

Legal Reconstruction of Electronic Storage for Notarial Deeds Minute Based on the Value of Justice

Lydia Amelia^{1*}, Gunarto², Anis Mashdurohatun²

¹Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

²Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

DOI: [10.36348/sijlcj.2024.v07i05.001](https://doi.org/10.36348/sijlcj.2024.v07i05.001)

| Received: 26.03.2024 | Accepted: 04.05.2024 | Published: 07.05.2024

*Corresponding author: Lydia Amelia

Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

Abstract

The objectives of this research are to analyze and find weaknesses in the current regulations for storing notarial deed minutes and to find a reconstruction of regulations on the legality of electronically storing minutes of notarial deeds based on the value of justice in a constructivism paradigm with a social legal research approach method to solve research problems by examining secondary data and primary data by finding legal realities experienced in the field as well as qualitative descriptive methods, namely where The data obtained is then arranged systematically so that a comprehensive picture will be obtained, where later the data will be presented descriptively. Research results show that the Weaknesses consist of (a) Legal structure where there are no communication and informatics experts which means electronic storage of certificate minutes cannot be implemented (b) Legal substance including unclear norms in UUJN Article 15 paragraph (3) UUJN, Unclear norms in UUJN no. 2 of 2014 Article 1 number 13. Weaknesses in proving Article 1868 of the Civil Code. (c) Legal Culture, namely the difficulty for senior notaries to understand new technology and tend to stick with old technology. Therefore, the reconstruction of Pancasila values in the electronic storage of deed minutes creates an electronic notary system because it can create a product that is more accurate, relevant, economical, trustworthy, faster, and more practical. Reconstruction of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Article 1 number 7 so that the Minutes of Deed are the original Deed containing the signatures of the presenters, witnesses, and Notary, which are stored in paper form and/or in the form of an electronic document as part of the Notary Protocol. Article 16 paragraph (1) letter b becomes (1) In carrying out his office, a Notary is obliged to: b. make deeds in the form of deed minutes and/or deed e-minutes and save them as part of the Notary's protocol.

Keywords: Legal Reconstruction, Notarial Deeds, Minute, Justice Value.

Copyright © 2024 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution **4.0 International License (CC BY-NC 4.0)** which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

INTRODUCTION

A notary is a public official with the sole authority to make deeds of contracts, agreements, or decisions, which are required by law to be formulated in authenticated documents. The notary is also responsible for determining the date of the deed, for keeping it, for providing a valid grosse or copy or partial quotation of the deed; as during the making of the deed it is not assigned to other public officials and is only the exclusive task of the notary (Kurnia, 2022).

The notary's authority to make authentic deeds is regulated in Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. An authentic deed is one of the documents called deed minutes, so that the deed minutes are made and prepared

by a notary who will later become a state document/archive which must be cared for and stored carefully so that it is not lost or damaged. The obligation of a notary to keep the minutes of his own deed is regulated in Article 16 paragraph (1) letter b of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. It is explained that in carrying out his obligations the notary is obliged to make a deed in the form of minutes of deed. and keep it as part of the notary's protocol.

The storage of the minutes of the deed above is still done manually by a notary. Usually, they are put in a safe that can withstand any conditions so that the documents are not easily damaged, lost or taken by unauthorized people. In a paradigm that still relies on paper media, of course, space and relatively expensive care or maintenance work is needed to be able to secure

the notary's protocol files. Meanwhile, notaries themselves certainly have limited funds, so it cannot be assumed that they have librarians or archivists who can support them well.

The problem that currently still occurs is that the method used to store deeds can be said to be still very conventional or seems to not keep up with technological developments, so the risk of conventional storage is quite high due to the threat of disaster or natural disaster (Toebagus, 2022).

When storing Notary protocols, you need to be careful, so that they are not scattered, lost, or damaged. The obligation is to keep the Notary's protocol for up to a period of 25 (twenty-five) years, and then submit it to the Regional Supervisory Council (MPD) in the Notary's working area.

The author gives the example of almost all notaries not binding the minutes of deeds into a book containing no more than 50 (fifty) deeds as mandated in Article 16 paragraph (1) letter i. Almost all notaries said that it was difficult for them to print the paper and record it because the minutes of the deed could not be taken to the printing place because the minutes of the deed were state archives and had to be kept confidential. So the process for recording it must be carried out at the relevant notary's office.

The rapid development of information technology has influenced notarial practice in Indonesia with the term cyber notary. However, the Law on Notary Positions does not yet regulate the development of information technology-based notary protocol storage. The provisions of Article 16 paragraph (1) letter b of Law Number 2 of 2014 and its explanation only stipulate the obligations of a Notary Public in carrying out their office, namely making a deed in the form of minutes of deed and keeping it as part of the Notary's protocol in its original form to maintain the authenticity of a deed so that if there is a gross forgery or misuse, a copy or quotation can be immediately identified easily by matching it with the original.

Transitioning from conventional storage of Minutes of Deeds (paper documents) to electronic documents, of course, Notaries have the obligation to increase their skills and knowledge to be able to operate various forms of media or internet-based electronic media applications which can be a medium for Notaries to store Minutes of Deeds. *"There are several methods for digitizing Deed Minutes in relation to the Notary Protocol, namely by transferring media as regulated in archival regulations based on statutory provisions."*

By looking at the above problems, according to the author, it is necessary to study it further in a research where the problem studied are further organized into research with the following main problem:

1. What are the weaknesses of the electronic storage for notarial deeds minute in indonesia currently?
2. How is the legal reconstruction of the electronic storage for notarial deeds minute based on the value of pancasila justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Electronic Storage for Notarial Deeds Minute in Indonesia Currently

The role of the Supervisory Council and especially the Regional Supervisory Council is very important, this is because the Supervisory Council supervises and guides notaries in carrying out their duties and positions continuously as well as develops and supervises the behavior of notaries in their positions and

outside their positions as the spearhead of ensuring legal certainty and protection to the public. and parties who use the services of a notary. Supervision is a process of a leader's activities to ensure that the implementation of organizational activities is in accordance with the plans, policies, and provisions that have been set. In carrying out supervision, the Supervisory Council has the authority to provide guidance and supervision of notaries as well as carry out examinations regarding alleged violations of the behavior and implementation of the notary's office (Nurshinta, 2023).

The norms governing cyber notaries in the UUJN are unclear in their aims and objectives. Shinta Pangesti *et al.*, in their writing said that the authority which is the starting point for the cyber notary concept in Indonesia is contained in Article 15 paragraph (3) of Law JN 2/2014, which reads:

"In addition to the authority as intended in paragraph (1) and paragraph (2), the Notary has other authority as regulated in statutory regulations."

In the Explanation to the article, it is stated that: *"What is meant by "other authority regulated in statutory regulations", among others, is the authority to certify transactions carried out electronically (cyber notary), make deeds of waqf pledges, and mortgage airplanes." ... , then in a limited way what is categorized as a cyber notary is the certification of transactions carried out electronically."*

Referring to the ITE Law No.19/2016 and PP No.71/2019 concerning the Implementation of Electronic Systems and Transactions (PTSE), it states that *"Electronic Certificates are electronic certificates that contain an Electronic Signature and identity that shows the legal subject status of the parties in Electronic Transactions issued by Electronic Certification Organizers."*

If the electronic transaction certification referred to in Article 15 paragraph (3) UUJN only verifies or validates electronic data, then it is clearly not the same as the electronic certificate referred to in UU ITE No.19/2016 and PP No.71/2019, because electronic certification According to this provision, it must contain an electronic signature and be issued by the electronic certification provider. Meanwhile, Notaries do not issue electronic certificates, do not issue electronic signatures, and are not providers of electronic certification. To create an electronic signature, based on the ITE Law and PP PTSE, it must be created using an Electronic Signature Creation Device, namely software or hardware that is configured and used to create an electronic signature. Electronic Signature Creation Data consists of personal codes, biometric codes, cryptographic codes, and/or codes resulting from converting manual signatures into Electronic Signatures, including other codes resulting from developments in Information Technology.

Then in UUJN No. 2 of 2014, Article 1 number 13 defines the Notary Protocol as a collection of documents that constitute state archives that must be kept and maintained by a Notary in accordance with the provisions of statutory regulations.

The UUJN does not explain what state documents and archives are. According to the Merriam-Webster website, historically and etymologically, the Word document comes from the English document. The word document comes from the Latin documentum, which means paper or official document.

The word documentum is derived from the words docere or docile which means to teach. According to the Big Indonesian Dictionary (KBBI), a document is a written or printed letter that can be used as proof of information, such as a birth certificate, marriage certificate, or agreement letter. In general, a document is a record or capture of an event or something so that information about it will not be lost. Documents are a form of information.

Usually, the information in documents is handwritten but can also be created from images and sounds. A document can be entered into electronic form and stored on a computer. Meanwhile, the definition of archives can be found in Law Number 43 of 2009 concerning Archives. In the general provisions of Article 1 Point 2, archives are defined as records of activities or events in various forms and media in accordance with developments in information and communication technology created and accepted by state institutions, regional governments, educational institutions, companies, political organizations, community organizations, and individuals. in the implementation of social, national, and state life.

Archives Law No. 43 of 2009 regulates the definition and types of archives. Apart from that, it is also regulated in Government Regulation Number 28 of 2012 concerning the Implementation of Law Number 43 of 2009 concerning Archives. These two regulations regulate the retention period for state institution archives before they are destroyed, namely Article 48 of the Archives Law and Article 54 paragraph 3 of PP 28/2012. Archive retention is the mandatory storage period for a type of archive. Meanwhile, the notary protocol does not have a retention period. A Notary Protocol is an archive which, even though its retention has expired and has no use value, must be kept by a Notary. Substitute Notaries, Temporary Officials, Notaries holding protocols, and MPD (Articles 62-64 UUJN). This shows that the archive must be kept for an unlimited period of time, even though it is not explicitly regulated in the UUJN. Archives are stored for an unlimited time because archive documents are evidence for the parties, perhaps within fifty years the descendants of the archive owner will need them in a dispute. The storage of notary archive documents is still

manual and has not been digitized, making it difficult to store them for a long time (Riswadi, 2024).

The cessation of a person's position as a Notary is due, among other things, to retirement or death. With the death of a Notary, all his responsibilities end and the relevant Notary's protocols must be immediately submitted to the Regional Supervisory Council (hereinafter referred to as the MPD) through his heirs to then be kept by the Notary who holds the protocol that has been appointed. This information is confirmed in Article 63 paragraph (2) Law Number 30 of 2004 jo. Law Number 2 of 2014, namely: "In the event that occurs as intended in Article 62 letter a, the submission of the Notary Protocol is carried out by the Notary's heirs to another Notary appointed by the Regional Supervisory Council." The Notary Protocol is a state archive, so it must be kept and maintained by the Notary with full responsibility. Storing notarial protocols by the Notary holding the protocol is an effort to maintain the juridical age of the notarial deed as perfect evidence for the parties or their heirs regarding all matters contained in the deed. So far, minutes of deeds have been written on paper, the durability of which is very limited, even though they are stored in a place protected from natural conditions.

Currently, modern offices already use archive storage which is called paperless. A paperless office is a work environment that uses very little paper and instead switches to digital documents. The process of switching from physical paper to electronic files is known as digitization. Benefits of Implementing a Paperless Office, namely saving time in searching for documents; Space Saving; Cost Effective; Ease of Information Transfer; Environmentally friendly; and improved security (Widodo, 2019).

Then, in Notary legal culture, there is a concept of benchmark (pattern for behavior) in providing services. This has become a reference because it has been socialized and formed through a learning process with the social environment in which they live their lives. This learning process occurs through internalization and socialization in life so that it becomes cultural knowledge that is used as a guide in carrying out actions or activities, namely providing notarial services to the community.

To find out an overview of the empirical reality regarding the legal culture of Notaries in E-notary, then it must be known first that the Culture can be divided into various levels, namely national, social class, gender, and organizations that differ from one another. Each group will form and build different organizations to implement the laws that apply to the lives of each member of the organization according to their characteristics.

It is difficult for senior notaries to understand new technology and tend to stick with old technology. He gave an example: currently, there are still notaries who use Wordstar software to archive documents. Apart

from being technologically illiterate, maybe notaries feel more comfortable in written form because they can make changes according to the "orders" of the party who wants to benefit. So it is not surprising that a Notary is caught in a legal problem because the deed he made was detrimental to one of the parties. (Paramita, 2023)

2. Legal Reconstruction of the Electronic Storage for Notarial Deeds Minute Based on the Value of Pancasila Justice

A notary is an official or legal professional who is sworn to act according to the law properly so it can be said that a notary is very necessary to ensure the legality of actions and to prevent unlawful acts. Therefore, for every activity and deed, the notary can be said to be fully responsible so that the quality of the document is categorized as an authentic deed and has executorial power.

Notaries are given legal authority by the Regional Supervisory Council or the Minister to keep protocols from Notaries as referred to in Article 8 and Article 12 UUJN. In accordance with Article 16 paragraph (1) letters b and e UUJN which requires every Notary to keep the minutes of the deed as part of the Notarial protocol and requires every Notary to issue a Grosse deed, a copy of the deed or an excerpt of the deed based on the minutes of the deed at the request of the parties or experts heirs of the parties. Based on the provisions of the UUJN, it can be seen that the Protocol Keeping Notary needs to act carefully in storing every protocol handed over to him, for example by storing it in a safe place and free from the danger of theft, danger of fire, humid temperatures, and the danger of animals that can damage it. deed, so that the document is not lost, damaged, or destroyed. The Notary Protocol as defined in Article 1 number 13 UUJN is a state archive. The importance of Notarial Deeds as Authentic Deeds and Notarial Protocols is described in the General Explanation section of the UUJN, as follows, namely that a Notary is a public official who has the authority to make authentic deeds as long as the making of certain authentic deeds is not reserved for other public officials. Making authentic deeds is required by statutory regulations in order to create certainty, order, and legal protection. Apart from authentic deeds made by or before a Notary, not only because it is required by statutory regulations, but also because it is desired by interested parties to ensure the rights and obligations of the parties for certainty, order and legal protection for interested parties as well as for the community overall. As stated in the last sentence of the quote above, the Notarial Deed and Notarial Protocol not only maintain certainty, order, and legal protection for interested parties alone but also for society as a whole (Widodo, 2018).

With so many deed archives (minutes) that must be kept and maintained by notaries, this has created problems for notaries, not only for notaries who are still in their term of office but also for the next notary's

successor. Inheriting these archives will of course have an impact on the costs of running a notary office which are quite large and relatively expensive, even though this inheritance does not necessarily mean inheriting the client himself. In fact, what happens is the opposite, this will be detrimental to them. Apart from that, fulfilling requests to find documents, especially to make copies of old deeds, is a problem for notaries, because finding and re-finding documents is not easy. Especially if the old deed from the previous notary is not well maintained. Meanwhile, the legal department, which is the supervisor and partner of the notary, has not deposited the deed documents properly. They are also of course constrained by limited space and costs. Ultimately, all potential risks due to this lack of clarity are the responsibility of the notary concerned.

Notary protocols in paper form can be damaged due to the length of time the documents are stored in the safe, or due to other factors such as the notary's own negligence in storing the documents or the negligence of the notary's employees who are given the task by the notary in storing the documents in the protocol. Notary protocols in paper form are also very vulnerable to damage by unexpected events (*force majeure*) such as fire, flood, and earthquake. As happened in 2004, notaries in Aceh lost their protocol documents due to the tsunami (Habibah, 2024).

The notary's obligation to store notary protocols carried out electronically can currently be said to be a discourse from the government to be implemented because there are no implementation regulations for storing notarial protocols carried out electronically. In terms of effectiveness, the discourse on storing protocols in electronic form will make it easier for notaries in Indonesia and for the public, of course, it should not overlap or conflict with existing regulations in Indonesia, so it is necessary to study the laws and regulations in Indonesia related to storage. whether this electronic document is in conflict with or in line with regulations and laws in Indonesia.

From the explanation above, it can be understood that the transfer of protocols in electronic form is important to implement because the notary is carrying out his obligation to store these documents safely, effectively and efficiently. Compared to documents in the form of paper/letters which are susceptible to damage and are easily lost due to negligence on the part of the notary himself or the notary's employees who are assigned the task of storing the document.

Referring to the discussion above, it can be analyzed that the notarial deed regarding the implementation of a cyber notary does not have perfect evidentiary power like an authentic deed. Until now, notarial deeds regarding the implementation of a cyber notary are only considered private deeds which are

equated with documents, letters, and electronic certificates. Even though Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary has been passed, the provisions in Article 15 paragraph (3) UUJN-P state that Notaries have other authorities as regulated in statutory regulations. -invitation. In this case, what is meant by other authority regulated in statutory regulations is the authority to certify transactions carried out electronically (cyber notary) which is not the same as an authentic deed that still adheres to the provisions in Article 1868 of the Civil Code. However, if you look at Roscoe Pound's theory, law as a tool of society engineering, it is hoped that the position of law should be at the forefront of development. It is not impossible that one day, cyber notaries in Indonesia can be implemented, considering that Indonesia is currently in an era of globalization with marked developments in information and communication technology.

Thus, in order for the Notary's deed regarding the implementation of cyber notary to have authentic value and to have a legal basis, Article 16 paragraph (1) letter b of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions where the Depository Electronic notary protocols are not yet based on the value of justice because the development of information technology has influenced notarial practice in Indonesia with the term cyber notary. However, the Law on the Position of Notaries does not yet regulate the development of information technology-based storage of notary protocols, even though in storing protocols, Notaries need to be careful, so that they are not scattered, lost, or damaged. The obligation to keep Notary protocols for a period of 25 (twenty-five) years, so that the e-minute deed as part of the protocol is expected to have better archive management, including protocol storage.

CONCLUSION

1. The Weaknesses in regulations regarding the legality of storing minutes of notarial deeds electronically that are not yet based on the current value of justice in the legal structure is where the Notary Supervisory Board is the structure for supervising minutes of deeds as one of the notary protocols, namely human resources in the Regional Supervisory Council is inadequate where there are no elements from the Ministry of Communication and Information who understand cyber notaries. Then, The legal substance includes the first unclear cyber notary norms in UUJN in Article 15 paragraph (3) UUJN. Second, the unclear norms for storing Notary Protocols in UUJN No. 2 of 2014 Article 1 number 13. Third Weaknesses in proving Article 1868 of the Civil Code. Lastly, in Legal culture, it is still difficult for senior notaries to understand new

technology and tend to stick with old technology.

2. Reconstructing regulations on the legality of storing minutes of notarial deeds electronically based on justice values, namely reconstructing values and reconstructing norms in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. Value reconstruction creates an electronic notary system because it can create a product that is more accurate, relevant, economical, trustworthy, faster, and more practical. Norm Reconstruction 1). Article 1 number 7 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public so that the Minutes of Deed are original Deeds that include the signatures of the presenters, witnesses, and Notaries, which are kept in paper form and/or in electronic document form as part of the Notary Protocol. 2) reconstruction of Article 16 paragraph (1) letter b of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries so that it becomes (1) In carrying out his position, a Notary is obliged to: b. make deeds in the form of deed minutes and/or e-deed minutes and save them as part of the Notary's protocol.

REFERENCES

- Faisal. (2010). Menerobos Positivisme Hukum. Rangkang Education, Yogyakarta, p.56.
- Habibah, N., Masykur, M., & Wardhani, D. (2024). Force Majeure And Notary Responsibility: The Case of the Destruction of Deed Minutes. *Iblam Law Review*, 4, 71-80. 10.52249/ilr.v4i1.241.
- Kurnia, T. (2022). The Responsibility of The Substitute Notary for his Error in Making a Notary Deed. *Authentica*, 5, 73-89. 10.20884/1.atc.2022.5.1.220.
- Nurshinta, F., & Gunardi, G. (2023). *The Role and Responsibility of Notaries in Improving the Validity of Deeds and Legalization*. *Jurnal Indonesia Sosial Teknologi*, 4, 1719-1726. 10.59141/jist.v4i10.758.
- Paramita, S. (2023). Legalization of Cyber Notary-Based Notary Deeds as Authentic Deeds. *Authentica*, 6, 70-79. 10.20884/1.atc.2023.6.1.363.
- Riswadi, Riswadi & Situngkir, Rospita. (2024). Legal Protection of the Notary in the Production of a Notarial Deed. *Jurnal Indonesia Sosial Sains*, 5, 1372-1378. 10.59141/jiss.v5i1.940.
- Toebagus, G. W. P. (2020). The Urgency for Implementing Crytomnesia on Indonesian Copyright Law. *Saudi Journal of Humanities and Social Sciences*, 5(10), 508-514, DOI:10.36348/sjhss.2020.v05i10.001.
- Toebagus, G. W. P. (2022). Peran Integrasi Teknologi dalam Sistem Manajemen Peradilan. *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum*, 4(1). DOI: <https://doi.org/10.37631/widyapranata.v4i1.583>
- Wahyu, W., Sapto, B., & Toebagus, G. W. P. (2018). The Role of Law Politics on Creating Good Governance and Clean Governance for A Free-Corruption Indonesia in 2030. *The Social Sciences*, 13, 1307-1311.
- Wahyu, W., & Toebagus, G. (2019). Poverty, Evictions and Development: Efforts to Build Social Welfare Through the Concept of Welfare State in Indonesia. *3rd International Conference on Globalization of Law and Local Wisdom (Icglow 2019)*, Dx.Doi.Org/10.2991/Icglow-19.2019.65.