakan Dengan Konsep Cyber Notary*. Universitas Jenderal Soedirman.

Astuti, M. (2018). Efektivitas Hukum Humaniter Internasional Dalam Melindungi Cagar Budaya Di Negara Konflik. *De Lega Lata: Jurnal Ilmu Hukum*, *3*(1), 96–108.

Atmadja, I. D. G. (2018). Asas-Asas Hukum Dalam Sistem Hukum. *Kertha Wicaksana*, *12*(2), 145–155.

Faried, A. (2022). *Penerapan Asas Kepastian Hukum Pada Pemberhentian Tidak Dengan Hormat Pegawai Negeri Sipil Berdasarkan Undangundang Nomor 5 Tahun 2014 (Studi Kajian Keputusan Bupati Simeulue Nomor 888/14/2019)*. Universitas Hasanuddin.

Julyano, M., & Sulistyawan, A. Y. (2019). Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum. *Urnal Crepido*, *1*.

Krisnawaty, A. (2015). *Hukum Pembuktian Dalam Perkara Perdata*.

Listiyani, N. (2022). *Analisis Yuridis Pelaksanaan Cyber Notary Di Indonesia Di Kaitkan Dengan Kewajiban Para Pihak Untuk Menandatangani Akta Secara Elektronik*. Universitas Islam Sultan Agung (Indonesia).

Lubis, S. (2020). *Konsep Kecerdasan Emosional Sebagai Metodologi Prestasi Belajar*. Guepedia.

Makarim, E. (2011). Modernisasi Hukum Notaris Masa Depan: Kajian Hukum Terhadap Kemungkinan Cyber Notary Di Indonesia. *Jurnal Hukum Dan Pembangunan*, *41*(3), 466–499.

Mertokusumo, S. (2014). Teori Hukum (Edisi Revisi). *Yogyakarta: Cahaya Atma Pustaka*, *12*.

Pratama, B. (2023). Alat Bukti Elektronik Dalam Uu-Ite. *Rubric Of Faculty Members*.

Prayogo, R. T. (2016). Penerapan Asas Kepastian Hukum Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 Tentang Hak Uji Materiil Dan Dalam Peraturan Mahkamah Konstitusi Nomor 06/Pmk/2005 Tentang Pedoman Beracara Dalam Pengujian Undang-Undang. *Jurnal Legislasi Indonesia*, *13*(2), 191–201.

Purwati, A. (2020). *Metode Penelitian Hukum Teori & Praktek*. Jakad Media Publishing.

Putra, T. A., & Yahya, T. (2022). Perlindungan Hukum Pegawai Notaris Yang Menjadi Saksi Dalam Akta Notaris. *Soumatera Law Review*, *5*(1), 12–20.

Saepullah, A. (2018). Peranan Alat Bukti Dalam Hukum Acara Peradilan. *Mahkamah: Jurnal Kajian Hukum Islam*, *3*(1), 141–157.

Suhaimi, S. (2018). Problem Hukum Dan Pendekatan Dalam Penelitian Hukum Normatif. *Jurnal Yustitia*, *19*(2).