

Legal Satisfaction of Electronic Authentic Diction Made Notary in Facing Industrial Revolution 4.0

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Abstract

Notary has the authority to make an Authentic Deed based on article 1867 of the Civil Code. Proof of evidence in writing is done by authentic writing or writing under the hand. Along with advances in technology, each transaction using electronic information technology makes it easy for parties to make agreements through online. However in reality the Authentic Deed made by a Notary Public must be adjusted to Law Number 30 of 2004 amending the Law Number 2 of 2014 about the position of Notary Public. The formulation of the problem in this research is How Positive Law about the Certainty of Authentic Deed Law conducted by a Notary by using Electronics and how the obstacles to the agreement by using the Electronic Deed conducted by a Notary. The writing method in this paper uses notative juridical and the nature of the research is perspective. Research results in writing are the legal certainty of an authentic deed made by a notary that there is no positive law relating to an authentic deed done online and authentic deeds made online are that the parties must face directly, good faith and the validity of electronic signatures whose authenticity is uncertain. Recommendation that policies on authentic deeds need to be made electronically.

Keywords

Legal satisfaction;
electronic authentic;
notary; industrial
revolution 4.0



I. Introduction

In law every agreement must be made through a deed. Deed is a piece of writing made as evidence and signed by the parties to the agreement. Based on article 1867 of the Civil Code a deed is divided into 2 (two), namely: the deed under the hand (Onderhands), authentic deed (Authentic).

The notary has the authority to make an authentic deed regarding all deeds, agreements and stipulations required by legislation and / or that is desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, giving the grosse, copy and quotation of the deed, all this as long as the making of the Deed is not also assigned or excluded to other officials or other people determined by law.

Globalization as a process that will ultimately bring the entire population of planet Earth into a word society. Furthermore, global society must be seen and understood as an inevitable natural process caused by the advancement of human civilization in the field of science and technology, especially information technology. Information Technology experts (IT) in 1990, among others, Kyoto Ziunkey said that IT increasingly needed in human life and therefore he said "you have to get married with IT", technology is very meaningful in human life. The development of information technology is very rapid and has brought many

changes (<http://ditjenpp.kemendikham.go.id/hukum-teknologi/661-keabsahan-alat-bukti-elektronik-dlm-suatu-perjanjian-dlm-penyelesaian-sengketa-melalui-arbitrase-onl.html>)

Development of Information and Communication Technology (ICT) advancements in the Industrial Revolution 4.0 era. provide a lot of convenience for us. If there is a contract law what about when the transaction is carried out and what about the positive law of the electronic contract, the Notary must anticipate various changes, and in order to prepare a notary who is ready to face the Industrial Revolution 4.0 era. (Agus Yudha Hernoko) (Peraturan Pemerintah Nomor 82 Tahun 2012).

Government Regulation Number 82 Year 2012 Organizing Electronic Systems and Transactions has been put in place to create a legal basis for online transactions throughout Indonesia. That is, all activities related to the internet or electronics must refer to these rules. One of them concerns the use of electronic evidence in the agreement. Notary as an official has the authority to make an authentic deed which is carried out directly in front of the person making the agreement. Diera Electronic Information Technology is growing, the Notary must be able to anticipate technological advances, especially the Electronic Agreement made by the Notary (Agus, 2014).

Based on the above description Research interested in writing about the rapid development of electronic information technology makes it easy for parties to make agreements via Online. In reality the authentic deed made by a notary must be adjusted to Law Number 30 of 2004 amendment to Law Number 2 of 2014 concerning Notary Position Based on this background, the problems in this research are:1. What is the Positive Law on the Certainty of Authentic Deed Law conducted by a Notary by using Electronics. 2. What are the barriers to the agreement using the Electronic Deed conducted by a Notary Public.

II. Research Method

The type of research conducted in this study is normative juridical research and the nature of the research in this study is perspective (Yahya Harahap).

III. Discussion

3.1. Positive Law on the Certainty of Authentic Deed Law conducted by a Notary by using Electronics

Agreement / verbentenis is a legal / rechtbetriking relationship which by law itself is regulated and ratified. In an agreement, the legal relationship between one party and another cannot arise automatically. The relationship was created by "legal action rechtshandeling . Legal actions / actions taken by parties that give rise to legal relations of agreement, so that one party is given the right by another party to obtain an achievement. While the other party provides the achievement (Yahya Harahap: 10) (Achmad, 2012). Positive notary law is regulated in Law Number 30 of 2004 amending Law Number 2 of 2014 concerning Notary Position. Basically, deeds can be divided into two types, namely: Under the Deed and Authentic Deed (Undang-Undang Number 2 Year 2014). Deed under the hand, in English is called under the hand, while in Dutch it is called onder de hand deed, it is a certificate made by a party, without the intermediary of the authorized official This deed can be divided into

three (3) types, namely: a) Deed under the hand of a deed drawn up and signed on a stamp duty without the presence of a public official. b) Deed under rules that are registered by authorized officials by a notary / authorized officer (waarmerken). c) Deed under the hands of a notary authorized as an authorized official (Hikmahanto Juwana).

In Article 15 paragraph (2) letters a and b of Law Number 30 Year 2004 concerning the Position of Notary, the term used for the deed under the hand that has been graded is the word under the hand that is legalized while the deed under the hand that is warmerken is recorded. under the hand that is ratified is a deed that must be signed and ratified in front of a notary / authorized official. The meaning of the endorsement of the akat under the hand is: a) The notary guarantees that the person who is named in the contract is the person who signed the contract. b) The notary guarantees that the date of the signature is carried out on the date stated in the contract (Salim, 2007).

In Article 1 number 7 of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Position of Notary, three conditions have been determined, called an authentic deed, which covers the form made by or before a notary form determined in the law and the procedure is also determined in the law. Philipus M. Hadjon put forward two conditions of a deed called an authentic deed, which includes in the form determined by the law (standard form) and made by and in front of general officials (Philipus). Besides that C.A. Kraan put forward five characteristics of an authentic deed, which includes an article, intentionally made solely for evidence or a proof of the circumstances as stated in the writing to be made and stated by the competent authority. The statutory provisions that must be complied with, these provisions govern the procedures for its making (at least the provisions concerning the date, place where the deed of writing is made, the name and position / position of the official make it secure can be known about these matters (Kitab Undang-undang Hukum Perdata).

Authentic Deed must fulfill what is required in Article 1868 of the Civil Code, it is cumulative or must cover all of them. Deed that is made, although signed by the parties, but does not meet the requirements of Article 1868 of the Civil Code, cannot be treated as an authentic deed, only has the power as writing under the hand (Article 1869 of the Civil Code) (Ghansham, 2018). Provisions regarding the authority of a Notary Public to make an authentic deed are regulated in Law No. 30 of 2004 concerning the Position of Notary as amended by Law No. 2 of 2014 ("UUJN"). In Article 1 number 1 of the UUJN, it is stated that the Notary is a public official, authorized to make an authentic deed and has other authorities as referred to in this Act or based on other laws.

In the practice of Notary according to Medis tarigan, SH, M. Kn the positive law governing Electronic Authentic Agreement / Deed has never been done. The parties making the agreement must come face to face with the Notary. If there is an improvement through Renvoi to the right of the Deed by not changing the original word. Notary activities and practices through online are carried out by the Notary Public AHU Online at the Ministry of Law and Human Rights, OSS (Online Singel Submission) (Interview with Medis Tarigan, 2019).

If referring to the Elucidation of Article 15 paragraph (3) of Law Number 30 of 2004 concerning Notary Position ("Notary Position Law") as amended by Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 there is an opportunity for a notary to use

an electronic signature in carrying out his work (cyber notary). In Article 15 paragraph (3) of Law 2/2014 Authority as referred to in paragraph (1) and paragraph (2), the Notary has other authorities regulated in the legislation. If referring to the Elucidation of Article 15 paragraph (3) of Law Number 30 of 2004 concerning Notary Position ("Notary Position Law") as amended by Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 ("Law 2/2014 ") there is an opportunity for a notary to use an electronic signature in carrying out his work (cyber notary).

This became the challenge of the Notary in the face of the Industrial Revolution 4.0. Positive law relating to Act Number 11 of 2008 concerning Information and Electronic Transactions ("ITE Law") as amended by Act Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions ("Law 19/2016") and Article 1 number 19 of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Transactions and Systems, but contains legal provisions concerning Authentic Deed (Law Number 19 Year 2016)

3.2. The barriers to the agreement using the Electronic Deed conducted by a Notary Public

In principle, the deed drawn up in front of and before a notary must be clean and there is no scribble, but the deed is not always clean and there is no scribble. If the deed is not clean or contains graffiti, the deed in the deed must be changed. The sound of the deed that has been done is lacking or there is a change in the deed, which is "made with three scribbles, two turns and one extra" But in practice, there are some obstacles in the authentic deed and the electronic signature related to the notary obligation is: a) According to Legal Practitioner Irma Devita Purnamasari read the deed in front of the parties. There are two types of notarial deeds, the first is the deed of partij (the parties face the notary and the party signs the deed) and the deed of relaas. As long as these three things have not been fulfilled then electronic signatures cannot be enforced. In contrast to the Deed of Relaas, this Deed of Relaas makes it possible to use electronic signatures. b) According to Edmon Makarim, Chair of the Institute of Law & Technology Study at the University of Indonesia, states that physical presence is a debate. Physical presence has been perceived this way. Whereas electronically, video conferencing is also a physical presence "c) The Strength of Proof of Authentic Deed There are three authentic evidence strengths, namely the strength of birth proof, the strength of birth proof, the strength of proof, the strength of formal proof and the strength of material proof (Herlin Budiono).

The Validity of Electronic Signature So the electronic signature is usually done on electronic transactions. Electronic transactions are legal actions carried out using computers, computer networks, and / or other electronic media. Regarding the validity of electronic signatures, Article 11 of the ITE Law and Article 53 of PP PSTE state that the following electronic signatures used in Electronic Transactions can be generated through various signing procedures. In reading the deed in front of the depositor, the benefit of reading the deed is that the Notary public still has the opportunity to correct mistakes that were not seen before (Subekti, 1996).

The deed itself has the ability to prove itself to be an authentic deed, as regulated in Article 1875 of the Civil Code. This ability cannot be given to akat made under the hand. Because the contract made under the new hand is valid if all parties who come to it acknowledge the truth of the signature, or if by lawful means can be considered as acknowledged by the complainant. If according to the deed it appears as an authentic deed, meaning that the words are from a public official (notary), then the deed against each person is considered as an authentic deed.

The Power of Formal Proof In the formal sense, the deed proves the truth of what is witnessed, that is, seen, heard and also done by a notary public official in carrying out his position. In a formal sense the truth of the date of the deed is guaranteed the truth contained in the akat, the truth of the identity of the people present and the truth of the place where the deed was made. This digital certificate contains the owner's signature information such as the residence identification number, a photo of himself from various sides, up to the blood type. So this digital certificate will be used to prove whether the digital signature is fake or genuine, and whether there are changes to the documents while in court.

Good faith, According to Medical Tarigan Notary Practitioner Serdang Bedagai Good faith a Client who comes face to face before a Notary is very Subjective. In Article 1338 paragraph (3) of the Civil Code, jurisprudence and doctrine in general mean that good faith is objective if it is in the realm of engagement. If in Practice if the Client makes an agreement not in good faith, to make an electronic agreement, then there may be changes in the content of the agreement changed by each party.

There is no law that regulates, Elektronik agreements there is no regulation governing that Notary must make an agreement made with Electronics. Although according to Article 1 number 13 of Act Number 11 of 2008 concerning Information and Electronic Transactions ("ITE Law") Act Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions ("Act 19 / 2016 ") and Article 1 number 19 Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Transactions and Systems (" PP PSTE "). As long as there are no regulations governing electronic agreements made by a notary public, then the agreement cannot be carried out. Because the regulations regarding Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Transactions and Systems ("PP PSTE") do not stipulate Authentic Deed made through the Electronic Agreement. [17] So based on the explanation above, an electronic signature can be said to be valid if it meets the provisions as explained in Article 11 of the ITE Law and Article 53 of PP PSTE regardless of one's position and profession

IV. Conclusion

Legal certainty Legal Certainty of an Authentic Deed conducted by a Notary by using Electronics There is no law governing the Authentic Deed made by a Notary Public. Barriers to the agreement by using an electronic certificate that is the validity of electronic signatures, good faith and no legal rules governing. The development of technological advances, it is hoped that the central and regional governments will issue a special regulation regarding the legal certainty of an Authentic Deed made by a Notary.

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