Preparation and Obstacles of Notary Position in Facing The Society 5.0 Era on Making of Notary Deeds

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Abstract

This writing discusses the preparations and obstacles to the position of a Notary in facing the era of society 5.0 regarding the making of a Notary deed. A notary deed is an authentic deed made by or before a notary according to the form and procedure stipulated in Law Number 2 of 2014. According to Article 1868 of the Civil Code, an authentic deed is a deed made in a form determined by law or before the authorized public official at the place where the deed was drawn up. This gives an indication that a deed drawn up by a Notary as a public official can be said to be an authentic deed if it fulfills the requirements as described in that article. The entry of the era of society (society) 5.0 in Indonesian society causes the need for an adaptation for Notaries in Indonesia in terms of meeting the needs of people affiliated with technology, especially in making authentic deeds. Initially the use of technology such as the use of video conferencing, electronic signatures, electronic identity card verification tools and liveliness test systems was considered the answer for notaries in terms of meeting the public's need for making authentic deeds, especially in dealing with technological developments that enter into all aspects of human life. However, Indonesia as a constitutional state has a passion to always ensure justice and legal certainty, causing all actions taken by a legal subject to be based on the law that governs it. In this case there are obstacles in the use of video conferencing, electronic signatures, electronic KTP verification tools and liveliness test systems due to the absence of a legal basis that becomes a legal umbrella for their use in making notarial deeds. The concept of facing using these technological developments cannot be equated with being physically present as explained in the Notary Office Law.

I. Introduction

Humans as living beings who are endowed with reason, will continue to struggle to maintain and improve the quality of their welfare. This can be seen from the role of technology which continues to be developed to provide convenience for all aspects of human life. The development of this technology can be seen from the

birth of Era Society 5.0 or better known as Era Society 5.0. The presence of Era Society 5.0 causes all centers of human life to be based on technology based

In Era Society 5.0, it can be said that almost all aspects of human life related to human performance and productivity will be optimized by utilizing existing technological developments. The existence of Era Society 5.0 in human life has led to the creation of a human condition that is getting closer to technology, moreover the expanding needs of all human beings in all countries have caused the use of technology to become a key to solving problems experienced due to the continuous expansion of human needs. The large volume of human needs that must be met at the same time has eroded the accuracy of fulfilling human needs from all areas of life, without exception in the field of law, especially in the position of Notary.[1]

Dr. I Made Pria Dharsana argues that the rapid development of technology which is considered to be a disruption for notary service activities causes a notary to be forced to make changes and dare to adapt because of digital transformation. 2 This is due to the urgency for utilizing technological developments in the position of Notary so that a Notary bearer can consistently provide services to the community as a public official in line with the entry of society into Era Society 5.0 in Indonesia.

In terminology, the blending of technological developments with the position of a Notary can be referred to as a Cyber Notary. The concept of Cyber Notary itself is a manifestation of technological advances for Notaries to make authentic deeds in cyberspace and carry out their duties as public officials. Notary deed, namely in the form of making a Notary deed using electronic media (confronting using video conferencing) and without the use of paper (paperless). In the entry of the public into the Era of Society 5.0, the use of technology in the position of Notary can be seen not only from the making of minutes of meetings by the Notary through video conferencing, but also in the use of scanner technology or also known as an electronic KTP reader or E-KTP reader, the use of marks electronic hands, and the use of a liveliness test system in making a Notary Deed are considered to be able to improve the quality of public services that can be provided by a Notary in dealing with technological and societal developments in Era Society 5.0.

Nevertheless, problems also arise in the use of technology in the formation of notarial deeds because there is a contradiction, especially in the Law on Notary Office, especially in Law Number 2 of 2014 which explains that a "notarial deed is an authentic deed made by or before a notary according to the forms and procedures stipulated in the Law"4 and Article 16 paragraph (1) letter m Law

[1] Kie, Tan Thong. *Studi Notariat dan Serba Serbi Praktek Notaris, Ichtiar Baru VanHoeve*. Jakarta, 2007.

Number 2 of 2014 which expressly provides an order containing the obligation for a Notary to read out the deed he made before the appearer. These two things in the Notary Office Law are considered to be obstacles and obstacles to the use of technology for a Notary position in making a Notary deed.[2]

The problems above occur because basically Indonesia is a rule of law country, in which everything must have a legal basis so that it can provide legal certainty for the community, moreover the position of Notary is a position that is appointed and sworn in to comply with all laws and regulations applies to the position of Notary. Even so, there seems to be some concern Law Number 2 of 2014 which indirectly gives hope for influence over the use of technology and the opening of Notary positions for technological developments, namely as a Cyber Notary. This can be seen in the phrase "other authorities" possessed by a Notary as stated in the explanation of Article 15 paragraph (3) of Law Number 2 of 2014 as a statutory regulation that provides authority as well as limitations for the position of Notary.[3]

Law has a necessity to continuously develop along with the times as the existence and manifestation of all the ideals of society to accommodate all new developments. The law does not only have a function as justification or enforcement, but the law must appear in harmony with developments in society. The law that lives in the community must be able to play an active role as a tool of social engineering, where the law is expected to move society towards better changes. 5 This view is the same as the position of a Notary as an official who provides public services. to the people who are regulated and mandated directly by the Law on Notary Office as the law that applies to the position of Notary Public, it is appropriate that it must continue to develop to keep up with the times, especially technological developments that existed in the era of society 5.0 (society 5.0). The development of the Notary's position must be in line with the expectation that the law will always run in harmony with the development of society.[4]

In connection with the description of the problem above, a question arises whether the use and utilization of technology can be used in the formation of notarial deeds in Indonesia as a form of preparation for notaries to face the era of society 5.0 (society 5.0). Therefore, the author feels interested in discussing and conducting an analysis related to the preparation and constraints of a Notary's

[2] Makarim, Edmon. *Notaris dan Transaksi Elektronik: Kajian Hukum Tentang Cyber NotaryAtas Electronic Notary*. Depok: Raja Grafindo Persada, 2020.

[3] Arif, Yuddin Chandra Nan. "Dimensi Perubahan Hukum Dalam Perspektif Sistem Hukum Terbuka." *Jurnal Kajian Hukum dan Keadilan* (2013). Hlm. 114.

[4] Manan, Abdul. *Aspek-Aspek Pengubah Hukum*. Jakarta: Kencana, 2006.

position in facing the society 5.0 era of making a Notary deed.

II. Research Method

This study uses a form of juridical-normative research, namely research conducted on written positive law. In this study, theoretical matters will be examined and interpreted based on laws and regulations, then used to find out how the preparation and constraints of a Notary's position in facing the society 5.0 era are related to the making of a Notary deed.

This study uses interviews as a data collection tool used to find primary data and document study as a data collection tool used to find secondary data. The author will conduct interviews with legal practitioners to obtain data related to the preparation and obstacles to the Notary's position in facing the society 5.0 era of making Notary deeds. This research is looking for data secondary school at the National Library, Documentation and Legal Reference Center, Faculty of Law, University of Indonesia, and related official sites.[5]

The secondary data that the author will use consists of:

1. Primary legal materials, namely legal materials that bind the community. This primary legal material consists of basic norms or rules, namely the Preamble to the 1945 Constitution and MPR Decrees; Laws and regulations consisting of laws and other laws and regulations; legal materials that are not codified; jurisprudence; tracts; and legal materials from the colonial era, such as the Criminal Code. The primary legal materials used in this study are the Law of the Republic of Indonesia Number 30 of 2004 concerning the Office of a Notary Public, Law Number 2 of 2014 concerning Amendments to the Law Law Number 30 of 2004 concerning the Position of Notary Public, Law Number 11 of 2008 concerning Information and Electronic Transactions, several related regulations, and also the doctrines of experts.
2. Secondary legal materials, namely legal materials that provide explanations regarding primary legal materials, such as draft laws, research results, works from legal circles, etc. The secondary legal materials used in this research are research results in the form of research reports , scientific journals and articles, theses, and dissertations, as well as other literature related to research.
3. Tertiary legal materials, namely legal materials that provide instructions or explanations of primary sources or secondary sources, for example, dictionaries, encyclopedias, etc. The tertiary legal material used in this

[5] Cahya, Deby Nurdiansyah, Erfan Achmad Dahlan dan M. Fauzan Edy Purnomo."Implementasi Video Conference Pada Jaringan HSUPA (HIGH SPEED UPLINK PACKET ACCESS) Dengan Media IPv6 Menggunakan SIMULATOR OPNET MODELER v.14.5." Jurnal Skripsi (2013). Hlm. 2.

research is the Big Indonesian Dictionary[6]

III. Results and Discussion

Utilization of Technological Developments in Society 5.0 Era by Notaries in Making Notary Deeds

Notaries who are public officials must always provide public services to the community in terms of making Notary Deeds in line with the times which is constantly changing. The entry of Indonesian society in Era Society 5.0 caused all human activities to be centered on the use of technology to carry out daily life. At present the use of technology is not only a complement but a necessity that always exists in all professions in Indonesia, without exception the Notary profession.

The opening of the Notary's position to always follow the development of society, in this case the use of technology can be seen in the Notary Office Law itself. In the explanation of Article 15 paragraph (3) of Law Number 2 of 2014 it is explained that one of them, a Notary has the authority to certify transactions carried out electronically as a Cyber Notary. The existence of this explanation proves that there is enthusiasm from legislators and notaries in Indonesia to be able to always develop and utilize technology so that in the end there is development from a conventional notary position to become a cyber notary. Notary's journey towards Cyber Notary can be started from the entry of the era of society 5.0 (society 5.0) in Indonesia. The use of technology by a Notary in making a Notary Deed can be implemented in several ways. First, the use of video conferencing and electronic signatures in making a Notary Deed. Second, utilizing the Electronic KTP verification tool and the liveliness test system to ensure the identities of the parties involved in making the Notary Deed.

The use of video conferencing in making a notary deed is considered to be able to support the making of a notary deed which was initially hindered because one or the parties were unable to attend/come to the notary's office to carry out the reading of the notary deed. In the use of video conferences such as zoom meetings, gmeets, and others in making a Notary Deed, it must be developed in such a way as based on applicable law so that in its use it can maintain and provide legal certainty for both the parties and for the Notary who uses it.[7]

Then in the use of technological developments by Notaries, it can also be seen from the application of developments from wet signatures to electronic signatures

[6] Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: UI-Press, 2018.

[7] Hudzaifah, Husnul. "Keabsahan Tanda Tangan Elektronik Dalam Pembuktian Hukum Acara Perdata Indonesia." *E-Jurnal Katalogis* (2015). Hlm. 197.

by the public in electronic transactions. An electronic signature, which is a signature that contains data in the form of electronic information on the owner of the signature, which is used as a verification and authentication tool, can be used as a substitute for wet signatures in the Society 5.0 era. The validity of this electronic signature can of course only be considered valid if it complies with the legal provisions in force in Indonesia, especially in accordance with Article 11 of Law Number 11 of 2008 concerning Information and Electronic Transactions.[8]

In the legal traffic of people's lives, the use of electronic signatures can be seen in the field of commerce, especially in electronic transactions. Electronic transactions have the characteristics of non-face to face (without meeting face to face), non-sign (not using an original signature) and without regional boundaries (an electronic transaction can be carried out by one party with another party even though each party is not in the same place). The same).Electronic signatures are signatures affixed to electronic transactions which are basically found in electronic agreements. In terms of the validity of electronic signatures in electronic agreements, in addition to referring to Article 11 Law Number 11 of 2008 concerning Information and Electronic Transactions regarding the conditions that must be met by an electronic signature, Article 1320 of the Civil Code is also a legal basis that needs to be emphasized, especially in relation to the agreement itself. Article 1320 of the Civil Code does not require the form and type of media used in transactions. Therefore, whatever form and media are agreed upon in an electronic transaction that is signed with an electronic signature, it remains valid and binding on the parties because the agreement is a law for the parties to the agreement.

In its development, services for making electronic signatures that are legally certified can be found, one of which is at electronic certificate providers (PSrE), which are the national pioneers of electronic certification providers which are directly managed by the Directorate of Informatics Application Management, Ministry of Communication and Informatics.[9] electronic signatures by PSrE are not without foundation, but are based on Minister of Communication and Informatics Regulation No 11 of 2018 concerning Implementation of Electronic Certification, PSTE Government Regulation No 71 of 2019 concerning Implementation of Electronic Systems and Transactions, and Law Number 11 of 2008 concerning Electronic Information and Transactions . [10]

[8] Putri, Anggi Astari Amelia. "Keabsahan Pembuktian Perkara Pidana Dalam Sidang Yang Dilaksanakan Via Daring (*Video Conference)* Dalam Masa Pandemi Covid-19." Syiah Kuala Law Journal (2020). Hlm. 253.

[9] Ramadhani, Virania Cahya. "Tinjauan Yuridis Menghadap Notaris Secara Video Conference Untuk Risalah Rapat Umum Pemegang Saham Menjadi Akta Notariil." Jurnal Universitas Negeri Surabaya. Hlm. 31.

[10] Subekti, Herni Ari. "Pemanfaatan Video Conference Sebagai Media Pembelajaran Interaktif Pada

IV. Conclusion

The entry of the Indonesian people in the Era of Society 5.0 has resulted in the use of technology in all aspects of human life to meet evolving human needs, without exception in the making of notarial deeds which are authentic deeds. The use of technology in making notarial deeds by a notary can be seen in the use of technological developments such as video conferencing, electronic signatures, electronic identity card readers (verification), and utilizing the liveliness test system. This of course aims to provide guarantees for the fulfillment of community needs in line with the times, especially in making notarial deeds by a notary. Basically the Notary profession is a position that must be open to technological developments both in achieving development for the Notary position itself to become a Cyber Notary and in order to provide services to the community in terms of making authentic deeds by a Notary.

The use of technology by a Notary in office in terms of making deeds cannot be realized because there is no legal umbrella that provides a basis for this, so that if it is enforced it will cause no guarantee of legal certainty in making Notary deeds by utilizing technological developments such as video conferencing, electronic signatures, Electronic KTP reader (verification), and a liveliness test system. In addition, the use of technology is deemed unable to comply with Article 1 paragraph (7) and Article 16 paragraph (1) letter m of Law Number 2 of 2014, in which the concept of facing using video conferencing and the use of other supporting technologies cannot be equated with the concept of being present physically in the making of an authentic deed by a Notary, unless there is a legal basis on which this is based. However, the notary profession is a position which is a manifestation of the Indonesian nation which must always be able to provide public services to the changing needs of the community as society enters the era of society 5.0, especially in terms of making notarial deeds. This can be started with the support from the Government of Indonesia by providing accommodation, starting from the making of regulations that are at least equivalent to the law governing Cyber Notaries to the development of more recent technology, especially in making deeds. Cyber notary. This is to support the development and progress of the Notary's position in Indonesia and to meet the needs of the community in terms of making a Notary deed by a Notary in the era of society 5.0

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