

Application of Notarial Deed in E-Commerce Transaction

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ABSTRACT: The development of times and technology in the digitalization era is currently happening so rapidly, especially developments in the digital world. The development of technology has a significant impact on various aspects of human life. One of the aspects affected is in the legal field, especially in the field of Cyber notary. One of the options for service facilities related to information development is electronic transactions. Along with technological advances, there are still those who do not know and fully understand the notary profession in conducting electronic transactions. The need to adjust to the dynamics of society regarding the application of electronic notaries (e-Notary) in conducting electronic transactions (e-Commerce). Starting from this, the question arises: How does a notary implement an electronic agreement?. This research was conducted using normative legal research methods that are descriptive analytical in nature. The research data sources collected and used are reviewing and analyzing secondary data by understanding the law as a device or positive norms in the legislative system that regulates the norms of human life. Data collection techniques with steps to research, review and systematically process existing library materials based on law as norms or regulations in the legislative system that regulate human behavior and life. as well as related documents. The data analysis technique used is library research which is presented descriptively. Based on this research, the role of Notary in implementing the agreement is actually carried out in line with the authority given. Notary authority is the power granted by law to Notaries to make authentic deeds and other powers in accordance with Article 15 of the Notary Office Law, which concerns two things, namely certification (Certification Authority) and authentication (Registration Authority) in electronic transactions. The regulation can be reviewed from the ITE Law (Electronic Transaction Information Law) as a legal standing for the application of e-Notary in conducting electronic transactions.

KEYWORDS: Technology, e-Notary, Cyber Notary, e-Commerce

INTRODUCTION

The development of technology at this time is increasingly rapid, especially technology in the field of communication and information. More and more people are also utilizing the technology that has developed in their daily lives. The Republic of Indonesia is a developing country that is very rich in human resources that have the ability to keep up with the development of information and communication technology. Along with the development of information and communication technology, it is characterized by the emergence of various kinds of communication services or services to meet the needs of the community. The development of the latest technology that is able to process and integrate all information media in transactions to meet the needs of society. Transactions that have been carried out electronically by everyone require legal protection. Following the development in several countries, including those with common law and civil law, many countries have given their notaries duties and roles in electronic matters. Electronic transactions as legal actions carried out using computers, computer networks or other electronic media have been regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as UUIE). Therefore, Indonesia should also be ready to promote and implement the adoption of notarial services in electronic management, and even implement the implementation of electronic notarial services itself. In Indonesia, this demand is even greater after the enactment of the UUIE, which opens up the widest possible opportunities for the utilization of information technology.¹ The application of information technology in making notarial deeds based on cyber notary requires a legal basis to serve as a basis for notary officials in carrying out their duties and functions to provide services to the public, thus notaries in exercising authority in making notarial deeds based on cyber notary obtain guarantees of legal certainty. on the other hand, the community as a party

¹ Emma Nurita, Cyber Notary, Pemahaman Awal dalam Konsep Pemikiran, (Bandung: Refika Aditama, 2012), hlm. xii.

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needs a guarantee of legal certainty for legal events against what has been done and also obtains a sense of security and comfort in making notarial deeds based on cyber notary.

This protection is realized not only in the form of recognition of the evidentiary value of electronic information, but also in ensuring the fulfillment of the subjective elements of the terms of the contractual relationship that determine the legality of the transaction. These subjective factors will be fulfilled if the legal identity of the parties and their legal capacity to act are clarified. Therefore, to ensure this, the presence of a notary plays a role as a deterrent against the possibility of fraud in electronic transactions. Transactions through internet media are currently more popular with the term electronic commerce (ecommerce). Taking an example in an e-commerce agreement that applies electronic contract agreement technology (e-contract), the application of technology in electronic contract agreements in e-commerce transactions is not like a general agreement, but an agreement can be reached even though the two parties do not meet in person, because the contract agreement is implemented electronically. Both parties can make an agreement simply by visiting the web page that has been provided, which contains the terms or agreement made by the first party as a seller and the second party as a buyer simply presses the button available as a sign of approval of the contents of the existing agreement and as a valid contract. Without the need to sign as a contract in general, but using an electronic signature or digital signature. So that the parties do not have to meet in person to make a contract. E-commerce is one of the electronic transactions. Contracts in electronic commerce are basically the same as contracts in conventional commerce, but the contracts used in electronic commerce are contracts made between parties through electronic systems, or called electronic contracts.²

The development of information technology, at least conceptually, in notary practice, has given birth to the concept of cyber notary (e-notary). Cyber notary relates to the implementation of the authority of notary duties based on information technology, cyber notary concerns how notaries use technological developments in the performance of their daily duties, such as for example: digitization of documents, electronic signatures of documents, which are related to the duties and functions of notaries, especially in making deeds.³ Therefore, there is a need for a legal product that aims to increase the security of electronic transactions through electronic networks and recognize the legal force of electronic evidence and electronic signatures. Its activities are no longer limited by the territory of the country, which is easily accessible anytime and anywhere. Losses can occur both to the person conducting the transaction and to others who have never transacted. In addition, authentication is a very important factor, considering that electronic data is not only fully adapted to the Indonesian procedural law system, but has also proven to be very easy to forge and send to various parts of the world.

New technologies and media are increasingly used in business both at national and international levels, therefore international organizations are increasingly thinking about the legal recognition of electronic documents and electronic signatures (TTE). Related to the validity of electronic notarial deeds and the status as authentic deeds of notaries in carrying out their duties, notaries have other authorities regulated in laws and regulations. Other authorities referred to in the Article have been elaborated in the explanation of Article 15 paragraph (3) of Law Number 02 of 2014 which states that: What is meant by other authorities regulated in laws and regulations, among others: the authority to certify transactions carried out electronically (cyber notary), to make a deed of pledge of waqf and aircraft mortgages. This makes efficient service delivery and wider transaction opportunities. Notaries will be facilitated and enriched by the rapidly developing electronic system facilities as a support for evidence of the fulfillment of authenticity requirements for both objective and subjective requirements, including; search systems regarding the validity of legal subject information, company registration systems, land deed checking and registration systems, electronic copy reporting/submission systems and so on.

In the practice of national and international trade, there is currently a lot of use of new technologies in conducting trade transactions. International organizations are increasingly concerned about the legal recognition of electronically created documents and electronic signatures. From this came the impetus of the United Nations Commission on International Trade Law, Model Law on Electronic Commerce (UNCITRAL) on December 16, 1996. *The Uncitral Model Law on Electronic Commerce has set the conditions for authenticity in an electronic transaction that has been carried out, which is the unchanged data of the agreed electronic message.* As is known that one of the requirements for a deed to be authentic is that it must be affixed with a signature. Based on the ITE Law, everyone can use an Electronic Signature (e-signature) supported by an electronic certification service service (Certification Service Provider / "CSP") or Electronic Certification Provider (PSrE) service. In essence, an electronic signature and its electronic certification system are organized to clarify the identity of legal subjects and protect the security and authenticity of electronic information. Digitally signed electronic documents can be classified as written evidence. However, there are legal principles that complicate the development of the use of electronic documents or digital signatures, namely the requirement that the document must be visible, sent and stored on paper.

Authentication is a very important factor, considering that electronic data is not only fully compliant with Indonesian procedural law, but also very easy to forge and send to various parts of the world. So the effects are complicated.

² Rudyanti Dorotea Tobing. *Aspek-Aspek Hukum Bisnis, Pengertian, Asas, Teori dan Praktik.* (Yogyakarta: Lasbang Justia, 2012) Hlm. 216

³ Cita Yustia Sefriani, et. al. *Buku Pintar Bisnis Online dan Transaksi Elektronik,* Gramedia Pustaka, Jakarta 2013). Hlm. 101

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RESEARCH METHODS

The research method is a scientific way to get data with specific purposes and uses. Based on this, there are four keywords that need to be considered, namely scientific methods, data, objectives, and uses.⁴ This research is one of the main means to develop knowledge in the field of law. This is because this research aims to discover, develop, or test the truth of knowledge. The use of this method is intended as an attempt to obtain an objective picture or truth of the problem that has been studied. To be able to obtain the materials needed in this research, the author does so by using several methods used in legal research. Material The research data sources used in this normative research consist of secondary data, the description of which is as follows: a. Secondary Data

Namely data derived from library materials, consisting of primary legal materials and secondary legal materials, both of which include: i. Primary Legal Materials

Primary legal materials are authoritative legal materials, which means that primary legal materials are materials that have authority over power in their implementation. Primary legal materials consist of laws and regulations, minutes, official records, and also judge decisions. Primary legal materials used by the author in this research include:

1. Primary legal materials, namely binding legal materials, namely :

- Constitution of the Republic of Indonesia Year 1945
- Civil Code (KUHPerdata),
- Electronic Information and Transaction Law or Law number 11 of 2008 Jo Law number 19 of 2016.
- Law No. 2 of 2014 on the Amendment to Law No. 30 of 2004 on Notary Position.
- Government Regulation number 71 of 2019 concerning the administration of electronic systems and transactions Jo Government Regulation number 82 of 2012 concerning the administration of electronic systems and transactions.
- Regulation of the Minister of Communication and Information Technology number 11 of 2018 concerning the implementation of electronic certification ii. Secondary legal materials.

Secondary legal materials come from written documents, which are sourced from official documents, archives and publications from institutions related to the focus of the problem, literature, papers, articles, internet data, research results and other scientific works related to this research. Documents sourced from statistical data, both those issued by government agencies..

RESEARCH RESULTS AND DISCUSSION

A. Implementation of Electronically executed Notarial Deed

At this time with the rapid development of witness technology experiencing very rapid development, notaries can carry out their duties and positions based on technology, such as making deeds electronically. Electronic deeds aim to simplify and accelerate the duties and authority of notaries when making notarial deeds, which concern all activities, agreements desired by parties who have an interest to be stated in an authentic deed.

This is in accordance with Soegondo Notodisoerjo's opinion that notaries who are public officials who have the duty and authority to make authentic deeds. in providing services in the making of authentic deeds.⁵

Cyber notary is a new idea where Notaries who previously carried out their duties and positions in a conventional manner transitioned to the use of electronic devices through internet facilities as the main media in the entire process of making legal Notary Deeds in paper form to electronic documents or electronic deeds.⁶

E-commerce buying and selling agreements have become a business that is in demand today, starting from personal business activities, as well as communities, as well as in the form of companies incorporated or partnerships. E-commerce has characteristics, such as:

1. Transaction between two parties through an agreed deal;
2. Exchange of either goods, services or information; and
3. The media used is internet, either through the web or other social networks. An e-commerce activity is carried out with the following orientationst:
 1. Pembelian on line (on-line transaction).
 2. Komunikasi digital (digital communication), which is an electronic communication.
 3. Penyediaan jasa (service), that provides information on product quality and instant updates.
 4. Business process, which is a system that aims to improve the automation of business processes.
 5. Market of one, which enables customization of products and services to be adapted to business needs.⁷

⁴ Sugiyono, Metode Penelitian Kuantitatif, Kualitatif, dan R & D (Bandung: Alfabeta, 2010), Hal. 2.

⁵ Soegondo, R. "Hukum Notariat di Indonesia Suatu Penjelasan." Rajawali Pers, Jakarta (1982), 42.

⁶ Brian Army. "Peluang dan Tantangan Cyber Notary di Indonesia.", (2014),

⁷ Rudyanti Dorotea Tobing, Op.Cit., Hlm. 215

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Article 18 in conjunction with Article 7 in conjunction with Article 11 of Law Number 11 of 2008, the evidentiary power of the electronic document signed with a digital signature is the same as the evidentiary power of an authentic deed made by an authorized public official. The rule above is contrary to Article 1 paragraph (7) of Law Number 2 of 2014, which means that a notarial deed is an authentic deed made by or before a Notary according to the forms and procedures stipulated in this Law. Meanwhile, the definition of an authentic deed based on Article 1868 of the Civil Code is a deed in the form prescribed by law, made by or before public servants authorized to do so in the place where the deed is made.

Digitally signed electronic documents can be classified as written evidence. However, there is a legal principle that complicates the development of the use of electronic documents or digital signatures, namely the requirement that the document must be visible, sent and stored on paper.

A digital signature is essentially a mechanism used to provide the similarities and characteristics of a written signature that can be applied in electronic signatures. An electronic signature is data in electronic form that is placed, associated or related to electronic information that is useful for identifying the signatory and indicating the signatory's approval of the electronic information in question. Electronic signatures function as verification and authentication tools.⁸

Regarding the validity of electronic signatures, Article 11 paragraph (1) of UUIITE and Article 59 paragraph (3) of the Implementation of Electronic Systems and Transactions (PP PSTSE) state as follows:

Electronic Signatures have legal force and legal consequences as long as they meet the following requirements:

- a. Electronic Signature creation data related only to the Signatory;
- b. Electronic Signature creation data at the time of the electronic signing process is only in the power of the Signer;
- c. Any changes to the Electronic Signature that occur after the time of signing can be known;
- d. Any changes to the Electronic Information related to the Electronic Signature after the signing time can be known;
- e. There is a specific means used to identify who the Signatory is; and There is a specific method used to identify who the Signatory is; and
- f. There is a specific way to indicate that the Signatory has given consent to the relevant Electronic Information.

There are five security criteria in information and electronic transactions, namely:⁹

1. Authenticity

This requirement relates to the authenticity of the parties involved in online communication. This requirement is a practical requirement in business in general, including in notarial practice. For this reason, supporting things are made that can ensure that these requirements are met, namely electronic signatures (digital signatures) and certificate authority.

2. Integrity

This requirement relates to the permanence and completeness of a communication. Messages, data and communications sent and received must be the same and complete. To support the fulfillment of this requirement, supporting infrastructure such as public key infrastructure is needed.

3. Non Repudation

The communicating parties cannot deny what has been done in the online communication..

4. Writing and signature

Requirement of written evidence and signatures of the parties.

5. Confidentiality

This requirement is important in order to protect a person's confidentiality.

For the application of electronic deed making basically has the same procedure as conventional, there are two things that are very different, first, on physical presence and signature, if carried out by cyber notary making deeds electronically, physical presence is replaced by teleconference or video call. Second, for the signature itself will be done digital signature.

Guaranteeing the security of electronic signatories, electronic organizers must apply cryptographic techniques intended to guarantee the integrity of Electronic Signatures. The selection of cryptographic techniques applied for these purposes must refer to the applicable cryptographic provisions or standards in accordance with the provisions of laws and regulations.

When referring to the provisions of Article 5 paragraph (4) letters a and b of the ITE Law, it is known that documents made in the form of notarial deeds are not included in electronic information and/or electronic documents. Therefore, notarial deeds that are executed electronically do not have legal force as valid evidence according to the provisions of the ITE Law. With the limitation of the meaning of electronic information/electronic documents stipulated in Article 5 paragraph (4) letters a and b, the authentic deed made electronically by a notary is considered not to be a valid evidence.

⁸ Joshua Sitompul., Op. Cit., Hlm. 93

⁹ Agung Fajar Matra, "Penerapan Cyber Notary di Indonesia ditinjau dari Undang-Undang No. 30

Tahun 2004 tentang Jabatan Notaris" (Jakarta: Fakultas Hukum Universitas Indonesia) hlm. 45

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Thus, the authenticity of the deed made by the notary in this case is not fulfilled. Thus, the legal substance in the making of deeds electronically has not been fully accommodated in the UUJN and also the ITE Law which is the legal basis for notaries in capturing opportunities for making deeds electronically in accordance with the demands and developments of modern society that occur today. However, although in the UUJN, Civil Code and ITE Law, electronic deed making is not yet possible to be implemented by notaries, the opportunity for electronic deed making remains open with the regulation of electronic deed making in the General Meeting of Shareholders through teleconference media (GMS Teleconference). Only in its implementation cannot be applied, given the juridical obstacles that are still faced by notaries.

B. Legal Protection for Parties in the Event of Default in Electronic Transactions

The mechanism of legal protection by notaries is carried out through the legal force of electronic transaction law certified by the notary itself based on Article 6 of the ITE Law which emphasizes In the event that there are other provisions other than those stipulated in Article 5 paragraph (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 integrity, and can be accounted for so that it explains a situation.¹⁰

Based on the definition of electronic transactions according to Article 1 number 2 of Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), trade or business conducted using electronic media is also included as part of electronic transactions..¹¹

If there are acts of default that have been committed by business actors where business actors do not have good faith, consumers who feel aggrieved can file a lawsuit against the business actors who operate the electronic system, this is stated in Article 38 paragraph (1) of the ITE Law and in Article 39 paragraph (2) of the ITE Law which states that consumers can also resolve disputes through arbitration or other alternative dispute resolution institutions in accordance with the provisions of the applicable laws and regulations. Protection of consumers of electronic transactions is also contained in Article 5 paragraph (1) of the ITE Law, which states that electronic information and / or electronic documents and / or their printouts are legal evidence. Article 18 paragraph (1) of the ITE Law reads that electronic transactions as outlined in an electronic contract are binding on the parties, and Article 28 paragraph (1) of the ITE Law regulates prohibited acts and/or acts that result in harm to consumers in electronic transactions. If an act of harming consumers as mentioned in Article 28 paragraph (1) of the ITE Law is found, then there is a threat of imprisonment for a maximum of 6 (six) years and / or a maximum fine of IDR 1 billion, this is stated in Article 45 paragraph (2) of the ITE Law. The forms of default on the part of business actors in online buying and selling, namely :

1. Not doing what has been agreed upon what will be done;

Business actors do not deliver goods as promised in online buying and selling transactions to the detriment of consumers..

2. The business actor performs what he/she promised but not as promised.;

The business actor delivers the goods but the goods do not match what was ordered by the consumer.

3. The business actor does what it promises but is late;

Business actors deliver goods that have been ordered by consumers but there is a delay in the delivery of goods and the buyer is not aware of it..

4. The business actor violates something that according to the agreement must not be done.

The regulation of the liability of business actors is contained in Article 19 of the Consumer Protection Law, namely:¹²

a. Compensate for damages

b. Compensate for pollution

c. Provide compensation for consumer losses due to consumption of goods or services produced.

Legal protection for parties if an electronic agreement defaults according to Law No. 11 of 2008 concerning information and electronic transactions is based on the mechanism for validating the electronic agreement/transaction itself. Based on Article 5 paragraph (1) of the ITE Law which reads that electronic information and / or electronic documents and / or their printouts are legal evidence. Article 18 paragraph (1) of the ITE Law reads that electronic transactions as outlined in an electronic contract are binding on the parties, and Article 28 paragraph (1) of the ITE Law regulates prohibited acts and/or acts that cause harm to consumers in electronic transactions.

¹⁰ Undang-undang Informasi dan Transaksi Elektronik Pasal 6

¹¹ Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (UU ITE) Pasal 1 ayat 2

¹² Habib Adjie, 2011, Hukum Notaris Indonesia (Tafsir Tematik Terhadap UU No. 30 Tahun 2004 tentang Jabatan Notaris), Refika Aditama, Bandung

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CONCLUSSION

Based on the results of the research and discussion above, the conclusion in this study is that the Regulation of the Implementation of the Implementation of Notarial Deed in electronic transactions issued through Cyber Notary Practices in general has been regulated in the provisions of the Act and Article 5 paragraph (1), (2), and (3) of the ITE Law. but specifically related to the implementation of cyber notary there is no law that regulates it. The norm conflict between Article 15 paragraph (3) and Article 16 paragraph (1) letter m of Law Number 2 Year 2014 can be resolved by continuing to use Article 15 paragraph (3) of Law Number 2 Year 2014 and can also make a notarial deed basically as long as the implementation of the article is in accordance with Article 16 paragraph (1) letter m and Article 38 of Law Number 2 Year 2014 and must also fulfill the elements in Article 1868 of the Civil Code which is a requirement for the authenticity of the deed. This is because in one law it is prohibited to override other articles and certification of transactions using cyber notary is valid because it has been regulated in Article 15 paragraph (3) of Law Number 2 of 2014 which authorizes notaries to certify transactions by cyber notary while still paying attention to the elements of an authentic deed.

Defaults that occur in electronic transactions transactions or often referred to as E-Commerce are usually carried out by business actors. business. This can result in harm to the consumer. As for the things that can be done by the consumer to settle the default case committed by the business actor to settle the dispute out of court to file a lawsuit to the authorized court. to file a lawsuit to the authorized court. However, in the current development current developments, legal reform is needed to regulate electronic transactions more specifically so as to provide a sense of security and comfort to consumers. transactions more specifically so as to provide a sense of security and comfort to consumers who want to make transactions electronically and there will be no more problems regarding defaults that can cause things that are detrimental to consumers in conducting electronic transactions. detrimental to consumers in conducting electronic transactions. electronic transactions.

Legal protection for the parties if default occurs electronic agreement is based on the agreement itself where legal protection by a notary is carried out through the power of notarization. is carried out through the power of electronic transactions that have been certified by the notary himself. Meanwhile, for consumers who have been harmed in electronic transactions, business actors are required to provide a period of time for consumers to return (reture) the goods sent if they are not in accordance with the agreement and if there are hidden defects, which ultimately harm consumers and if the act of default is carried out by the business actor but the business actor does not have good faith, then the harmed consumer can take action to sue the business actor where the consumer can demand responsibility and the business actor to compensate the harmed consumer.

SUGGESTION

The suggestions that the author can give in this writing are that the Government should immediately make a rule of law that specifically regulates the application of cyber notary so that it can become a strong legal basis for people in need; or can provide changes to Article 15 of the UUN and Article 16 paragraph of the UUN. So that it is hoped that cyber notary can be implemented optimally and thoroughly.

It is hoped that the government will provide a deterrent effect to business actors in handling it because there needs to be firm action both in the context of implementation and something related to the public interest where this requires an analytical power both in the planning, implementation and supervision processes that need to be synergized and integrated so as not to harm consumers in conducting electronic transactions.

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