



The Use of the Notary Protocol That Is Stored Digitally as Evidence in the Court

Putri Isna Vonna; Yanis Rinaldi; Teuku Muttaqin Mansur

Master of Notary, Law Faculty, Syiah Kuala University, Aceh, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v8i3.2507>

Abstract

The importance of the authentic act position made by the notary makes the deposit of the minuta akta as part of the Notary Protocol is as important. Due to the absence of standard procedures in the storage of the Notary Protocol, the Notary Protocol is prone to damage, loss even vanish. Therefore, to anticipate this, the solution for the storage of the Notary Protocol is through the use of information technology or electronically. But in reality there are no specific rules for the procedure of keeping notary protocol, so the electronic document evidence is valid evidence in addition to conventional evidence in procedural law, but there are also those who argue that electronic documents as companion evidence must be supported with other evidence to increase the judge's conviction. This research aims to analyze notary protocols that are stored digitally which can be used as evidence according to the law and regulation in Indonesia. This type of research is normative legal research. The research approach used is statute approach. The source of the legal material used is secondary data which is analyzed qualitatively and conclusions are drawn deductively. The result shows that, notary protocol storage can be done digitally and can be used as evidence in court, however, digitalization of the notary protocol functions only as a backup of data, not as an archive that has binding legal force. It means that the notary protocol has to be kept in physical form to maintain its authenticity.

Keywords: *Notary Protocol; Digital Notary Protocol; Notary*

Introduction

In article 15 paragraph (1) of Law Number 30 of 2004 on notary department (hereinafter referred to as UUJN) mentions, "Notary is authorized to make authentic act regarding all actions, agreements, and assignments required by the legislation and regulation and / or as required by the interested to be expressed in the authentic act, desired by those concerned to be stated in the authentic act, ensured the certainty of the date of making the act, keep the act, provide grosse, copy and excerpt of the act, all of which as long as the act is made or not assigned or excluded to other officials or other people stipulated by law".

Notary with the authority granted by the legislation and regulation plays a very important role in making official act (authentic act). The legal actions written in a notary act contain actions, agreements and stipulations of the parties who request or want their legal actions to be written into an authentic act.

Ghansam Anand stated that, “as a general officer, a notary is appointed by the Country to carry out part of the Country's duty in the field of civil law. The country, with the intention providing legal protection for citizen, has delegated part of its authority to a notary to produce the strongest evidence in the form of authentic act”.¹

Apart from the authority of the Notary above, the Notary also has the obligation to make act in the form of original act (*minuta akta*). This is based on Article 16 paragraph (1) letter b UUJN in conjunction with Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public (hereinafter referred to as UUJN-P) which states that “In carrying out his / her office, act in the form of requesting a act and keeping it as part of the Notary Protocol”.

As stated in the Elucidation of Article 62 UUJN, that “Notary Protocol consists of:

- a. *Minuta akta*;
- b. Act register book or repertorium;
- c. Book lists the names of the tapers or clamps;
- d. Protest list book;
- e. Book list of wills; and
- f. Other register books that must be kept by the Notary based on the provisions of the legislation.”

The most important part in a Notary Protocol is the monthly files of all original acts or acts made by the Notary.

The existence of a notary is contained in the Civil Code, especially in the Fourth Book on Evidence and Expiration. Then regarding the main evidence in civil law is written evidence, while the strongest written evidence is in the form of an authentic act. Notary act is a perfect, strongest and full tool of proof so that in addition to guaranteeing legal certainty, notarial act can also avoid dispute. It is considered better to write down an act, agreement, stipulation in the form of a notary act than to write it down in a letter under hand, even though it is signed on a stamp duty, which is also strengthened by the signature of the witness.²

When a dispute or civil case arise, a notary act as a written evidence is needed as a proof which has perfect evidentiary power. The written evidence requested by the judge is generally a minimum act or a photocopy of the original act or a *minuta akta*, where the original act is enough to show to the judge and the copy of the original submitted to the judge.³ A problem ascends for the notary if it turns out that the minimum act is damaged or lost, due to event that occur due to human error or force majeure

Therefore, to anticipate the impact in the storage process, one solution that can be applied for the storage of the Notary Protocol is through the application of information technology or electronically. The concept of transferring documents to microfilm or other media can minimize the use of paper (paperless) and the possibility of loss or damage to notary act and other file. Notary can save their office archive and document into electronic document, in the form of original scan of the act, email and photographic documentation at the time the act is signed. All of that can be stored in electronic form via softcopy, flash

¹ Ghansham Anand, *Karakteristik Jabatan Notaris*, Zifatama Publisher, Sidoarjo, 2014, hlm.39-40.

² Mohamat Riza Kuswanto, “Urgensi Penyimpanan Protokol Notaris Dalam Bentuk Elektronik dan Kepastian Hukumnya di Indonesia”, *Jurnal Repertorium*, Volume IV No. 2 Juli-Desember 2017, Surakarta: Magister Kenotariatan, Universitas Sebelas Maret, hlm. 62, 2017.

³ Allamudin Al Faruq dan Riri Lastiar, “Perlindungan Notaris Dalam Pengambilan *Minuta Akta* dan Pemanggilan Pada Peradilan Pasca Undang-Undang Nomor 2 Tahun 2014”, *Jurnal Penelitian Hukum*, Volume 2, No.2, Juli 2015, Universitas Gajah Mada, hlm.79, 2015.

disk, CD, or microfilm. Thus, the Notary Public can keep it safe, confidential and private because only the Notary can keep and carry the document.⁴

With the enactment of Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the UU ITE), there is a new regulation regarding electronic document evidence. Based on the provisions of Article 5 paragraph (1) of the UU ITE, it is determined that “electronic information / electronic document / printout are valid evidence”.

The meaning of “Electronic Information is one or a set of electronic data, including but not limited to writing, voice, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail telegram, telex, telecop, etc., processed letter, sign, number, Access Code, symbol, or perforation which have meaning or can be understood by those who are able to understand them” (Article 1 point 1 of the UU ITE). Whereas what is meant by “Electronic Document is any Electronic Information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, etc., which can be seen, displayed, and / or heard through a computer or electronic system. , including but not limited to writing, sound, picture, map, design, photograph, etc., letter, sign, number, Access Code, symbol or perforation which have meaning or can be understood by those who are able to understand them” (Article 1 point 4 UU ITE).

In judicial practice, the outlook of the judge in viewing electronic document evidence can vary, some are think that electronic document evidence is valid evidence in addition to conventional evidence in procedural law, but there are also those who argue that electronic document as a companion evidence that must be supported by other evidence to increase the conviction of the judge.⁵

According to Article 15 paragraph 1 letter b, a Notary is obliged to make an Act in the form of a *Minuta Akta* and keep it as part of the Notary Protocol, the notary must keep and maintain the protocol. Thus, the storage of this notary protocol is the responsibility of the Notary Public. However, the Amendment UUN has not regulated the development of information technology-based notary protocol storage.

Based on the description stated above, the legal problem that arise in the application of storage by looking at the requirements above, so the authors gives the opinion that the transfer of protocols in electronic form cannot be compared to authentic evidence, considering that the act is also part of the notary protocol. Proof of authenticity of the document must be written on paper and made by an authorized official. Documents in electronic form are still as ordinary evidence, which means the power of proof on electronic document cannot be stated as strong as evidence on an authentic act. So that document in electronic form cannot stand alone as valid evidence in the court, unless it is supported by other evidence, such as testimony from witness or expert witness, even though the documents in electronic form are the result of a print out, output, or printed result or photocopy of an authentic act, and the value of proof is in according to the judge's decision.

Research Method

The research method used is normative juridical with a statutory approach. Sources of legal materials in research are secondary data consisting of primary legal materials, secondary legal materials, tertiary legal materials related to Notary Protocol, notaries, evidence, digital evidence, civil law, as well

⁴ Triyanti, “Kekuatan Pembuktian Dokumen Elektronik Sebagai Pengganti Minuta Akta Notaris”, *Jurnal Repertorium Volume II* No. 2 Juli-Desember 2015, Surakarta: Magister Kenotariatan, Universitas Sebelas Maret, 2015, hlm.22.

⁵ Minanoer Rachman, Ketua Pengadilan Negeri Tuban & Hakim Pengadilan Tindak Pidana Korupsi pada Pengadilan Negeri Surabaya, Bahan Seminar Nasional “*Penggunaan Informasi atau Dokumen Elektronik sebagai Alat Bukti dalam Proses Litigasi*”, Fakultas Hukum Universitas Airlangga, Surabaya, Sabtu, 16 Juni 2012, hlm. 17.

as those in accordance with statutory regulation and law journal which is then entirely analyzed qualitatively and conclusions are drawn deductively by analyzing the legal norm in statutory regulation. The purpose of this study is to analyze notary protocols that are stored digitally which can be used as evidence according to laws and regulations in Indonesia.

Result and Discussion

Notary's Authority in Keeping the Notary Protocol

One of the obligations of a notary is to make act in the form of a minimum act and keep them as part of the Notary Protocol as evidenced in Article 16 paragraph (1) letter b of the UUJN. The Notary Protocol according to the provisions of Article 1 point 13 UUJN, states that "Notary Protocol is a collection of documents which is a state archive that have to be kept and maintained by a Notary in accordance with the provisions of the legislation". Elucidation to Article 62 of the UUJN, states that the Notary Protocol consists of:

a. *Minuta Akta;*

Minuta akta is the original notary act which is kept in the notary protocol. In the *minuta akta*, the original signature, initials and thumbprints of the parties, witnesses and notary are listed. In addition, the renvooi or documents required for the making of the act are attached. Every month the *minuta akta* always have to be bound into one book called the *budel minuta akta* which contains no more than 50 acts. On the cover of each book, the minimum number of acts, month and year of manufacture is recorded. In general, the minimum act is called an authentic act because it has met the authenticity requirements of an act, that is, if the act is drafted, it is read by the notary in front of the audience in the presence of at least 2 (two) witnesses and signed on the spot by the tappers, witnesses and notary public. *Minuta akta* is part of the notary protocol and part of the notary administration which is a state archive, so it must be kept, guarded and maintained by the notary as well as possible.

b. *Act register book or repertorium;*

The repertorium contains notes on all acts made by or in front of a notary, either in the form of a *minuta akta* or in original by stating the serial number, month, date, nature of the act and the names of the parties. Before being used, the act register book or repertorium must be submitted to the Regional Notary Supervisory Council for legalization of its use. The act register book is also useful as the existence of act made by notary.

c. *The act list book under hand, which consists of:*

- 1) Act that is signed by the party concerned before a notary is called legalization. Legalization is an act which is made by the parties themselves; however the signing of the parties is carried out in front of a notary in order to ensure that the person who is signing is really the person concerned. Therefore, the contents of this underhand letter are more binding on the parties because the notary guarantees that the parties actually signed it before the notary public.
- 2) Act under registered warmerking. Warmerking is a letter under the hand that has been signed by the parties and then brought to a notary to be recorded in the letter register under hand by recording the resume of the content of the letter under the hand so that if the letter under the registered hand is lost then the resume can still be seen at the notary's office. Submissions do not have to be made by 2 (two) parties, but can only be made by one party.

Notary is obliged to recor the document under hand, either legalized or recorded by stating the serial number, date, nature of the letter and the names of the parties.

d. Book of list tapper names or klapper;

The notary is obliged to make a book listing the names of the tappers or klapper which is arranged alphabetically and done every month, in which the name of the tappers, the nature of the act, the number of the act, and the date are attached. This book is made as a control book in finding minuta.

e. Protest list book;

The protest list numbering method starts with serial number 01 and continues throughout the notary's tenure. The protest list book is submitted every month and if it is not available then the notary is obliged to report it with statement of NIHIL.

f. Will ist book;

The notary is obliged to record the will he made in the will register. In addition, at the latest on the date of 15th of each month, the notary is obliged to report the list of wills that has made in the previous month. If no testament has been made, then the will must still be prepared and reported with statement of NIHIL.

g. Other register books that must be kept by a notary based on the provisions of the laws and regulations.⁶

Apart from having the authority to make agreement act and other civil legal act, notary also have the authority to keep notary protocol. As stated in Article 16 paragraph (1) letters b and e of the Amendment UUJN, "it requires every notary to keep a minimum act as part of the notary protocol and requires every notary to issue a grosse act, a copy of the act or an excerpt of the act based on the minimum act at the request of the parties or heirs of the parties." For the sake of proof for the parties, the Notary is obliged to issue a copy of the *minuta akta* which is stored as the Notary Protocol. *Minuta akta* is the original act, meaning that the original Minuta akta is stored in the Notary Protocol where the act was made, the parties written in the act or the interested person (onmiddelijk belanghebbende) are entitled and will receive a copy of the act of the *Minuta akta* with a stamp, stamped with the position of Notary and signed only by Notary. The definition of a Copy of Act according to Article 1 point 9 of the UUJN is "Copy of Act is a word for word copy of all Acts and at the bottom of the Copy of Act is the phrase" given as COPY which has the same comprehensive.

Notary Protocol as Legal Evidence in the court

In civil procedural law, it states that judges are bound by valid evidence. This means that in making a decision, the judge is always bound by the means of evidence that have been determined by law. Various kinds of evidence in civil procedural law according to RBg / HIR and the Civil Code, include written evidence or letters, witness evidence, suspect evidence, confession evidence and oath evidence. The legal basis for written evidence or letters is regulated in Article 164 RBg / Article 138 HIR, Article 285 RBg to Article 305 RBg, Article 165 HIR, Article 167 HIR, Stb. 1867 Number 29 and Article 1867 to Article 1894 of the KUHPerdata.

⁶ A.A.Andi Prajitno, *Pengetahuan Praktis Tentang Apa dan Siapa Notaris di Indonesia*, Perwira Media Nusantara, Surabaya, 2015, hlm.77.

There are several opinions regarding the meaning of written evidence or letters. Sudikno Mertokusumo explained that written evidence or letter is anything that contain reading sign that is meant to pour out one's heart or to convey someone's thoughts and are used as proof.⁷ Meanwhile, according to Teguh Samudera, written evidence or a letter is a statement of thought which is manifested by reading sigs and contained in something.⁸

Based on the definition of some of the above opinions, conclusions can be drawn regarding the meaning of letter evidence. Whereas letter evidence is anything that contains reading signs which are the thoughts or thoughts of the person who made it. Written evidence or letters are divided into two, namely:

a. Act

According to Sudikno Mertokusumo, an act is a letter as a sign of evidence, which contains the events that constitute the basis for a right or agreement, which was made from the beginning on purpose to prove.⁹ Therefore, the important element to be classified in the definition of act are the gap in making an act is a written evidence to be used by someone for the purposes of whom the letter was made and must be signed. Therefore, not all letters can be said to be act. Then the act can be divided into two, namely the authentic act and the act under the hand.

According to article 285 RBg / Article 165 HIR, "an authentic act is a letter made based on the provisions of the Law by or before a public official, who has the power to make the letter." Meanwhile, according to article 1868 of the KUHPperdata states that "an authentic act is an act made in the form prescribed by law by or before a public official who has the authority to do so at the place where the act was made."

The point is the elements in order to be stated as an authentic act are made in the form prescribed by law, which is drawn up before the competent public official and the act must be signed. Public officials who are authorized to make authentic act is a notary, clerk, marriage registrar employee, district head, and so on.

Meanwhile, underhand deacteds are regulated in Articles 286-305 RBg, in Article 286 paragraph (1) RBg states that they are viewed as underhand act, namely letter, list, household affair and letter signed and made without the assistance of a public official. . And article 1874 of the KUHPperdata states that "under hand writing is deemed to be act signed under the hand, letter, register, document of household affair and other writing made without the intermediary of a public employee."

In contrast to an authentic act, the elements of a letter can be said to be an underhand act, it is written only by interested party, it does not need to be done by or before a public official. Even in free form, it does not have to be in accordance with the provisions of the law, in the event that it must be proven, then when it is used for such proof, the letter must also be equipped with other supporting evidence.

b. The writing which is not an act

The writing which is not n act is any writing that is not deliberately used as evidence about an event and is not signed by the author. Even though the writings or letters which are not acts are intentionally made by the person concerned, they are basically not intended as evidence in the process of proof at a later date.

⁷ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, 2006, hlm.150.

⁸ Teguh Samudera, *Hukum Pembuktian Dalam Acara Perdata*, Alumni, Bandung, 1992, hlm.36.

⁹ Sudikno Mertokusumo, *Op.Cit.*

The Law on Notary Position (UUJN) does not yet regulate the procedure for keeping the Notary Protocol, so that Notaries in Indonesia do not have standard procedures regarding the correct procedure for keeping the Notary Protocol. So far, the act certificate has been made with paper which is generally sold freely, there is no quality standard of raw material (paper) which is stipulated to maintain the quality of the act's minimum material, nor is it specially made by the competent authority, so of course this has the potential to be disadvantages the parties in need, because the act as a perfect evidence is unable to survive in order to fulfill the law of proof in the future.

Today, the development of technology and information is increasing rapidly and increasing all over the world. Globalization has become the driving force for the birth of the era of information technology development. The phenomenon of the speed of information technology development has spread throughout the world, not only in developed countries, but also in developing countries that have spurred the development of information technology. In other words, information technology has an important position for the progress of a nation and society. This progress and development must be followed by the development of the law itself in the science of law known as the *Ius constitutum*, the current prevailing law or established law (positive law), and *ius constituendum* means the law aspired or dreamed of in the future. *Ius constituendum* is an abstraction from the fact that everything is a process of development.

The invention of technology has resulted in convergence (integration) in the development of technology and communication, media and information (telematics). At first, each of these technologies seemed to run separately (linearly) from one another, but now all of these technologies are increasingly convergent. The form of telematics convergence is marked by the birth of new technology products that combine the capabilities of information systems and communication systems based on computer systems strung together in one electronic system network, both locally, regionally and globally.¹⁰

Digital notary protocol storage

a. Digital notary protocol storage according to UUJN

In the Notary Protocol, there is a minimum act which is also a state document, one of whose functions can act as evidence, stating that there have been legal actions that have been carried out by the parties related to the agreement in the realm of civil law. As in Article 1 point 13 of the Amendment UUJN states that the Notary Protocol is a collection of documents which is a State Archives that must be kept and maintained by a Notary in accordance with the provisions of the prevailing laws and regulations.

Notaries in creating their protocols still use paper as the medium, so they need a very large space and expensive maintenance costs to store these protocols. Therefore, one solution that can be applied is to use information technology for storage and maintenance. Article 68 paragraph (1) of the Archive Law has regulated that creators of archives and / or archival institutions can create archives in various forms and / or transfer media including electronic media and / or other media. However, until now, notaries have not implemented it.

Likewise with the service provided by a notary. It can be seen that so far notary service to the public is still conventional, meaning that the parties still have to face each other, this is due to legal norms that require this to be done. However, along with the development of information technology that inevitably leads every line of activity in people's lives to shift and / or move from conventional systems to electronic systems, notary services are also shifting to electronic-based services. UUJN has not yet regulated the digital storage of notary protocols. It is only stated in Article 15 paragraph (3) UUJN that the possibility of a notary to certify transactions conducted electronically (cyber notary). Because there

¹⁰ Syamsir, "Prospek Cyber Notary Sebagai Media Penyimpanan Pendukung Menuju Profesionalisme Notaris", Vol. 1 No.2 Tahun 2019, hlm.137.

are still no rules governing the digital storage of notary protocols, it creates a norm vacuum so that there is no legal certainty for these problems.

b. Digital notary protocol storage according to KUHPerdata

The digital storage of the notary protocol may mean that a notary act made by electronic means or a notary only ratifies an agreement which the reading and signing of the act is not carried out before a notary. The electronic transaction is an agreement in which the act is not read and signed before a notary. This raises the question of whether the notary act has met the requirements as an authentic act if it is linked to Article 16 paragraph (1) letter m UUJN-P and Article 1868 of the Civil Code. Because as previously stated, the elements so that a act can be said to be an authentic act is made in a form determined by law, which is drawn up before the competent public official and the act must be signed. Public officials who are authorized to make authentic acts are notaries, clerks, marriage registrar employees, district heads, and so on.

c. Digital Storage of the Notary Protocol according to the ITE Law

Article 5 paragraph (1) of the ITE Law states that Electronic Information and / or Electronic Documents and / or their printouts are valid evidence in court. But Article 5 paragraph (4) states the exceptions, namely:

- 1) Letters which according to the law must be in writing; and
- 2) Letters and documents which according to the law must be made in the form of notary acts or acts drawn up by the act-making official.

So if seen from the explanation above, it can be concluded that the notary protocol can be stored digitally, but the notary protocol that is digitally stored does not fulfill the evidentiary strength as a notary act, and does not meet the document authenticity requirements. Making the transfer of electronic data storage can only function as a data back up, not as a legally binding copy.

In the opinion of Ms. Nurdhani, one of the notaries in the city of Banda Aceh, it is fine if notary acts and other notary protocols are stored digitally. But still, the manufacture must be direct. This can minimize problems when one day the notary is unable to present the notary's protocol when asked as evidence because it is lost or damaged. The notary may present the notary protocol in digital form or print it. Because sometimes the judge also asks for the original file to be examined in order to give confidence to the judge regarding the evidence that has been submitted¹¹

The analysis is taken from the explanation above that, storage media can also be used as an input and output device, as an input tool, when the data and information in the storage media is needed, it will be opened on a computer or other technological device / equipment, the process becomes input. . It is also an output tool when data and information on the computer is moved or stored in storage media. Several types of storage media such as: diskette, Laser Disk, CD, DVD, HD-DVD and Blu-Ray, Memory Card, Memory Card, Flashdisk. USB Flash Drive, Hard Disk, External Hard Disk.

The function and purpose of storing digital notary protocols can be assessed from 2 (two) aspects, namely economic and legal aspects. Economically, the digital storage of the notary protocol aims to be more practical, efficient, safe and inexpensive. Meanwhile, if viewed from the legal aspect, notary protocols are stored digitally and facilitate legal proceedings, especially legal evidence which is closely related to electronic evidence.

¹¹Interview with a notary in Banda Aceh City, Ms. Nurdhani, S.H., SpN.

Ms. Nurdhani also added that the transfer of the notary protocol form from physical to digital is inact very easy for notaries' work. But it also means that acts can be easily faked. He hopes that along with the development of technology, this form of transfer can be carried out without having to worry about the problem of act forgery. So that the purpose of storing the digital notary protocol as mentioned above can be realized.¹²

Electronic archives that were created from the start using computer technology can be directly integrated into the electronic archive management system, but for archives that were originally in physical form and want to be digitized, they need to be transferred to provide. According to Sukoco Badri in Saifudin, methods that can be used to transfer supply as follow:¹³

a. *Scanning*

Transferring media by using scanning or scanning documents will produce image data that can be stored on a computer. The scanning process can be done using a print scanner. By scanning the document it will produce a digital file in image format which is then stored and processed using a computer..

b. *Conversion*

Converting documents is converting documents in the form of a word processor or spreadsheet into permanent image data to be stored on a computerized system. Converting can be done directly on a computer. For example, a document that has a word format can be converted into an image in a jpg / png format, or it can also be converted into a document that has a pdf format, and vice versa.

c. *Importing*

This method is a method for transferring data electronically, for example office documents (e-mail), graphics or video data into an electronic document filing system. The data can be moved by dragging or dropping it to the system and still using the data format. Data can also be transferred by copying and pasting into the system while maintaining the original data format.

After the electronic files are created or print files have been digitized and entered in the storage system, it must be ensured that the files are stored properly and safely. The storage system that is carried out must consider technological changes, both in terms of hardware and software. Electronic archive storage media must also support hardware and software systems, so that these files can continue to be read even though they are transferred to new hardware and software.

One thing that is no less important to consider in digital / electronic archive storage is the back up system. Because archives stored in electronic form are vulnerable to being lost due to viruses or damage to hardware or software systems, so to avoid and minimize such damage and loss, it would be nice to schedule regular backups, make copies of files into various media. , or you can also store data online.

Electronic archive storage can be done in 2 ways, as follow:

a. *Online*

The online storage is the latest media in information technology which functions to store files in digital form. This media can be used to back up the digital notary protocol which can be downloaded at

¹² *Ibid.*

¹³ Muhamad Saifudin, *Rancang Bangun Sistem Digitalisasi Dokumen Menggunakan Metode Visible Watermark Di Kantor Urusan Agama (Kua) Kecamatan Sayung*, <http://journal.stekom.ac.id/index.php/JurnalMhs/article/download/90/84> (Accessed on 14th November 2020 at 12.30)

any time when needed. Online data storage provided for free, for example Google Drive, SkyDrive, Dropbox, Mediafire, and many more.

b. *Offline*

Offline storage can be done by utilizing magnetic and optical storage media, such as hard drives, flash drives, digital audio tapes, video tapes, compact disks (CDs), digital versatile discs (DVDs), and so on.

As we can see from the form of electronic / digital archives that are very different from print files, the forms of their maintenance must also be different. How to maintain electronic records can be in the form of securing the electronic records themselves, maintaining storage media, their management systems and devices for managing these records. Information security activities in electronic records are as follows:

- a. Creating a standard procedure in operation that guarantees the safety against the possibility of unauthorized use of information by unauthorized parties. Electronic archive managers can protect by locking vital electronic files. Vital files are files that are considered important for the activities of a corporate body. This protection aims to prevent misuse and destruction of electronic records.
- b. Perform hardware maintenance and make adjustments to technological developments on a regular basis.
- c. Perform software maintenance and ensure the software can run on the latest technology.

Maintenance of electronic / digital records must be carried out periodically so that the physical archive is not damaged, because usually if the physical archive is damaged, the data inside will also be damaged. Several ways that can be used to maintain physical electronic records as follow:

- a. Use the hardware (hardware; computers, laptops, hard drives, flash drives) properly and according to procedures.
- b. Use genuine archive management software (not pirated).
- c. Back up data regularly.
- d. Store the electronic / digital files in a place that is protected from magnetic fields, dust, excessive heat and water.

As we observe from the development, there are basically several laws and regulations that provide opportunities for Notaries to take advantage of information technology in exercising their authority, for example Law Number 8 of 1997 concerning Company Documents (hereinafter referred to as the Company Documents Law), and the ITE Law. However, there are several laws and regulations that find it difficult to accept the concept, for example the Civil Code. In the Civil Code, authentic acts become part of evidence which must meet certain requirements.

Failure to fulfill these requirements will affect the power of proof. The invalidity of a notary's act certainly contradicts the regulatory principles of the UUJN, which aims to want the Notary to produce an act that can create legal certainty and is able to provide maximum protection for the parties. The close relationship between the UUJN and several laws and regulations makes the concept of changing the law very important to be considered in the context of amendments to the UUJN.

In the intended change, at least to accommodate the principles of protection in depth, this change is needed to see the legal issues that are happening in cyber notaries, such as the obscurity of legal norms in the currently enacted law related to notary or the Position of Notary Public. The three legal issues referred to are related to whether it is the duties and rights and obligations of a Notary Public and / or the parties and related to electronic archival documents which are authentic acts that become part of evidence as a means of proof, as well as procedures for signing Acts and so on. Therefore, in the era of development and development of technology and information that is connected to one another via the Internet network, the law should also be able to follow its developments, so as to provide a sense of justice and legal certainty for the community. To support a notary's work from conventional to modern, it needs to be supported by a legal structure that can guarantee protection and legal certainty.

Conclusion

Notary protocol storage can be done digitally. But this is only a form of storing / backing up data from the physical notary protocol. This means that the notary protocol must still be created in a physical form / printed archive which is then digitized as a form of back up. This is done as a solution if in the future there are things that are not desired in the notary's protocol, either due to human error, damaged due to the influence of weather or natural disasters. The Notary Protocol that is digitally stored can also be used as evidence as any other electronic form of evidence, however, this notary protocol that is digitally stored does not have binding legal force as the physical notary protocol. Digital notary acts only have the power of proof like an underhand act, but this does not make a digital notary act unable to be used as evidence in court.

References

Books

- Ghansham Anand, *Karakteristik Jabatan Notaris*, Sidoarjo, Zifatama Publisher, 2014
- Azhari, *Hukum Bisnis dalam Era Globalisasi*, Banda Aceh, Percetakan Bandar, 2018.
- Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Yogyakarta, Liberty, 2006.
- A.A. Andi Prajitno, *Pengetahuan Praktis Tentang Apa dan Siapa Notaris di Indonesia*, Surabaya, Perwira Media Nusantara, 2015.
- Teguh Samudera, *Hukum Pembuktian Dalam Acara Perdata*, Bandung, Alumni, 1992.

Journals

- Mohamat Riza Kuswanto, 2017, *Urgensi Penyimpanan Protokol Notaris Dalam Bentuk Elektronik dan Kepastian Hukumnya di Indonesia*, Jurnal Repertorium, Volume IV No. 2 Juli-Desember 2017, Surakarta: Magister Kenotariatan, Universitas Sebelas Maret.
- Allamudin Al Faruq dan Riri Lastiar, 2015, *Perlindungan Notaris Dalam Pengambilan Minuta Akta dan Pemanggilan Pada Peradilan Pasca Undang-Undang Nomor 2 Tahun 2014*, Jurnal Penelitian Hukum, Volume 2, No.2, Juli 2015, Universitas Gajah Mada.
- Triyanti, 2015, *Kekuatan Pembuktian Dokumen Elektronik Sebagai Pengganti Minuta Akta Notaris*, Jurnal Repertorium Volume II No. 2 Juli-Desember 2015, Surakarta: Magister Kenotariatan, Universitas Sebelas Maret.

Minanoer Rachman, Ketua Pengadilan Negeri Tuban & Hakim Pengadilan Tindak Pidana Korupsi pada Pengadilan Negeri Surabaya, *Penggunaan Informasi atau Dokumen Elektronik sebagai Alat Bukti dalam Proses Litigasi*, Bahan Seminar Nasional, Fakultas Hukum Universitas Airlangga, Surabaya.

Syamsir, 2019, *Prospek Cyber Notary Sebagai Media Penyimpanan Pendukung Menuju Profesionalisme Notaris*, Vol. 1 No.2 Tahun 2019.

Muhamad Saifudin, *Rancang Bangun Sistem Digitalisasi Dokumen Menggunakan Metode Visible Watermark Di Kantor Urusan Agama (Kua) Kecamatan Sayung*, <http://journal.stekom.ac.id/index.php/JurnalMhs/article/download/90/84>

Legislation

Kitab Undang-undang Hukum Perdata (Burgerlijk Wetboek).

Peraturan Jabatan Notaris.

Undang-Undang No. 30 Tahun 2004 Tentang Jabatan Notaris *juncto* Undang- undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris.

Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik *juncto* Undang-Undang Republik Indonesia Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik. The 1945 Constitution of the Republic of Indonesia, State Gazette No. 14 of 2006.

Undang-Undang Nomor 43 Tahun 2009 Tentang Kearsipan.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).