

The Validity of the Cyber Notary in Supporting Government Indonesia in the Field of International Trade



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ABSTRACT: Along with the very rapid development of information and electronic technology where electronic media is widely used as a reliable platform for carrying out various activities including communicating and carrying out various kinds of work from business transactions to implementing duties and positions, also the use of the use of electronic signatures (electronic signatures) or digital signatures (digital signatures) on authentic deeds, the concept of cyber notary has been around for quite a long time but an ideal meeting point and harmonization have not been found regarding implementing comprehensive regulations for its implementation. The authors are interested in examining how the relationship and role of Notaries in Indonesia are implemented when digital signatures are implemented in a number of agreements or contracts in the context of international trade. This writing was written using normative research methods by collecting primary, secondary, tertiary or non-legal legal materials which collected and analysed through the steps of description, systematization and explanation. The conclusion that can be drawn from this writing is that the development and regulation of cyber notaries in Indonesian positive law can be seen from the new authority for Notaries to certify transactions carried out electronically, and the concept of cyber notary in supporting Indonesia in the field of international trade based on UNCITRAL, can be done with 3 (three) approaches in regulating electronic signature authentication procedures. To make the notary's authority in the concept of cyber notary effective, legal protection and legal certainty are needed for the perpetrators of the transaction.

KEYWORDS: Validity, Cyber Notary, Supporting, Government Indonesia, International Trade

I. INTRODUCTION

Basically, law moves dynamically along with the development of society, but law in a narrow sense (Riyanto, 2020), namely laws are often left behind in following and accommodating changing times and technological developments. One aspect of human life that has developed rapidly is the aspect of trade transactions and buying and selling. The practice of buying and selling goods across countries is known as international trade. From a legal standpoint, it means a transaction that involves the interests of more than one national law. (Hikmahanto Juwana (et.al), 2013)

A trade is said to be international trade, if the sale and purchase has led to a choice of law between two different legal systems and the goods being traded must be handed over across state boundaries, as well as the presence of foreign elements or elements foreign to the applicable legal system. In this context, we can understand that the main IJMRA, Volume 6 Issue (Month) 2023 elements of international trade are (Ricardo Simanjuntak, 2008):

1. There is cross-border trading;
2. There is a choice of two different legal systems;
3. The presence of foreign elements or elements in the sale and purchase agreement.

When referring to the provisions of Article 1233 of the Civil Code, it can be seen that one of the sources of an engagement is an agreement. According to the provisions of Article 1313 of the Civil Code, it states that:

“Agreement or agreement is an act by which one person or more binds himself to one or more other people.”

The agreement creates and contains terms of rights and obligations between the two parties, or in other words, the agreement contains an agreement. The agreement or contract has conditions that must be met. According to the provisions of Article 1320 of the Civil Code, the conditions for the validity of the agreement are as follows:

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1. Agree those who bind themselves;
2. The ability to make an agreement;
3. A certain thing;
4. A lawful cause.

Notaries in Indonesia are public officials appointed by the Government to carry out some of the Government's functions in the field of civil law. This function is then understood as the authority possessed by a Notary as a public official. The main authority of a Notary is to make authentic deeds.

An authentic deed is a deed drawn up before or by an authorized public official and in a form that has been regulated by law. In the legal system adopted by Indonesia, which is Continental European or Civil Law, considers that law is a rule that is written and puts forward written evidence as the strongest evidence.

In the legal system in Indonesia, an authentic deed has perfect evidentiary power, meaning that it is the strongest and can only be refuted as long as it can be proven otherwise. A notary deed is an authentic deed because it is made by or before a notary who has the authority and the form has been determined in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Rules of Notary Profession (hereinafter referred to as UUJN).

In the context of notarialism, the 1961 Hague Convention gave rise to 2 (two) concepts of the role of a Notary in realizing the effectiveness of electronic transactions, namely Cyber Notary and Electronic Notary (Supriadi, 2006). Cyber Notary was originally the brainchild of the American Bar Association Information Security Committee in 1994.

This concept is widely implemented in Common Law countries such as the United Kingdom, the United States, Canada and Australia, where a Notary is known as a Public Notary who is not appointed by an authorized official so that he is not bound by the obligation to form or format a particular deed regulated by law. In the context of Cyber Notary, the duties of a public notary (public notary) are more to carry out administrative processes combined with security technology by placing a stamp/seal on a document/agreement as a form of administration or registration of documents.

Along with the very rapid development of information and electronic technology where electronic media is widely used as a reliable platform for communication, coordination, implementation of teaching and learning processes, implementation of various types of work, activities and business transactions up to the implementation of duties and positions, the possibility of using electronic signature (electronic signature) or digital signature (digital signature) on an authentic deed, especially related to its authenticity and legal force in terms of UUJN and related regulations in the context of cyber notaries which have been around for quite a while.

However, it can be said that until now there has not been found an ideal meeting point and harmonization regarding implementing regulations that are comprehensive for its implementation in order to be able to find harmonization as well as best practice in a proportionate manner that is implementative in the implementation of the notary office in Indonesia.

UNCITRAL (United Nation Commission on International Trade Law) has long provided recommendations for the legal value of electronic information and/or documents through the 1996 Model Law on E-Commerce; United Convention on the Use of ECommunication in International Contracts in 2005; Model Law on E-Signatures in 2001; and Promoting Confidence in E-Commerce: Legal Issues on International Use of Electronic Authentication and Signature Methods in 2009.

Then, what is the relation and role of a Notary in Indonesia when digital signatures are then implemented in a number of agreements or contracts in the context of international trade. In this research, the authors will try to examine and analyse more deeply by starting from the link between the practice of international buying and selling transactions and notary practice. The notary practice referred to in this research is of course the implementation of the Notary's position related to Notary's authority in making authentic deeds.

II. RESEARCH METHOD

The type of research that researchers use is normative legal research. According to Peter Mahmud Marzuki, normative legal research is a process to find legal rules, legal principles and legal doctrines to answer the legal issues at hand (Peter Mahmud Marzuki, 2010). This is in accordance with the prescriptive character of legal science. As a prescriptive science, jurisprudence studies the purpose of law, the values of justice, the validity of legal rules, legal concepts and legal norms.

Approach is the researcher's point of view in choosing a spectrum of discussion space that is expected to be able to provide clarity on the description of a scientific work substance. In this study, the authors used an approach: statutory approach (statute approach); Conceptual Approach, this approach is used because the legal issues that are the subject of discussion are related to certain legal concepts that are interrelated with one another.

The technique of collecting legal materials in normative legal research is carried out by studying the literature on primary, secondary, tertiary or non-legal legal materials. Searches are done by reading, viewing, listening and now mostly done through

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internet media. Primary and secondary legal materials are collected according to a systematic method and recorded on cards in a certain size and manner. The cards are arranged by subject matter to facilitate analysis and the cards are recorded on the concepts related to certain legal issues.

Legal material analysis techniques in normative legal research, legal materials that have been collected are analysed through the steps of description, systematization and explanation. The description is done by describing the content and structure of positive law, which is studied in the sense of making an understanding to determine the meaning of the rule of law. At this stage a description is carried out in order to determine the meaning of the legal rules contained in the laws and regulations used in this discussion.

III. RESULT AND DISCUSSION

A. Evolution and Regulation of Cyber Notary on Indonesian Positive Law

A world without borders, "borderless world", is often put forward to describe how quickly and rapidly technology is developing and playing a very important role, especially in communication technology such as being a communicator between individuals, community groups and also corporations in a very fast and spectacular without having to present the communicating parties face to face. (Dharmawan, 2015)

Recently, conventional transactions that use paper have changed to forms of transactions that use electronic systems. This is in line with the global agreement in the UNCITRAL forum which has long provided recommendations for the legal value of electronic information and/or documents. In Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic Devices (hereinafter referred to as ITE Law), is a manifestation of the government's efforts to provide legal certainty for transactions conducted electronically. In addition, the government also gave new authority for Notaries to certify transactions carried out electronically through the elucidation of Article 15 paragraph 3 UUJN, stating that:

"What is meant by "other authorities regulated in laws and regulations", among others is the authority to certify transactions carried out electronically (cyber notary), make deed of pledge of waqf, and aircraft mortgage."

Ironically, the concept of cyber notary in Indonesia is still under debate. Even though technology allows the role of a Notary online and remotely, it seems that this cannot be done legally. Therefore, the function and role of a Notary in the context of electronic transactions is very important to study in depth, so that Indonesian Notaries can play a global role, especially in the context of international trade.

In general, if the idea of cyber notary can be implemented in Indonesia, then the strength of proof of information and electronic transactions which so far are often perceived as having weak proving value will have a stronger position because it can be understood as an authentic deed.

This will increase public trust and security in electronic transactions. Even though the opportunity for a notary to play an electronic role seems invisible in the UUJN, if there are other laws and regulations that provide this opportunity (for example: Government Regulations mandated by UUTE provide opportunities for Notaries to provide support for electronic certification services), so this matter is actually still very relevant to the provisions of Article 15 paragraph (2) point (a) and paragraph (3) UUJN which has been provide other authorities for the Notary as long as it is in accordance with the laws and regulations.

In addition, several legal issues related to the implementation of conventional notary work so far will also be resolved properly. This is not only related to the improvement of the filing system due to the use of electronic filing, but also due to an increasingly efficient recording system and service delivery standards and an increasingly global scope of transaction opportunities.

Notaries will also be facilitated and enriched with electronic system facilities that support evidence of the fulfilment of the requirements for authenticity, both objective and subjective requirements, such as: a tracking system regarding the validity of legal subject information; company registration system; land deed checking and registration system; electronic copy submission reporting system; and so forth.

B. The Concept of Cyber Notary in Supporting Indonesia in the Field of International Trade Based on

UNCITRAL

UNCITRAL or United Nations Commission on International Trade Law is one of the special organs of the United Nations tasked with developing international trade law. With Resolution 51/162 dated December 16, 1996, UNCITRAL formulated an important rule of law, namely the UNCITRAL Model Law on Electronic Commerce, where the purpose of this model law is to promote uniform legal rules in the use of computer networks or electronic technology for commercial transactions. (Huala Adolf, 2010)

There are 3 reasons for using the UNCITRAL Model Law on Electronic Commerce, as follows:

- 1) Model Law which is acceptable to countries with different legal systems, socio-economics. Model law can also provide significant developments towards the development of harmonious

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international economic relations;

2) The Model Law was chosen because previously the countries (and interested international organizations) proposed the use of this legal instrument; And

3) The use of Model Law can assist countries in making their national legislation in the field of ecommerce.

The main objectives of the formation of this law model are:

1) Provide regulations regarding e-commerce addressed to national legislative bodies or legislature-making bodies of a country;

2) Provide rules that are more certain for electronic trade transactions.

In practice, the existence of an authentication method for electronic signatures, electronic information and electronic documents requires the involvement of a 3rd (third) party as an institution providing electronic certification held by a third party (Certification Service Provider) as the party carrying the mandate of trust (Trusted Third Party). Related to this, signature authentication is important. Basically there are 3 (three) approaches in regulating electronic signature authentication procedures, namely:

1) Minimalist Approach or Functional Equivalent Approach (Catatan Sekretariat UNCITRAL, 2016), based on the UNCITRAL Model Law of ECommerce (1996) and the UNCITRAL Model Law on Electronic Signatures (2001) which adheres to the neutral principle of technology and emphasizes, at least the 2 (two) main functions of electronic signatures are to identify the signer and to show the intention of the signer in relation to the information being signed. The requirements for the validity of transactions that use electronic communication or information for international contracts are subject to the provisions of Article 9 UNCITRAL Model

Law on Electronic Signatures (2001) where the transaction must meet the conventional requirements of a transaction consisting of: written form (writing), signature (sign) and authentic (original);

2) Technology Specific Approach, which is the paradigm for managing e-signatures, which only refers to a certain type of technology, namely the use of digital signatures with Public Key Infrastructure which is considered as the most perfect technique in answering the need for secured communication. This technological approach requires synergy with other related infrastructure. Regarding this approach, UNCITRAL shows that there are 3 (three) models namely the SelfRegulation Model (self regulation), limited government involvement and the optimal role of the government in leading the Public Key Infrastructure process (Government led process);

3) Two-Tiered or Two Pronged Approach, which is a two-network approach widely adopted by European Union (EC) countries based on Directive

1999/93/EC on Electronic Signatures, that there is a classification of electronic signature authentication, in which the European Community provides criteria for recognizing electronic signatures into the ordinary category and the advanced category supported by an accredited certification body.

Notary as a position that carries out part of the state's authority in the realm of private law which is closely related to aspects of public service and the economy in general, of course, should not be seen as a rigid and static position, however, a Notary must try to make adjustments to actual phenomena, while still supporting the government in overseeing the direction of development in an orderly, safe and legal certainty (R.A. Emma Nurita, 2012). This needs to be supported by the proactivity of the Notary himself so that he is always aligned and relevant to the times and technology through a service that is fast, precise and efficient so as to be able to support the acceleration of the economy.

IV. CONCLUSIONS

After the explanation of the research as described in the previous chapters, the conclusions regarding the problems discussed in this writing are as follows:

1) The development and regulation of cyber notaries in Indonesian positive law, can be seen from the new authority for Notaries to certify transactions carried out electronically through the elucidation of Article 15 paragraph 3 UUJN and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Devices (hereinafter referred to as ITE Law), is a manifestation of the government's efforts to provide legal certainty for transactions conducted electronically. Ironically, the concept of cyber notary in Indonesia is still under debate. Even though technology allows the role of a Notary online and remotely, legally it seems that this cannot be done.

2) The concept of cyber notary in supporting Indonesia in the field of international trade based on UNCITRAL, can be with 3 (three) approaches in regulating electronic signature authentication procedures, namely: Minimalist Approach or Functional Equivalent Approach, based on UNCITRAL Model Law of E

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- Commerce (1996) and UNCITRAL Model Law on Electronic Signatures (2001); Technology Specific Approaches; and Two-Tiered or Two Pronged Approach. This approach needs to be supported by the proactivity of the Notary himself so that he is always aligned and relevant to the times and technology through a service that is fast, precise and efficient so as to be able to support the acceleration of the economy.

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