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Juridical Study of Arrangements for Authentic Deeds through Cyber Notary: Comparative Study with Japan

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Abstract This study aims to analyze cyber notary regulations in Indonesia and Japan, analyze the similarities and differences in cyber notary regulations in Indonesia and Japan and explore what benefits can be drawn from cyber notary regulations in Indonesia by using the theory of legal certainty, comparative law, legal system, and the idea of legal authority. The legal materials in this research are primary and secondary legal materials using normative research methods. According to the study, the concept of a cyber notary in Indonesia is still conceptual. At the same time, in Japan, the cyber-notary is regulated in law No 74 of 2011 concerning the Notary Act, which has differences related to Notary Organizations, procedures for carrying out cyber-notary, Certification Authority/Certified Service Providers, and witnesses.

Keywords: cyber-notary; Authentic deed; Notaryact.

INTRODUCTION

The development and progress of technology in the world have increased so rapidly that it has had various significant impacts, where people have received multiple conveniences and increased the implementation of their daily activities and activities in many fields, one of which is marked by the birth of the internet as a carrier of the world's economic system to a new chapter more popular with the term digital economics [1].

Today's electronic transactions have become part of people's lives domestically and across countries [2]. Electronic transactions are a separate trend in business interests. Its development has changed the types of transactions that exist. In ordinary transactions, there is a change in transactions from physical (money) to something tangible (paper), while in electronic transactions, transactions from physical to electronic produce electronic certificates. Electronic transactions are carried out by not bringing the parties face to face, as in doing a deed, which generally occurs [3].

Developments in information technology also affect notaries in carrying out their duties and

authority as public officials. Legal technology has been widely applied in carrying out the responsibilities and positions of a Notary/PPAT, for example, the Fiduciary Registration System through online AHU, application for letters of authorization for the establishment of legal entities and business entities through online SABH (Legal Entity Administration System) and online SABU (Business Entity Administration System) to installation Electronic Mortgage.

In connection with the increasing prevalence of electronic transactions in Indonesia, of course, the authority of a Notary in issuing certificates for transactions carried out electronically is a breath of fresh air for the perpetrators of these transactions. Because with this authority, the perpetrators of electronic commerce can certify their legal actions to have a certificate that can be used as evidence that a transaction has occurred electronically. If the notary's authority to certify transactions carried out electronically can be carried out, fraudulent acts that often happen in society can be avoided.

The authority of a Notary to certify transactions carried out electronically (cyber-notary) has created a polemic in society, especially among Nota-

ries. In Indonesia, implementing cyber-notary is still being debated and is felt as just a discourse, yet to be a necessity. Even though technology allows the role of a notary online and remotely, this cannot be done legally because there are still many other problems, such as authentication problems [4]. The term cyber-notary itself or electronic notary is two different concepts. The term electronic notary, better known as e-notary, was popularized by legal experts from countries that inherited the Continental European tradition. In contrast, the term cyber-notary was popularized by jurists who inherited the common law tradition [2].

In addition to Law No 2 of 2014 concerning the Position of Notary Public and Law No 19 of 2016 concerning Amendments to Law No 11 of 2008 concerning Information and Electronic Transactions, provisions in other laws that support opening up opportunities for implementing cyber-notary are in Article 77, paragraph 1 and paragraph 4 of law No 40 of 2007 concerning Limited Liability Companies (LLC). It states that, in addition to holding a General Meeting of Shareholders (GMS) as referred to in Article 76, it can also be held via teleconference media, video conferencing, or electronic media facilities others that allow all GMS participants to see and hear each other directly and participate in the meeting.

Even though some regulations and laws open up vast opportunities for implementing cyber-notary in carrying out the duties and powers of a notary, it must be recognized that shifting roles towards the era of cyber-notary takes work. This is due to several legal obstacles faced by notaries in their application. The problem concerns the validity or legality and strength of proof of electronic documents as a product of a cyber-notary. The issue of legitimacy or the legality aspect in the application of cyber-notary referred to is contained in the provisions of Article 1 point 7 of law No 2 of 2014 Concerning the Position of Notary Public, which states that a Notarial Deed is an authentic deed drawn up by or before a Notary by the form and procedure stipulated in this law. Then in Article 16, paragraph 1, letter m states in carrying out his position, the notary is obliged to read the deed before he appeared in the presence of at least two witnesses, or four witnesses, specifically for making a will underhanded, and signed at that time by the apparel, witness.

Where this is not by way of making a Notary deed an authentic deed which has been regulated in the provisions of Article 16, paragraph 1(m) of law No 2 of 2014, explaining that a Notary is obliged to read the deed before the appeared in the presence of two people witnesses, it means that the appearers must have a physical meeting before the notary in person (face to face). Meanwhile, as we know, cyber-notary here, the position of the apparel is not directly before the notary but through electronic means such as teleconference or video calls.

Based on the background stated above, the authors are interested in researching how cyber-notary regulations are in Indonesia and Japan and the similarities and differences between cyber-notary rules in Indonesia.

METHODS

The type of research used by the authors in this study is normative legal research. Normative legal research is legal research that uses normative legal case studies in the form of legal behaviour products. The survey's main subject is a law conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behaviour. In addition, it is said to be normative research because, in this study, the author refers to the literature and legislation relating to the problem that will be investigated to get answers to the above issues.

The research approach used to answer the problems in this study is

a) Statutory Approach. This approach studies and analyses all laws and regulations related to the studied legal issues [5]. In this study, the authors analyzed laws and regulations regarding cyber-notaries in Indonesia and Japan.

b) Conceptual approach. This approach departs from the views and doctrines of the science of law.

c) Comparative Approach (Comparative Approach). This approach is carried out by comparing a country's legal system or laws with laws from one or more other countries regarding the same matter, including court decisions. In legal comparisons, special comparisons or general comparisons can be made. Comparisons were made to discover the similarities and differences between each [6].

RESULTS AND DISCUSSION

The concept of cyber-notary in Indonesia was first embodied in law No 2 of 2014. The definition of electronic transactions, as stated in Article 1 No 2 of Law No 11 of 2008 concerning Information and Electronic Transactions, is: "Legal actions carried out using computers, computer networks, and/or other electronic media".

Implementing certification of transactions carried out electronically (cyber-notary) has a close relationship with the authenticity of a document. A certificate can clarify the authenticity of a document and the trustworthiness of an information and communication security system based on a specific classification, even though the security of electronic information or document is vulnerable to change. Some things that need to be considered in the authentication process are [7]:

1. The validity, validity or correctness of the identities of the parties where the electronic document originates, including the party sending and receiving the electronic record.
2. The authority of the party that creates, sends and receives electronic documents.
3. The validity or legitimacy of the devices or equipment used in creating, storing, transmitting and receiving electronic documents.
4. The validity or legitimacy of creating, storing, sending and receiving electronic documents.
5. Integrity or guarantee of the integrity of electronic documents

Law No 30 of 2004 concerning the Office of a Notary Public does not regulate cyber-notary matters. Whereas Law No 2 of 2014 mentions cyber-notary but does not provide a normative definition. So by including the Elucidation of Article 15, paragraph 3 of law No 2 of 2014, the provisions that are categorized as cyber-notary is the certification of transactions carried out electronically. Typically, a cyber-notary can be interpreted as the authority of a Notary electronically by utilizing information technology.

Notaries, as public officials, are given authority by law, one of which is to do authentic deeds. The granting of this authority is mentioned in the definition of a Notary in Article 1 point 1 of law No 2 of 2014. The power to do authentic deeds is reaffirmed in Article 15, paragraph 1 of law No 2 of 2014, which states that: "The notary has the authority to do authentic deeds regarding all ac-

tions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of doing the deed, save the deed, provide Grosse, copies and quotations deed, all of that as long as the making of the Deed is not also assigned or excluded to other officials or other people determined by law".

In general, deeds made or issued by a notary are divided into two different types of acts, namely:

- 1) *Relaas Deed* is a deed drawn up or issued by a notary. The deed is an authentic deed made as a form of the authority of the position's duties. In doing an act, a situation or event witnessed or all events seen or carried out by a notary can be used as the basis for doing the deed [8].
- 2) *Partij Deed* is a deed which contains a complete series of information told or explained by the appeared, which is then based on the appearer's statement. The notary confirms it as an authentic deed [9].

Cyber-notary is a concept that utilizes technological advances for notaries in carrying out their daily duties. Utilization or use of information technology by a notary in carrying out his duties and authorities can be found. For example, in making minutes of a meeting at the General Meeting of Shareholders of a Limited Liability Company by a Notary via teleconference where the deed is a type of release deed. In addition, it is also used in document digitization, electronic signing of deeds, online registration of legal entities through the Legal Entity Administration System website, and other similar matters.

Thus, *de facto*, it can be said that the cyber-notary applied to make a Notary deed does not reduce the authenticity of the act as long as it fulfills the provisions of a face-to-face meeting so that the notary can face the appearers concerned (including witnesses) and the signatures affixed to the deed must comply with the requirements of electronic signatures by statutory provisions.

The strength of proof of the deed of the General Meeting of Shareholders conducted by teleconference is the act of minutes of the General Meeting of Shareholders, and the doing of the statement of meeting resolutions having the power of proof attached to it is perfect and binding as the provisions of Article 1870 of the Civil Code [10].

The authenticity of a deed should not depend on the form determined by law but also on the public official authorized to draw up the act. The aims and objectives of the parties involving the notary as a third party in the legal actions they carry out, of course, are to obtain assistance, services, and legal opinions, which are independent and impartial and provide a guarantee of legal protection for the legal actions they carry out. This is indeed one of the obligations of a Notary in carrying out his position as stipulated in Article 16, paragraph 1 of the letter of the law No 2 of 2014, which reads: "In carrying out his position, a Notary is obliged to act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of the parties involved in legal actions".

Cyber-notary is defined as using information technology in its functions, duties and authorities as a notary. Examples of information technology in question are computers or computer networks and other electronic media such as video conferences or teleconferences [11]. Therefore, if a notary, while carrying out his/her official duties, uses and/or utilizes information technology, then this can already be said to be a cyber-notary.

In implementing cyber-notary, there is a conflict between Article 15, paragraph 3 and Article 16, paragraph 1(m) of law No 2 of 2014, which are in one rule. Article 15, paragraph 3 is the authority a notary gives to certify transactions in a cyber-notary manner. In contrast, Article 16, paragraph 1(m) explains the reading of the deed before appearers. It has been in line with the authenticity of the activities listed in article 1868 of the Civil Code.

In connection with other authorities given to notaries, namely to certify transactions using cyber-notary, the printout results of the certification can also be categorized as electronic documents where the electronic record must also fulfil the elements in article 1868 of the Civil Code regarding the authenticity of the deed.

Until now, there are still no regulations governing the cyber-notary concept. Therefore, the legal vacuum of rules relating to cyber-notary authority can have implications from various perspectives. In this case, the consequences for the absence of regulation regarding the power of a Notary over a cyber-notary can be reviewed and explained from multiple perspectives, including the legal vacuum regarding the authority of a No-

tary in doing deeds through cyber-notary and legal uncertainty.

The legal vacuum is one of the legal issues within the scope of legal dogmatics which arises apart from when the parties to a lawsuit or are involved in a debate put forward different or even contradictory interpretations of the text of the rules because of the ambiguity of the regulations themselves, or there are differences in performance of the facts [12].

Thus, based on the discussion above, Cyber Notary in Indonesia is still at the concept and implementation level, which is partial. Cyber notary regulations need to be formulated as soon as possible. Because based on the empirical reality of the urgency, it is necessary to develop rules regarding cyber-notary, that the legal needs of the community for cyber-notary are increasing every year, and there is a legal vacuum which fails to achieve one of the lawful objectives, namely legal certainty. Cyber-notary is a manifestation of legal progress in notary affairs.

Meanwhile, Japan is one of the most developed countries in the Asian region. Regarding system issues, Japan is one of the most skilled. The habit of Japanese citizens being structured and doing things quickly has made Japan one of the countries in Asia that have used a cyber-notary system since 2000. Even in the course of the inclusion of regulations regarding cyber-notary into the Notary Office Law, Japan became one of the countries legislators visited to conduct a comparative study.

Japan has given authority to Notaries, called *kooshoonin*, to do deeds electronically in Japanese. Even Japan has a special committee to handle the cyber-notary system, the Electronic Notarization Committee. Deeds are electronically made using the cyber-notary system and stored and managed by the Japan National Notary Association, an official notary professional organization in Japan like the Indonesian Notary Association.

Japan is a country that adheres to a civil law system. This system is the same as the legal system adopted by Indonesia. In its development, notaries have become known in Japan since 1886. That year, regulations regarding notaries were enacted in the Notary Execution Ordinance. At that time, Japanese notary arrangements were influenced by the French Notary Act, namely *Le Leloi Ventôse*, whose laws have existed since

1803. Later Japanese notary regulations were also influenced by Dutch law.

According to the researcher, what happened to Japan was also experienced by Indonesia because Indonesia was also influenced by Dutch law. Even though the concordance principle, Indonesia also applied Notary rules from the Netherlands before having special rules.

The rules regarding the cyber-notary system in Japan came into effect on January 15, 2002. Then not long ago, in April 2002, Japan launched a system capable of accommodating cyber-notary. In Japan, not all notaries can run the cyber-notary system. Only certain notaries can be appointed by the Ministry of Justice who can exercise cyber-notary authority (Japan National Notaries Association, 2022)

This is also stated in the Notary Act Japan Article 7, paragraph 2(1), namely: "Processes related to electronic or magnetic records, which are specified as processes to be carried out by a notary according to this Act and other laws and regulations, shall be handled by a notary designed by the Minister of Justice".

Notary authorities regarding cyber-notary are regulated in Article 1, paragraph 4 in the Notary Act Japan, namely: "Notaries have the authority to carry out the following processes upon commission from a party or any other person concerned: certified electronic or magnetic records (records made in electronic form, magnetic form, or any other form that is impossible to perceive by the human senses, which is used in information processing by computers). The same applies here that this applies only in cases of certifying electronic or magnetic records, other than those created by a government employee in performing said employee' studies".

In carrying out the authority of a notary through the cyber-notary system, it is carried out using an online application system for registration and storage operated by the Ministry of Justice. Electronic information exchange between the client and the designated notary is encrypted using SSL to prevent tampering or snooping by third parties and provide security and safety services. The Japanese Ministry of Justice has created an application that can be downloaded as a liaison between the notary and the appeared.

The procedures for cyber-notary deeds in Japan are as follows (Japan National Notaries Association, 2022).

a) A client prepares an e-document as a PDF document and executes a digital signature on the e-document.

b) A request for e-notarization is made online. For this purpose, the Ministry of Justice provides a reception page on the Ministry's website for clients of e-notarization. Application accepted, and a notary transfers this page to the e-notarization Center for notarization.

c) A notary downloads the e-document from the centre's server to his/her terminal in his/her office and examines the sit-to-see if it satisfies the requirements for notarization.

d) The notary takes acknowledgement of the e-signer (i.e., client). The client must have appeared in person before the notary. This is because of the general doctrine of physical appearance before the notary applications to e-notarization. However, as noted earlier, agents may participate in place of the principal in e-notarization.

e) When the notary is satisfied with the acknowledgement, they attach an acknowledgement certificate with his/her digital signature to the e-document and save it to a CD or other media for storage to give back to the client. The relevant Government departments issue digital certificates for notaries.

The electronic does not eliminate the obligation of the appearers to be present and sign the deed before the notary. Suppose you want to apply for the legalization of electronic documents. The notary then attaches his digital signature to the paper and saves it on a compact disc.

Such a system is consistent with the current Notary Act and the notary system, as the notary's office currently handles cyber-notary operations. In this system, it is also possible for appearers to choose the notary they use. This system seems convenient for applicants because applicants can quickly know where to send their registration. In addition, the cost of setting up a cyber-notary system will be relatively cheaper than a system where each notary office has a computer system to handle cyber-notary completely because electronic documents regarding cyber-notary are stored centrally in the centre of an electronic notary.

Similarities and differences in cyber-notary arrangements in Indonesia and Japan. The development of information technology and its relation to the implementation of the notary's posi-

tion gave rise to various kinds of responses, especially in Indonesia and Japan, which adhere to civil law, for example, the establishment of a separate Certification Authority / Certified Service Provider to support the use of electronic signatures from notaries who are members where these notaries can submit a copy of the deed made electronically. Because in implementing a cyber-notary, a notary cannot work correctly to provide solid legal legitimacy if he only works alone. The notary must be assisted and cooperate with a third party as an Electronic Certificate Operator/Certificate Authority.

Differences in cyber-notary regulation in Indonesia and Japan can be seen in the organization of notaries, procedures for carrying out cyber-notary, a Certification Authority/Certified Service Provider and witnesses. The Notary Office Law explains that a notary organization is a professional organization for the position of a Notary Public in the form of a legal entity association. The notary organization has a structure that aims to oversee the behaviour of the notary in carrying out his position as a notary, as well as implementing operational standards by the notary's code of ethics both in the notary's code of ethics and in Law No 2 of 2014 [13].

The notary organization has several facilities consisting of the Notary Honorary Council, Notary Honorary Council and Notary Supervisory Council. The Notary Honorary Council has the same authority to enforce the law internally within the notary association, in this case, implementing the notary's code of ethics. The Notary Supervisory Board has the power to issue decisions to decide on a hearing on a topic related to the notary profession that violates the code of ethics in carrying out the duties of a notary position with sanctions imposed by the Notary Supervisory Board. Meanwhile, the Notary Honorary Council has the authority to carry out the guidance of the notary and the obligation to give approval or reject the judicial process undertaken by the notary.

The Indonesian Notary Association is the only professional association for everyone who assumes and performs the duties of a Notary in Indonesia whose existence is recognized by the government as stated in Article 82 of Law No 2 of 2014. Meanwhile, there are 50 notary associations in Japan. However, Japan has one national notary organization called Nippon Koshonin Regokai. The Japanese Notary Association, or in

Japan it is called the Japan National Notary Association, joined the International Union Of Latin Notaries in 1977.

The Japan National Notary Association aims to develop a notary system and improve services and quality by providing guidance and communicating with local Notary Associations and individual notaries. The Japan National Notary Association has one president, six vice presidents, 25 directors, and two auditors. Several managing directors are selected from among the directors, and a chairman of the board of directors is selected from among the managing directors. General meetings are held once a year, and executive board meetings are held about thrice yearly.

The procedure for carrying out cyber-notary in Indonesia has yet to be implemented, so it still needs a method for carrying out cyber-notary. Meanwhile, the Cyber Notary System in Japan features various notarization services, namely:

1. Electronic Official Stamped Date. The procedure for an officially stamped date electronically is as follows.

a) The applicant must apply for an official electronic stamp date on the electronic document. The current official date stamp must be attached to a paper-based document with a signature (Article 5(2) of the Civil Code of Enforcement). Still, an officially stamped date can be attached to an electronic document without a digital signature, image, or the like. In applying for an electronic stamp date, the electronic application form and documents attached to the electronic stamp date must be submitted. It is worth discussing whether a specific digital signature must be attached to the application form to confirm the intention to file a cyber-notary.

b) The cyber-notary office accepts the application.

c) The applicant must pay a fee, and the notary must confirm the completion of the fee payment. The payment procedure should be determined in the future. It may be possible to make applicants pay a fee in advance or use an electronic payment system.

d) The notary must attach the official date and digital signature to the electronic document, send it to the applicant, and save the hash of the electronic document. The notary must maintain the deed himself if the applicant wishes. The statement for the date of the official electronic stamp

must be clearly distinguished from the idea of certification for the notary of the personal electronic document.

2. Electronic Personal Document Notary. The procedures for an electronic deed notary are as follows.

a) The applicant must file a notarized application for electronic personal documents. What kind of electronic documents can be notarized should be discussed. At a minimum, electronic documents with certain digital signatures must be notarized. But the requirements for digital signatures must be specified in such cases.

b) The cyber-notary office accepts the application.

c) The notary must confirm the existence and intentions of the parties involved by verifying the digital signature attached to the personal electronic document or some other act and checking the effectiveness of the contents of the electronic document.

d) The notary must confirm the completion of payment of fees.

e) The notary must write a statement of certification and date on the personal electronic document and attach his digital signature.

f) The notary must send a notary's electronic document with a notary's digital signature to the applicant and maintain the document's contents.

3. Compilation of cyber-notary Documents. The procedure for doing a cyber-notary deed is as follows.

a) The applicant must apply the preparation of cyber-notary documents.

b) The cyber-notary office accepts the application.

c) The notary must ensure the application's contents and the parties' intentions. The steps for confirmation purposes at this stage can be moderate.

d) The notary must prepare a draft cyber-notary deed, attach the digital signature, send it to the applicant, and direct the applicant to secure the applicant's digital signature to the draft and send the current to the notary.

e) The applicant must verify the notary's digital signature, confirm the contents of the draft, attach the digital signature to it, and send it to the notary.

f) The notary will verify the applicant's digital signature.

g) The notary must confirm the completion of payment of fees.

h) The notary must confirm the eligibility of the draft notarial deed sent and attach a certification statement, date and digital signature to the document.

i) The notary must send the applicant a cyber-notary deed with a digital signature and maintain the contents of the cyber-notary act.

4. Maintenance of Electronic Documents and Certification of Existence and Contents of Electronic Documents. The procedures for validating the existence and contents of electronic documents handled by a Notary and kept at the Cyber Notary Office are as follows.

a) Users must ask a notary to certify the existence and contents of electronic documents stored in the Cyber Notary Office files.

This service is similar to the current notary system where the notary's original documents and notary articles of association are kept by the notary so that the original documents can be issued and copies can be issued. So it seems that there is no need to keep the contents of electronic documents with official stamped dates and notarized electronic personal documents (other than the notarized deed of establishment) because these documents are not kept by a notary and are not published in the current newspaper based on a notary system.

However, in the current notary system, the Register of Notaries (Article 61 of the Notary Law) records the outline of a notarized application for personal documents. The List of Official Stamped Dates (Article 6 of the Penal Code of Enforcement Law) records the design of the application for an official date stamp prepared. However, the contents of the document itself need to be maintained. So in building a cyber-notary system, the contents of notarized personal electronic documents and electronic documents with official stamped dates must be maintained to certify their contents by extending the function of the current Register. Such systems may clarify application content and be convenient for applicants and users. Clarifying the contents of the documents will prevent disputes about the contents of the documents stored. But if there is a large amount of electronic document data, saving all

the contents of the relevant documents is almost impossible.

In such cases, only the hash of each notarized electronic personal document and document with an official date stamp may be retained. However, all contents of the document may be retained for a fee if the applicant wishes the notary to do so. The details of these services need to be discussed further, bearing in mind future service requests.

CONCLUSIONS

In Indonesia, cyber-notary is still in the conceptual stage where Law No 2 of 2014 concerning Notary Positions presents the concept of cyber-notary but has yet to provide broad opportunities for cyber-notary application. Legal certainty can only be achieved when a legal basis already regulates cyber-notary. Starting with formulating the definition of cyber-notary, authorities and responsibilities of a notary in cyber-notary, to parties who assist, supervise and even those who give sanctions and prepare sanctions for violations in cyber-notary. Meanwhile, from the notary side, it is also necessary to study the readiness of Indonesian notaries to welcome cyber-notary. In Japan, cyber-notary has been implemented as

regulated in article 1, paragraph 4 of the Japanese Notary Law.

The State of Indonesia has similarities in cyber-notary arrangements, which the notary laws of each country have regulated. However, in Indonesia, cyber-notary is still at a conceptual and regulatory level in the provisions of Article 15, paragraph 3 of law No 2 of 2014 concerning the Office of a Notary. In addition, Indonesia and Japan adhere to the civil law system (Latin notaries). As well as the countries of Indonesia and Japan that adhere to civil law have formed a separate Certification Authority/Certified Service Provider to support the use of electronic signatures from notaries who are members where these notaries can submit copies of the deeds they made electronically. Because in implementing cyber-notary, Notaries cannot work well to provide solid legal legitimacy if they only work alone. The notary must be assisted and cooperate with a third party as an Electronic Certificate Operator/Certificate Authority. Meanwhile, the differences between Indonesia's and Japan's cyber-notary arrangements lie in Notary Organization, Procedure for running a cyber-notary, Certification Authority/Certified Service Provider, and witness.

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