



Reliability of Notary Deals Issuing Authentic Assets Using Electronic Networks

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Abstract

This study uses normative research because this research is only aimed at the study of various written regulations. Referring to the provisions of Law of the Republic of Indonesia Number 2 of 2014 concerning the Position of Notary Public (Law No.2-2014), it's known that Notaries have an important role and function in determining the validity of transactions in Indonesia. Even the Notary is also known as a trusted third party. Likewise, in the scope of the task of carrying out the position of a Notary, namely providing the evidence needed by the parties in a certain legal action, and the evidence is at the level of civil law, where the Notary prepares a deed because of a request from the attending parties. Without requests and requests from the parties, the Notary will not make any deeds, and in making the intended deeds, taking into account the evidence or statements or statements of the parties that are stated or explained or shown before the Notary. Then the Notary prepares systematically, straight forwardly, formally and materially in the form of a Notary deed. Conflict of norms between Article 15 paragraph (3) and Article 16 paragraph (1) letter m of Law no. 2 of 2014 can be completed by continuing to use Article 15 Number (3) of Law no. 2 of 2014 and can also make a notary deed in general as long as the implementation of the article is in accordance with Article 16 paragraph (1) letter m and Article 38 of Law No. 2 of 2014 and must also meet the elements in Article 1868 of the Civil Code which is a requirement for the authenticity of the deed.

Keywords: *Authentic; Electronic Networks; Notary*

Introduction

Referring to the provisions of Law of the Republic of Indonesia Number 2 of 2014 concerning the Position of Notary Public (Law No.2-2014), it's known that Notaries have an important role and function in determining the validity of transactions in Indonesia. Even the Notary is also known as a trusted third party. Likewise, in the scope of the task of carrying out the position of a Notary, namely providing the evidence needed by the parties in a certain legal action, and the evidence is at the level of civil law, where the Notary prepares a deed because of a request from the attending parties. Without requests and requests from the parties, the Notary will not make any deeds, and in making the intended deeds, taking into account the evidence or statements or statements of the parties that are stated or explained or shown before the Notary. Then the Notary prepares systematically, straight forwardly, formally and materially in

the form of a Notary deed. By continuing to refer to the legal regulations relating to the legal action in question as outlined in the deed.(1)

Other powers referred to in this Article have been described through the elucidation of Article 15 paragraph (3) of Law no. 2 - 2014 states that "What is meant by other authorities are regulated in laws and regulations, among others: authority to certify transactions conducted electronically (*cyber notary*), concoct pledge deeds and mortgages".(2)

This creates a conflict of norms(3) which occurs in accordance with Article 15 paragraph (3) and Article 16 paragraph (1) letter m of Law no. 2-2014. Transaction certification using *cyber notary* technology is an explanation of Article 15 paragraph (3) of Law no. 2-2014 is felt to be less well understood, although it can be interpreted as a means of ratification of a transaction made electronically, resulting in the transaction being considered a notary deed, so this is clearly contrary to Article 16 paragraph (1) letter m of Law No. 2-2014 where it is not in accordance with the model of making a notary deed as an authentic deed that has been regulated in the provisions of Article 16 paragraph (1) letter m of Law No. 2-2014 which explains that the Notary is obliged to read the deed in front of an audience in the presence of 2 (two) witnesses. Meanwhile, cyber notary here is the position of the tapping indirectly in front of the notary but through electronic means such as *teleconferences* (audio-visual) and *video calls*.

Research Method

This study uses normative research because this research is only aimed at the study of various written regulations.(4)

Result and Discussion

Notary Deed in the Form of an Electronic Deed

Through an authority, obligations and prohibitions that must be carried out by a notary as mentioned between Article 15 paragraph (3) and Article 16 paragraph (1) letter m of Law no. 2 - 2014 has conflicting norms. (5) The other powers are stated in the elucidation of Article 15 paragraph (3) which states that what is meant by other authorities regulated in the laws and regulations, among others, the authority to certify transactions conducted electronically (*cyber-notary*), make a Deed of Pledge, and airplane mortgages. Whereas in Article 16 paragraph (1) letter m states that the notary must read the deed in front of the audience in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for the making of the will under hand, and signed on right then and there by tappers, witnesses, notary funds.

As explained by Hikmahanto Juwana,(6) it's stated that the term *cyber-notary* appeared in 1994 issued by *The Information Security Committee of the Americanbar Association*, this committee describes that there is a profession that is similar to *public notary*, but documents made and which are there is a profession based on electronics, this profession has a function to increase trust in the documents made.(7) In this scope, *cyber-notary* has a means to authenticate documents based electronically, from which the document authentication can be *printed out* anywhere and anytime.

In connection with the description above, it can be concluded that the term *cyber notary* used in this article refers to a notary official as a public official who is officially appointed under the laws and regulations to carry out his authority as stated in Article 15 paragraph (3) of Law no. 2-2014 isn't a *Certification authority* which is a non-legal technical institution whose principles are similar to *cyber-notary*.(8)

Based on the theory of conflict of norms in the writing of this article, this theory cannot be used because of the conflict between Article 15 and 16 paragraph (1) of Law no. 2-2014 which are two articles

that are in one law. Article 15 of Law no. 2-2014 is the authority granted by a notary to certify transactions through *cyber-notary* and Article 16 of Law no. 2-2014 has been in line with the elements of authenticity of the deed stated in Article 1868 of the Civil Code.

Comprehensive Study of the Validity of Deeds

The provisions in Article 1 paragraph (4) of Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions (Law No.11-2008) in conjunction with Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of Years 2008 Regarding Electronic Information and Transactions (Law No. 19-2016) provides an understanding of electronic documents, namely any electronic information created, tampered with, sent, received, stored in the form of analog files, digital systems, electromagnetic, optical or the like and which can be seen, displayed and heard through a computer or electronic media program but is not limited to writing, sound, pictures, maps, designs, photos or the like, letters, signs, numbers, access codes, or symbols that have the meaning of funds that can be understood by people. capable people understand it.(9)

The stages in making deeds conventionally are as follows: a) The tappers or parties come to the notary's office and then face the notary with the aim of conveying their wishes to be stated in the notary deed, b) After the notary hears the intentions of the parties' funds, the notary must can take what legal actions the parties want as well as provide legal education regarding the deed to be made whether it is in accordance with the law or not, c) After the notary knows the legal action desired by the parties, then the notary makes the deed in the form and method which has been listed in Article 38 of Law no. 2-2014. (7)

The content of the deed by a notary is an obligation in making an authentic deed. This has been regulated in the provisions of Article 16 paragraph (1) letter m of Law no. 2-2014, so that the deed reading process is part of the *verlijden* or the inauguration of the reading and signing of the deed concerned. If the deed is made by a notary public, it must also be read by the notary concerned, not read by a third party, for example a notary employee.

So the notary still has to read the deed he made even though the parties want to read the deed in question so that the deed remains an authentic deed or does not lose its authenticity because the notary does not read the deed. In addition to this, paying attention to the benefits of reading the deed, the notary is obliged to read the deed he makes because the notary position is a position of trust given by the public.(10) The deed reader itself is a form of public trust represented by the parties making the deed.

When referring to the theory of authority and the theory of validity in the aspect of authority, the notary has the authority of attribution, where the notary is given direct authority by law to make deeds including reading the deed and as long as the object of the agreement is still in the notary's working area, the notary remains has the authority to make the deed even though the reading of the signing's fund using *cyber notary* and the deed remains valid as long as the form of the deed is in accordance with the provisions of Article 38 of Law No. 2-2014 and Article 1868 of the Civil Code.(11)

Then the provisions in Article 1868 of the Civil Code in it regulate authentic deeds including notary deeds, must be made in the form stipulated by law and the deed is made by or made before the authorized public official at the place where the deed was made, so that if the deed made is in accordance with the form determined by law and public officials who make the deed are in accordance with their respective authority, the deed can be classified as an authentic deed.(12) It becomes a problem if the process of reading and signing the deed uses *cyber notary* or electronic devices such as teleconference or *internet video calls*.(13)

This is because in Article 16 paragraph (1) letter m of Law no. 2-2014 states that the reading of the deed must be carried out in front of the audience and attended by at least 2 (two) witnesses, and in the explanation it is written that the Notary must be physically present to sign the Deed in front of the audience and witnesses. The word physically present, if translated into each word, is physically present. To be present means to be present or to come physically. The word physical has a physical meaning, so that the meaning of being physically present is being physically, in other words being tangible or visible physically. The explanation about being physically present creates a conflict of norms in Law no. 2-2014, because the *cyber notary* method as part of technological advances can bring together two or more parties in different places with real sound and image facilities, so that the shape of the face, voice and real situation can be seen.(14)

Based on the theory of authority on the procedural aspects of making a notary deed, the validity of the transaction certification through *cyber notary* by a notary has 03 (three) conclusions, namely: First, the notary deed as referred to in Article 1 paragraph (7) of Law No. 2-2014, namely Notary Deed, hereinafter referred to as Deed, is an authentic deed made by or before a Notary according to the form and procedure stipulated in this Law.(12)

Second, if the certification stated in the explanation of Article 15 paragraph (3) of Law no. 2-2014 is equated with an underhand letter legalized by a notary (legalization), then the certification in question isn't an authentic deed. Third, when certification has the same meaning as a letter under the hand registered by a notary (*warmeking*). If that is the case, the certification itself is not an authentic deed so that even though it has been done through *cyber notary*, it will not cause problems because the notary doesn't have responsibility for the certainty of the date, time or contents as well as the form of the letter made by the parties or the parties.

Based on the theory of validity in the substance aspect, the content of the certification itself must not contain a prohibited legal act, a prohibited agreement and must also fulfill the elements of Article 1320 of the Civil Code.

Conclusion

Conflict of norms between Article 15 paragraph (3) and Article 16 paragraph (1) letter m of Law no. 2 of 2014 can be completed by continuing to use Article 15 Number (3) of Law no. 2 of 2014 and can also make a notary deed in general as long as the implementation of the article is in accordance with Article 16 paragraph (1) letter m and Article 38 of Law No. 2 of 2014 and must also meet the elements in Article 1868 of the Civil Code which is a requirement for the authenticity of the deed.

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