



## Legal Construction of Notarial Deed Bank as the Media of Electronic Notarial Protocol Storage

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### **Abstract**

The concept of cyber notary can serve as electronic storage of notarial protocols and functions to fill the legal loophole in the provision of Article 63 Paragraph (5) of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notarial Position (UUJN-P). electronically stored notarial protocols must meet the requirements set forth in Article 6 of Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) to properly serve as valid proof. This study aims to formulate the legal construction of electronic notarial protocol storage by reviewing how this electronic storage is regulated through the norm of Notariële Aktebank in Belgium. This research employed normative-juridical methods that required primary legal materials analyzed based on statutory, conceptual, and comparative approaches. The research results conclude that the e-storage of notarial protocols that abides by the requirements stipulated in Article 6 of UU ITE is applicable through the establishment of the norm of Notariële Aktebank in Belgium acting as the database.

**Keywords:** *Legal Construction; Notarial Deed Bank; Notarial Protocols; Electronic Storage*

### **Introduction**

The term cyber notary and/or electronic notary (e-notary) in cyber technology within the purview of notarial position initially referred to “another party” with its competency in technology that is capable of performing tasks as if it were the real notary in electronic transactions.<sup>1</sup> However, this term has extended to a condition where a notary has shifted from paper-based notarial activities to electronic or digital ones.<sup>2</sup> The term cyber notary is also intended to accommodate the definition made in Article 15 Paragraph (3) of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notarial Position (UUJN-P).

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<sup>1</sup> Leslie G Smith, “The Role of the Notary in Secure Electronic Commerce” (The Role of The Notary in Secure Electronic Commerce., 2006). Baca juga dalam Cyndiarnis Cahyaning Putri and Abdul Rachmad Budiono, “Konseptualisasi Dan Peluang,” *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 1 (2012): 29–36.

<sup>2</sup> Muhammad Farid Alwajdi, “URGENSI PENGATURAN CYBER NOTARY DALAM Mendukung KEMUDAHAN BERUSAHA DI INDONESIA,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (2020): 257, <https://doi.org/10.33331/rechtsvinding.v9i2.422>.

The concept of cyber notary is common in several countries in terms of storing notarial documents electronically, especially notarial deeds. In Belgium, for example, this storage is performed electronically in *Notariële Aktebank* founded by the monarchy of Belgium.<sup>3</sup> In Japan, the cyber notary services are given in “Maintenance of electronic Documents and Certification of the Existence and Contents of the Electronic Documents” that is more focused on electronic document maintenance performed by a notary within a certain period of time.<sup>4</sup> In Indonesia, on the other hand, this concept has not been performed to store documents electronically. The concept of cyber notary is recognized in positive law, referring to the provision of Article 15 Paragraph (3) of Law concerning Notarial Position (henceforth referred to as UUJN-P) and to date there have not been any laws implementing cyber notary concept for electronic storage of notarial documents as performed in Belgium and Japan.

Article 63 Paragraph (5) of UUJN-P implies that notarial protocols that are 25 years old and over are stored by Regional Supervisory Council (MPD). However, this provision does not seem to be congruent with the norm implied recalling that the MPD does not have any independent office, and this situation cannot guarantee a proper space for storage. Following this situation, the storage of such protocols is no longer dealt with by the MPD but by notarial protocol recipients appointed by MPD. Increasing numbers of notarial documents certainly trigger the urgency of bigger spaces for protocol storage, incomparable to the limited notary office spaces and demanding maintenance. This condition, once again, urges the involvement of digitalization to accommodate notarial protocols, which is contextual to the industrial revolution 4.0 and society 5.0. The measures in digitalization in legal services in Indonesia are implemented in judicial scopes as well, such as e-court and the digitalization of land documents supplementary to e-certificate under the protection of Agrarian and Spatial Planning Minister.

The provision of Article 1 point 13 of UUJN-P states “notarial protocols consist of a collection of documents serving as state archive to be stored and maintained by notaries in compliance with laws in Indonesia.” Article 68 Paragraph (1) of Law Number 43 of 2009 concerning Archive implies that “An archivist and/or an organization in charge of archiving could create archive in any forms and/or transfer archive to electronic media and/or another media form.” The provision of a quo article can serve as the basis to perform digitalization supporting the notarial protocol storing in an electronic form. The digitalization of notarial protocols should be initiated by understanding that this is not only intended to save storing spaces in notarial offices and reduce the likelihood of archive damage but also to understand the authenticity and perfect evidential values that characterize the authenticity of notarial deeds.

Article 5 of Law Number 11 of 2008 concerning Electronic Information and Transactions (henceforth referred to as UU ITE) legitimates electronic documents as valid proof, contrary to the fact that Article 5 Paragraph (4) point b does not recognize notarial deeds as valid proof. The provision of a quo article in previous studies seems to be present as dead ends since the digitalization of notarial deeds does not guarantee that notarial protocols remain valid. Moreover, Article 6 of UU ITE expressly states “in terms of other provisions governed in article 5 Paragraph (4) requiring a piece of information to be provided in writing or to be authentic, electronic information and/or electronic documents are deemed to be valid as long as they are accessible and can be displayed, and their unity and accountability can be guaranteed recalling that they must clarify a state.” The provision of a quo article implies that electronic documents as in notarial protocols can serve as valid proof as long as they fulfil the requirements as in a quo article.

Laws concerning notarial matters in Indonesia do not recognize digitalization processes. This lack indicates there is a legal loophole when measures of digitalization are performed within notarial purview

<sup>3</sup> Belgium, “Koninklijk Besluit houdende de Invoering van de Notariële Aktebank,” Pub. L. No. 18 Maart 2020, Belgisch Staatsblad van 24-03-2020 bladzijde: 17634 (2020), chrome-extension://oemmnecblldboiebnladdacbdmfmadadm/http://www.ejustice.just.fgov.be/img\_1/pdf/2020/03/18/2020030345\_N.pdf.

<sup>4</sup> The Ministry of Justice, “Electronic Notarization System Based on the Notarization System,” n.d., <https://www.moj.go.jp/ENGLISH/information/rotlf-11.html>.

in order to electronically store notarial protocols. As a consequence, the norms of electronic notarial protocol storage are absent, while Article 6 of UU ITE indicates that Indonesia require these norms. Departing from this legal issue, it is essential to establish legal findings with a legal construction method. Jazim Hamidi argued that legal construction is required when there are no rules regarding a particular matter, leading to a legal loophole (*rechts vacuum*), or also known as the loophole of law (*wet vacuum*).<sup>5</sup> To respond to the absence of these norms, it is important to review the existing norms applicable in Belgium, the *Notariële Aktebank*, or it bears similar meaning to Notarial Deed Bank.

The shift in law is necessary since there is a gap between a condition, event, or relationship between society and the law that governs it.<sup>6</sup> Similarly, this Article refers to the theory of progressive law according to Satjipto Rahardjo (law is principally for the people to achieve prosperity and happiness). Therefore, law is always in the making<sup>7</sup> to fulfil the prosperity and happiness of the people. This article applies the theory of legal benefit, as in line with the notion of Jeremy Bentham believing that a state and the law are intended to give absolute happiness to the people.<sup>8</sup> This theory of legal benefit serves as the reference for the analysis of the provision of Article 63 Paragraph (5) of UUJN-P, while the theory of progressive law serves as the basis to perform legal construction of notarial deed bank as the media where notarial protocols are stored electronically.

This paper is a normative legal study involving scientific research procedures to find the truth according to the logic of legal science from normative perspective.<sup>9</sup> Article 15 paragraph (3) of UUJN-P in conjunction with Article 63 Paragraph (5) of UUJN-P in conjunction with Article 68 Paragraph (1) of Law concerning Archive in conjunction with Article 6 of UU ITE were analyzed to bring about the legal construction of notarial deed bank as the media of e-storage of notarial protocols by reviewing the norms (*Notariële Aktebank*) applicable in Belgium and stated in *Art. 199 Het Belgisch Staatsblad van 20 July 2017 bevat twee uitgaven, met als volgnummers 183 en 184, Koninklijk besluit houdende de invoering van de Notariële Aktebank 18 MAART 2020, Art 13 j.o. Art 18 Loi du 25 ventôse an XI contenant organization du notariat 16 MARS 1803*. This article refers to the legal construction method by developing positive law.<sup>10</sup>

## Discussion

### 1. Positive Law Development in Indonesia to Arrange Electronic Notarial Protocol Storage in Notarial Deed Bank

The term notarial deed bank in this research departed from the term *Notariële Aktebank* set forth in *Art. 18 Loi du 25 ventôse an XI contenant organisation du notariat 16 MARS 1803, Art. 199 Het Belgisch Staatsblad van 20 July 2017 bevat twee uitgaven met als volgnummers 183 en 184 dan Koninklijk besluit houdende de invoering van de Notariële Aktebank 18 MAART 2020. Notariële Aktebank*, or *Bank Akta Notaris* in Bahasa. The use of the term *Bank Akta Notaris* in several scientific papers in Indonesia is not common simply because laws in Indonesia do not recognize the norm of the term regarding electronic storage of notarial documents. In this article the norm of *Notariële Aktebank* in Belgium serves as reference for electronic storage of notarial deeds in Belgium. This comparison took

<sup>5</sup> Jazim Hamidi, "Teori Penemuan Hukum Baru Dengan Interpretasi Teks" (Yogyakarta: UII Press, 2005), p. Baca juga dalam Fatimah Al Zahra, "KONSTRUKSI HUKUM PENGATURAN BANK TANAH UNTUK MEWUJUDKAN PENGELOLAAN ASET TANAH NEGARA BERKEADILAN," *Arena Hukum* 10, no. 3 (December 29, 2017): 357–84, <https://doi.org/10.21776/ub.arenahukum.2017.01003.2>.

<sup>6</sup> Achmad Ali, "Menguak Tabir Hukum Edisi Kedua," *Jakarta: Kencana*, 2015, 214–214.

<sup>7</sup> Satjipto Rahardjo, **Hukum Progresif: Aksi, Bukan Teks** dalam Satya Arinanto, *Memahami Hukum: Dari Konstruksi Sampai Implementasi*, ed. Satya Arinanto and Ninuk Triyanti (Jakarta: Rajawali Pers, 2012). p. 3.

<sup>8</sup> Ali, "Menguak Tabir Hukum Edisi Kedua." p. 109.

<sup>9</sup> Jonny Ibrahim, *Teori Dan Metodologi Hukum Normatif* (Malang: Bayumedia Publishing, 2006). p. 57.

<sup>10</sup> Ali, "Menguak Tabir Hukum Edisi Kedua." p. 178.

Belgium because of the resemblance of its legal systems Indonesia's that refers to civil law in addition to the consideration of the concept of electronic storage in *Notariële Aktebank*, and the legal materials studied involved laws. The implication of civil law system in Indonesia regarding notarial position indicates that the notarial position must refer to the laws<sup>11</sup> and notaries act as the parties enforcing the rules of law.<sup>12</sup>

In positive law, notaries in Indonesia must abide by Law Number 30 of 2004 concerning Notarial Position (UUJN) in conjunction with UUJN-P in performing their tasks. Referring to the provision in UUJN-P, amendment to the content is obvious in Article 15 Paragraph (1) and Paragraph (2), while Paragraph (3) mentions no amendment to the content but amendment to the explanation. Regarding the provision in UUJN, Article 15 Paragraph (3) bears the phrase "cukup jelas" (mostly meaning "explicitly"), but what was previously set forth in Article 15 paragraph (3) of UUJN-P was amended to "yang dimaksud dengan "kewenangan lain yang diatur dalam peraturan perundang-undangan", antara lain, kewenangan mensertifikasi transaksi yang dilakukan secara elektronik, membuat akta ikrar wakaf, dan hipotek pesawat terbang (other authorities regulated in the laws involve certifying transactions performed electronically (cyber notary), arranging an undertaking of waqf deed, and aircraft mortgage). This addition of information in explanation section indicates that the interpretation of "other authorities" of notaries refer to cyber notary as governed in the laws. Therefore, the provision of Article 15 paragraph (3) can serve as the basis to make new legislation that authorizes notaries to store notarial protocols electronically within the context of cyber notary.

Several scientific articles highlight the term cyber notary in UUJN-P without including the definition and /or the scope and implementation,<sup>13</sup> meaning that there are no specific laws regulating cyber notary.<sup>14</sup> R.A Emma Nurita argues that, in terms of its concepts, cyber notary utilizes advanced technology to assist notaries with deed making.<sup>15</sup> This definition is also referred to as to define cyber notary, the term initiated by Habib Adjie.<sup>16</sup> Unlike Habib Adjie, Cynidaris Cahyaning Putri and Abdul Rachmad Budiono argue that the term cyber notary is only restricted to the certification of electronic transactions.<sup>17</sup> This research sees cyber notary as a system, as it is referred to Bahasa Indonesia Dictionary defining the word system as "perangkat unsur yang secara teratur saling berkaitan sehingga membentuk suatu totalitas" (a unity of elements structurally connected to form an entity). That is, the implementation of cyber notary requires the unity of several components; cyber notary is defined as electronically deed making requiring regulatory components to electronically make deeds, electronically read the deeds, **electronically store the deeds**, and electronically prove the deeds.

UUJN and UUJN-P require the notaries to store and protect notarial protocols as intended in Article 1 point 13 in conjunction with Article 16 Paragraph (1) letter b of UUJN-P. This obligation raises from the authority held by notaries to make authentic deeds and store the deeds as governed in the provision of Article 15 Paragraph (1) of UUJN-P. The storage and protection of the notarial protocols are not only restricted to original of deed, including *repertorium*, underhand deed register, *klapper*, will

<sup>11</sup> Muhammad Ricky Ilham Chalid, "Hambatan Dan Prospek Hukum Penyelenggaraan Jasa Notaris Secara Elektronik Di Indonesia Memasuki Era Society 5.0," *Journal Content* 2, no. 4 (2020): 393–413, <http://www.notary.ui.ac.id/index.php/home/article/view/1288/284>.

<sup>12</sup> Hartanti Sulihandari and Nisya Rafiani, *Prinsip-Prinsip Dasar Profesi Notaris* (Jakarta: Dunia Cerdas, 2013), p. 11.

<sup>13</sup> Masrur Ridwan, "Reconstruction Of Notary Position Authority and Implementation Of Basic Concepts Of Cyber Notary," *Jurnal Akta* 7, no. 1 (2020): 61, <https://doi.org/10.30659/akta.v7i1.9432>. p.65.

<sup>14</sup> Denny Fernaldi Chastra, "Kepastian Hukum Cyber Notary Dalam Kaidah Pembuatan Akta Autentik Oleh Notaris Berdasarkan Undang-Undang Jabatan Notaris," *Indonesian Notary* 3, no. 2 (2021): 249, <http://notary.ui.ac.id/index.php/home/article/view/1522>.

<sup>15</sup> Emma Nurita, *Cyber Notary: Pemahaman Awal Dalam Konsep Pemikiran* (Bandung: Refika Aditama, 2012), p. 4.

<sup>16</sup> Habib Adjie, "Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global," *Jurnal Hukum Respublica* 16, no. 2 (June 13, 2018): 201–18, <https://doi.org/10.31849/respublica.v16i2.1436>.

<sup>17</sup> Putri and Budiono, "Konseptualisasi Dan Peluang."

register, protest register, and register of other matters that must be kept by notaries in compliance with the laws in Indonesia.<sup>18</sup> Notarial protocols must be stored and protected despite the death of the notary concerned, end of tenure, notary's request to step down, failure to perform notarial tasks for more than three consecutive years, appointment for another governmental position, official transfer to another area, temporary discharge, or dishonorable discharge. When this is the case, the task concerned is transferred to another notary appointed by MPD and/or the Minister with the recommendation of the MPD.<sup>19</sup> The delegation of notarial protocols more than 25 years old and over from the notary receiving the protocols to the MPD must comply with the provision of Article 63 Paragraph (5) of UUJN-P.

The provision of Article 63 Paragraph (5) authorizes the MPD to store and take care of notarial protocols that are 25 years old and over. This authority attached to the MPD is known as attributive authority.<sup>20</sup> However, this authority faces an issue where there is no office or particular space owned by MPD to store the protocols. Responding to this issue, the Ministry of Law and Human Rights, through the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2021 concerning Organizational Structure and Working Procedures, Appointment and Termination Procedures, and the Budget of the Notary Supervisory Council (Permenkumham Number 16 of 2021) in Article 30 letter c states:

“The authority of administrative Regional Supervisory council that requires the approval of the session of the Regional Supervisory Council as intended in Article 27 letter c) constitutes: deciding the space to store notarial protocols that are 25 years old and over (idn);”

Referring to the provision of a quo article, we can conclude that determining the office to store the notarial protocols seems to be the issue the MPD is facing. The regulatory provision regarding storage space is congruent with the increasing need of the space or notarial offices for storage and the maintenance of notarial protocols for the recipient notaries.

Such legal norms indicate that the provisions regarding the storage of notarial protocols as in Article 63 Paragraph (5) do not represent legal benefit<sup>21</sup> that should exist in a legal norm. Jeremy Bentham once argued that the existence of a state and its law is nothing but for the sake of the absolute happiness for the people.<sup>22</sup> Linked with 25-year-old-and-over notarial protocols, there is a tendency that unhappiness may emerge from complicated demands for spacious areas for the storage and maintenance of notarial protocols. Moreover, this absence of spaces is likely to cause damage of notarial protocols due to natural disasters prone to happen in Indonesia and damage buildings.<sup>23</sup> The damage may also cause losses the parties concerned have to bear. The losses that hinder people from the fulfilment in authentic deeds following the damage caused indicate that the state fails to guarantee the certainty, order, and the legal protection for the people. Therefore, notarial protocols cannot just be understood as the state

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<sup>18</sup> See the provision of Article 62 of UUJN.

<sup>19</sup> See the provision of Article 63 of UUJN-P.

<sup>20</sup> Nurin Dyasti Pratiwi, Dominikus Rato, and Moh. Ali, “Kewenangan Majelis Pengawas Daerah Terhadap Urgensi Penyimpanan Protokol Notaris Sebagai Arsip Negara,” *Jurnal Syntax Transformation* 3, no. 2 (February 23, 2022): 290–307, <https://doi.org/10.46799/JST.V3I2.511>, p. 293.

<sup>21</sup> The legal benefit in this context refers to the values of benefit that trigger legal norms to result in benefits, virtue, or happiness to prevent any damage, pain, or crime, as expressed by Curzon cited in Ali, “Menguak Tabir Hukum Edisi Kedua.” P. 91.

<sup>22</sup> *Ibid.*,

<sup>23</sup> Lendo Theo Engelbert, “Analisis Yuridis Penyimpanan Minuta Akta Notaris Secara Elektronik” (Universitas Brawijaya, 2020). p. 83.

archive, but it should transcend this scope simply because these notarial protocols serve as evidence of legal events within the purview of private law<sup>24</sup>

Thus, notarial protocols like *boedel* of original of deed as the state archive should get involved in the storage of the documents by facilitating or amending how it is regulated. This need of storage requires immediate attention, recalling that there is no regulation governing this notarial protocol storage. In the laws governing notarial positions in Belgium, there are no regulatory provisions governing the period of storing notarial protocols but the submission of fifty-year-old notarial deeds to the archive office in the Provincial Kingdom or administrative reGENCY in the regions where notarial positions are served.<sup>25</sup> According to Tan Thong Kie, the original of deed as a notarial protocol is issued by a notary, **which does not mean that the notarial protocol is under the individual ownership of the notary concerned but the ownership of the members of the public and, thus, this protocol is taken care of the government**<sup>26</sup> or the Ministry of Law and Human Rights. That is, facilitating notaries with the storage and maintenance of notarial protocols by the government is acceptable and in line with the interest of the people and the principle of the state of law that guarantees the certainty, order, and legal protection that are truth- and justice-oriented.

Archive Law allows for digitalization. Article 68 Paragraph (1) of Law concerning Archive states “An archivist and/or an organization in charge of archiving could create archive in any forms and/or transfer archive to electronic media and/or another media form.” The transfer process to archive digitalization, according to the provision of a quo article, can be performed by an archivist or an archive organization or by both working together. Article 1 point 19 defines an archivist as “an independent and authorized party to perform functions, tasks, and duties in dynamic archiving.” Dynamic archive, according to Article 1 point 3, is defined as “an archive directly used by an archivist to be stored for a certain period of time.” A notarial protocol such as original of deed is categorized as a vital and dynamic state archive.<sup>27</sup> The provision of Article 68 Paragraph (1) represents the principle of anticipation, meaning that archiving must be based on anticipation or awareness of possible transformation and development of archive in the nation. This principle also serves as an instrument required in the development of positive law that results in legal construction of electronic notarial protocol storage. It is essential to synchronize Archive Law with UUN in conjunction with UUN-P to highlight the position of notaries as archivists and an organization in charge of archiving. The implementation of Article 68 Paragraph (1) of Law concerning Archiving is expected to guarantee the legal certainty when this implementation is intended for notarial protocols.

The digitalization of state archive in terms of notarial protocols (original of deed) is different from that of state archive other than original of deed. This is the implication of authentic values and perfect proof attached to notarial deeds. In line with this condition, the process of digitalization of notarial deeds must be congruent with the basic principles with which the authentic deeds comply with.<sup>28</sup> In terms of this digitalization according to Article 1868 of Civil Code, an authentic deed is “determined by law, made by or before general officials having the authority in this matter at the venue where the deed is

<sup>24</sup> Benny Heriawanto, “KEWAJIBAN MENYIMPAN PROTOKOL NOTARIS DAN AKIBAT HUKUMNYA MENURUT HUKUM POSITIF INDONESIA,” *Arena Hukum* 11, no. 1 (2018): 101–18, <https://doi.org/10.21776/ub.arenahukum.2018.01001.6>. p. 103.

<sup>25</sup> Lihat pada Art. 62 *Loi du 25 ventôse an XI contenant organisation du notariat 16 MARS 1803*.

<sup>26</sup> Tan Thong Kie, *Studi Notariat: Beberapa Mata Pelajaran Dan Serba-Serbi PraktekNotaris, Buku I* (Jakarta: PT Ichtiar Baru van Hoeve, 2007).

<sup>27</sup> Ivo Dewi Kumalawati, Muhammad Khoidin, and Nurul Ghufron, “Karakteristik Minuta Akta Notaris Sebagai Arsip Negara (Characteristics Minuta Deed as a State Archives),” 2019, p. 135. <https://repository.unej.ac.id/handle/123456789/89524?show=full>.

<sup>28</sup> Lana Imtiyaz, Budi Santoso, and Adya Paramita Prabandari, “Reaktualisasi Undang-Undang Jabatan Notaris Terkait Digitalisasi Minuta Akta Oleh Notaris,” *Notarius* 13, no. 1 (2020): 97–110. See also Shanti Dwi Kartika, “Pembuktian Dalam Electronic Commerce Dan Implikasinya Terhadap Notaris,” *Kajian* 16, no. 2 (September 1, 2011): 387–412. <https://doi.org/10.22212/KAJIAN.V16I2.529>.

made.” In reference to a quo article, authentic deeds must be made in compliance with laws and by or before authorized general officials. The digitalization, as discussed in this study, is to facilitate notarial protocols, meaning that the transfer from paper-based documents to electronic ones is applicable for authentic deeds made by notaries pursuant to the provisions of Article 1868 of Civil Law in conjunction with Article 38 of UUJN-P. The output of this digitalization should not leave any doubt in terms of the authenticity as in line with the statement in Article 6 of UU ITE:

“Written forms are commonly associated with information and/or documents set forth on paper, while principally, information and/or documents can be shown in any kinds of media, including electronic media. Within the purview of electronic systems, original information and its copies are no longer different, recalling that in electronic systems documents are often duplicated, making the original documents bear no difference with the duplicated ones.”

Notarial protocol storage involves the process of digitalizing notarial protocols from paper-based form to electronic documents. Although Article 5 Paragraph (4) of UU ITE does not recognize the electronic form of notarial deeds as valid proof, Article 6 of UU ITE takes notarial deeds as legal proof as long as the notarial deeds are declared acceptable in an electronic form and:

- a) **accessible**, all parties concerned can obtain electronic information and/or documents attached therein;
- b) **shown**, electronic information and/or documents attached therein are clearly presented and readable;
- c) **guaranteed in terms of its authenticity**, the electronic information and/or documents attached therein must not be changed from its original; and
- d) **guaranteed that it holds accountability clarifying a state**, there should be some parties responsible for the authenticity and truth in terms of all matters of electronic information and/or documents.

The storage of notarial protocols is aimed to facilitate the documents as evidence for the parties concerned. Damaged or missing original of deed as part of notarial protocols cause the losses for clients because there are no regulatory provisions concerning the resolution to the damaged or missing notarial deeds in UUJN in conjunction with UUJN-P.<sup>29</sup> Therefore, it is essential to consider some measures to legitimate the presence and use of electronic notarial protocols to present the deeds as valid proof as in line with the provisions of Article 6 of UU ITE.

From the above issue, this study concludes that electronically storing notarial protocols not only refers to the provision of Article 15 Paragraph (3) of UUJN-P in conjunction with Article 63 Paragraph (5) of UUJN-P in conjunction with Article 68 Paragraph (1) of Law concerning Archive in conjunction with Article 6 of UU ITE, but there should also be a new law comprehensively regulating the electronic storage of notarial protocols. This measure needs to refer to the law in Belgium as set forth in *Koninklijk besluit houdende de invoering van de Notariële Aktebank 18 MAART 2020*.

## **2. Electronic Storage of Notarial Deeds in *Notariële Aktebank* in Belgium According to *Koninklijk besluit houdende de invoering van de Notariële Aktebank 18 MAART 2020*.**

Belgium amended Article 13 in conjunction with Article 18 of *Loi du 25 ventôse an XI contenant organisation du notariat 16 MARS 1803*. This amendment implies that notarial deeds can be presented in an electronic form. However, the amendment to Article 18 of a quo states that the original of deed was initially stored in an electronic form and the electronic copies of this conventional deed are stored in

<sup>29</sup> Imtiyaz, Santoso, and Prabandari, “Reaktualisasi Undang-Undang Jabatan Notaris Terkait Digitalisasi Minuta Akta Oleh Notaris.” p. 100.

*Notariële Aktebank*. Following the amendment to *Loi du 25 ventôse an XI contenant organisation du notariat 16 MARS 1803*, the monarchy of Belgium formed and regulated *Notariële Aktebank* / NABAN through *Koninklijk besluit houdende de invoering van de Notariële Aktebank - 18 MAART 2020* as the delegated law for the provision of Art. 18 *Loi du 25 ventôse an XI contenant organisation du notariat 16 MARS 1803*. *Koninklijk besluit houdende de invoering van de Notariële Aktebank - 18 MAART 2020* regulates the following matters:

a) Definition

According to the general provision of Article 1 point 1 of *Notariële Aktebank* through *Koninklijk besluit houdende de invoering van de Notariële Aktebank - 18 MAART 2020*, "*Notariële Aktebank*" is defined as electronic database as mandated by Article 18 of Law of 16 March 1803<sup>30</sup> henceforth referred to as NABAN.

b) Foundation

NABAN was founded to implement Article 18 of Law dated 16 March 1803 / *Loi du 25 ventôse an XI contenant organisation du notariat 16 MARS 1803*. The foundation of NABAN required the parties in charge of data protection and performing tasks according to Article 38 and 39 of the Regulation (UE) 2016/79.<sup>31</sup> The persons in charge of NABAN<sup>32</sup> must declare an undertaking in writing to respect the confidentiality of personal data.<sup>33</sup>

The foundation of NABAN<sup>34</sup> is intended to record, store, and manage authentic data to ease the legal tasks notaries have to perform and the operational management of notarial archive. The persons in charge of the operation of notarial deed bank are authorized to process copies and data that have been dematerialized<sup>35</sup> and stored in NABAN.

c) Numbering

Upon records of all electronic copies of conventional notarial deeds in NABAN, all notarial deeds recorded are labelled with unique numbers for references, or known as NABAN Number.<sup>36</sup> These numbers are reported to the notary concerned. The NABAN numbering structure is determined by the persons in charge of NABAN and they must not contain any personal data.<sup>37</sup>

d) Storage Period

The storage period of electronic copies of notarial deeds in NABAN is exactly as the period of the storage of those deeds, as governed in *Loi du 25 ventôse an XI contenant organisation du notariat 16 MARS 1803* explaining that the period is 50 years.<sup>38</sup> Upon the expiry of this period, the storage is guaranteed by the state archive.<sup>39</sup>

e) Access to Electronic Copies and Data

The parties authorized for access to electronic data in notarial deed bank are:

<sup>30</sup> Belge, "16 MARS 1803. - Loi Du 25 Ventôse an XI Contenant Organisation Du Notariat." (1803), <http://www.ejustice.just.fgov.be/eli/loi/1803/03/16/1803031601/justel>.

<sup>31</sup> Notarial Federation of the Monarchy of Belgium / *de Koninklijke Federatie van het Belgisch Notariaat*, see Article 1 2° Belgium, *Koninklijk besluit houdende de invoering van de Notariële Aktebank*.

<sup>32</sup> Notarial Federation of the Monarchy of Belgium / *de Koninklijke Federatie van het Belgisch Notariaat*

<sup>33</sup> See Art. 4 Belgium, *Koninklijk besluit houdende de invoering van de Notariële Aktebank*.

<sup>34</sup> See Art. 3 Belgium.

<sup>35</sup> Digitalized.

<sup>36</sup> See Art. 5 Belgium, *Koninklijk besluit houdende de invoering van de Notariële Aktebank*.

<sup>37</sup> See Art. 6 Belgium.

<sup>38</sup> See Art. 62 Belge, 16 MARS 1803. - *Loi du 25 ventôse an XI contenant organisation du notariat*.

<sup>39</sup> See Art. 6 Belgium, *Koninklijk besluit houdende de invoering van de Notariële Aktebank*.



1. Notaries storing the documents in NABAN. The access they gain includes storage, completion, and correction of data and documents related to the execution of the notaries' legal tasks;<sup>40</sup>
2. Applicants and parties directly related to notarial deeds stored in NABAN. The access is only restricted to observing/reading notarial deeds stored electronically.<sup>41</sup>

f) Request and Registration of Notarial Deeds

Dematerialized copies must be kept by notaries and recorded in NABAN within five days.<sup>42</sup>

g) Storage in *Notariële Aktebank*

The mechanism of the storage in NABAN involves the following:

1. Copies have been dematerialized and the attachments must be kept in compliance with the provisions set forth in *Loi du 25 ventôse an XI contenant organisation du notariat 16 MARS 1803* and Article 32 of the Regulation (UE) 2016/679, in a certain condition where integrity, authenticity, confidentiality, and legibility, accessibility, and widespread availability in information life cycles are guaranteed.<sup>43</sup>
2. The management of NABAN:
  - i. Provide at least two spaces for notarial deed bank where all dematerialized copies are stored in NABAN so that sustainable storage of intangible copies can be guaranteed at all time.<sup>44</sup>
  - ii. Take all necessary measures to ward off any likelihood of data modification during the storage, consultation or transfer, but not for any possible changes that come with the carriers or in electronic format;<sup>45</sup>
  - iii. Take all necessary measures to guarantee the safety of the data transferred to NABAN and ensure that the data are not accessed by an unauthorized party;<sup>46</sup>
  - iv. Take all necessary measures to detect destruction or modification of stored data, either normal or counterfeit ones, and ensure that the parties in charge of the destruction or modification are identified and dated. Information registration regarding the transaction storage takes the whole period of data storage, especially allowing the management of NABAN to fulfil their obligation governed under the provision number 3, to work with authorities in judicial or administrative investigation, or to detect any anomalies.<sup>47</sup>
  - v. Take all necessary measures to detect invalid consultation and to respond to the request of related parties by identifying the parties having consultation regarding notarial deeds, the details of person identification of the consultation, consultation duration, and the reasons of the consultation. The data are stored for ten years following the consultation. In case of disputes, this period is adjourned to the time when no options are left.<sup>48</sup>
  - vi. Take all necessary measures to protect the stored data from any intentional or unintentional damage, counterfeit, and theft;<sup>49</sup>
  - vii. Take all necessary measures to prevent unauthorized access to devices, communication systems, and carriers containing the stored data;<sup>50</sup>

<sup>40</sup> See Art. 13 Belgium.

<sup>41</sup> See Art. 14 Belgium.

<sup>42</sup> See Art. 18 Belge, 16 MARS 1803. - *Loi du 25 ventôse an XI contenant organisation du notariat.*

<sup>43</sup> See Art. 22. § 1 Belgium, Koninklijk besluit houdende de invoering van de Notariële Aktebank.

<sup>44</sup> See Art. 22. § 2 1° Belgium.

<sup>45</sup> See Art. 22. § 2 2° Belgium.

<sup>46</sup> See Art. 22. § 2 3° Belgium.

<sup>47</sup> See Art. 22. § 2 4° Belgium.

<sup>48</sup> See Art. 22. § 2 5° Koninklijk besluit houdende de invoering van de Notariële Aktebank.

<sup>49</sup> See Art. 22. § 2 6° Koninklijk besluit houdende de invoering van de Notariële Aktebank.

<sup>50</sup> See Art. 22. § 2 7° Koninklijk besluit houdende de invoering van de Notariële Aktebank.

- viii. Provide procedures to respond to incidences and restrict consequences;<sup>51</sup>
- ix. Provide systems to communicate stored readable data requested by users;<sup>52</sup>
- x. Take all measures to permanently destroy data that—under any conditions- can no longer be stored in NABAN, so that the data concerned cannot be wholly or partially reconstructed;<sup>53</sup>
- xi. Regulate procedures to transfer intangible copies and data to state archive;<sup>54</sup>

The comparisons between the laws concerning electronic storage of notarial deeds in Belgium and the provisions in positive law in Indonesia are given in the following:

Table 1. The comparisons between laws governing electronic notarial document storage in Indonesia and those in Belgium

No.	Indicator	Positive law in Indonesia	Positive law in Belgium
1.	Appointed organization	None according to the systematic interpretation of UUJN in conjunction with UUJN-P in conjunction with Archive Law in conjunction with UU ITE	<i>Notariële Aktebank</i> , according to Art. 18 <i>Loi du 25 ventôse an XI contenant organisation du notariat 16 MARS 1803</i> in conjunction with <i>Koninklijk besluit houdende de invoering van de Notariële Aktebank</i>
	Definition of organization	None	Electronic database provided by Article 18 of Law dated 16 March 1803 <sup>55</sup> henceforth referred to as NABAN
2.	Organization foundation	None	Founded by the monarchy of Belgium
3.	Numbering	None	All notarial deeds recorded are uniquely numbered for references or known as NABAN number
4.	Storage period	None	50 years
5.	Access to electronic documents	None	Notaries, applicants
6.	Request and registration of electronic documents of notarial deeds	None	Dematerialized copies must be stored by notaries and recorded in NABAN within fifteen days
7.	Storage in Electronic Storage Organization	None	Organized by the management of NABAN

Source: Primary legal material, processed, 2022

Studying the comparisons between the laws concerning electronic storage of notarial documents according to positive law in Indonesia such as UUJN in conjunction with UUJN-P in conjunction with Archive Law in conjunction with UU ITE and those in Belgium such as *Loi du 25 ventôse an XI contenant organisation du notariat 16 MARS 1803* juncto *Koninklijk besluit houdende de invoering van de Notariële Aktebank* juncto *Code de civil Belge*, we learn that Indonesia recognizes no electronic norms that run tasks and manage electronic storage of notarial documents because of the legal loophole

<sup>51</sup> See Art. 22. § 2 8° *Koninklijk besluit houdende de invoering van de Notariële Aktebank*.

<sup>52</sup> See Art. 22. § 2 9° *Koninklijk besluit houdende de invoering van de Notariële Aktebank*.

<sup>53</sup> See Art. 22. § 2 10° *Koninklijk besluit houdende de invoering van de Notariële Aktebank*.

<sup>54</sup> See Art. 22. § 2 11° *Koninklijk besluit houdende de invoering van de Notariële Aktebank*.

<sup>55</sup> Belge, 16 MARS 1803. - *Loi du 25 ventôse an XI contenant organisation du notariat*.

concerning electronic storage of notarial protocols in the positive law in Indonesia. The digitalization of documents into electronic ones is recognized in Archive Law on the grounds of anticipation but not in UU ITE, UUJN in conjunction with UUJN-P. The establishment of the norm of Notarial Deed Bank in Indonesia like in Belgium can depart from this absence of the electronic norm/organization in charge of the storage of notarial deeds.

The provisions of *Koninklijk besluit houdende de invoering van de Notariële Aktebank* that provides access to electronic documents in *Notariële Aktebank* indicates that the norm of *Notariële Aktebank* meets the principles that require electronic documents and/or electronic information to be accessible and displayed as governed in Article 6 of UU ITE. Several regulatory provisions also deal with numbering, request, and registration of notarial deeds, as in a quo provision, showing that the norm of *Notariële Aktebank* meets the requirements implying that the entity of electronic documents/electronic information can be guaranteed and accountable. Therefore, the regulatory provisions regarding notarial deed bank in Indonesia should at least consist of 7 (seven) indicators as detailed in the above Table:

- a) Appointment of an authorized organization to manage the systems of the electronic storage of notarial protocols, including the definition of the organization;
- b) The foundation of the organization;
- c) Numbering electronic notarial protocols;
- d) The period of electronic notarial protocol storage;
- e) The provision and approval of accessibility to electronic notarial protocols;
- f) Request and registration of electronic notarial protocols;
- g) Electronic notarial deed storage;

The absence of these 7 indicators in the positive law in Indonesia triggers the need to improve the laws such as UUJN-P in conjunction with Archive Law to accommodate electronic notarial protocols as part of state archive and the appointment of an organization to execute electronic notarial protocol storage and the making of new law as to legitimate the organization appointed to be responsible for the electronic storage of notarial protocols in Indonesia.

### **Conclusion**

1. There is a legal loophole in positive law in Indonesia concerning the electronic storage of notarial protocols, and, thus, measures to develop positive law in Indonesia need to be taken into account to review existing laws concerning the electronic storage of notarial deeds in Belgium. Moreover, amendments to UUJN-P and Archive Law are deemed to be necessary to support the legitimation of the existence of electronic storage of notarial protocols as state archive.
2. Unlike in Belgium, the positive law in Indonesia recognizes no organization serving as central electronic database to house the notarial products electronically. Therefore, the improvement of positive law in Indonesia could refer to *Notariële Aktebank* in Belgium that at least has 7 indicators regulating the storing organization and the electronic storage of notarial protocols.

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