

## ENHANCE CYBER NOTARY FOR BUYERS ONLINE BUYING AND SALE

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### ABSTRACT

This study aims to determine the major role of Cyber Notary for a Notary in issuing Certificate Authority as an effort to protect the law for buyers in online buying and selling transactions, as well as the process of making evidence so that it can be used as authentic evidence. This research was conducted using a statutory approach and also using a conceptual approach. The type of data used is secondary data in the form of sources of legal materials. Data collection techniques used by way of literature study. The verification process requires digital forensics and can be verified through the office of the Ministry of Law and Human Rights of the Republic of Indonesia by scanning a barcode directly. The position of a Notary should accommodate and involve a Notary in issuing electronic certificates, so this role should also be regulated in the Law on the Position of a Notary. Included in the changes to the Electronic Information and Transaction Law, The position of a Notary should be recognized as a service provider in the electronics field, so that it can serve as protection for the parties in buying and selling online. The process of making evidence so that it can be categorized as authentic evidence should be regulated in law to become reinforcement and can be used as authentic evidence.

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### 1. INTRODUCTION

Science and technology are developing very rapidly in Indonesia along with the times and dynamics. Technological advances, especially in the field of telecommunications, which are currently accessible to the public using computers, laptops, and mobile phones (HP), can have an impact on various aspects of life, such as trade and law. The development in the field of information technology is the internet network (Lubbe, 1992:3-10). Internet network is a support for the development of telecommunications technology.

With the internet network, people can more easily trade via the internet. Trading activities via the internet are usually better known as e-commerce and e-business. This trading method allows people to transact using credit cards. The impact of these technological advances can affect social change which can be interpreted that people have more innovative mindsets. Based on the above, the trend of buying and selling online or e-commerce is becoming a trend in modern life (Ardoni, 2005). However, these technological advances do not only have positive impacts but can have negative impacts such as cases of fraud and identity theft as well as electronic money for its users.

The government has facilitated technological advances by issuing Law no. 11 of 2008 concerning Information and Electronic Transactions. With this law, people can feel safer in online transactions and feel they have proper legal protection. Social changes and legal changes in the field of information technology affect notaries. The application of information technology in online transactions affects the arrangement of duties and authority of a notary in making deeds.

The rapid development of online transactions expects notaries as public officials whose job is to serve the public not to miss these developments precisely. With the Law no. 2 of 2014 concerning changes to Law no. 30 of 2004 concerning the Office of a Notary, Article 15 paragraph (3) is like giving a breath of fresh air to the concept of cyber notary, as follows, "In addition to the authority referred to in paragraph (1) and paragraph (2), a notary has other authorities regulated in laws and regulations -invitation" (UUJN Article 15 paragraph (1-3)).

In this case what is meant by the author is a cyber notary that can be applied in the process of buying and selling online or e-commerce. However, to be able to implement a cyber notary in Indonesia is quite difficult. This obstacle is due to the conflict between online transaction media and notary activities which are limited by laws and regulations.

As an example of the case that the notary world is closely related to advances in technology and informatics is the practice of implementing contracts to protecting consumers and protecting databases and content or sites on a website. The imposition of unequal risk through an online purchasing system requires the buyer to pay in advance after which the goods can be sent by the seller to the buyer's address. In this case the seller does not guarantee that the goods can be received by the buyer but only guarantees the delivery of the goods.

## **2. METHODS**

The type of research in the preparation of this article is doctrinal law research. Doctrinal law is research on law that is conceptualized and developed based on the doctrine of the developer (Wignjosobroto, 2010). The research used is prescriptive research. The approach used in this study is the statutory approach and the conceptual approach. The type of data in this study uses secondary data from legal sources. The legal material collection technique used by the author is through library research. Sources of legal materials obtained were analyzed using deductive logic analysis techniques.

## **3. RESULT AND DISCUSSION**

### **3.1. Cyber Notary**

*Cyber notary* is a concept that utilizes technological advances for notaries in carrying out their daily tasks, such as digitizing documents, signing a deed electronically, holding a General Meeting of Shareholders online, and various other similar matters. Some time ago, the world of notaries has indeed socialized Cyber Notary, although until now it is still only a concept. Basically the role of a cyber notary in an e-commerce agreement can contain (Notaries and Electronic Notarization):

### **3.2. E-Commerce Agreement**

An e-commerce agreement appears when both parties have agreed on an agreement that has been made and are able to understand the rights and obligations of both parties. Electronic agreements can be said to be the same as the Civil Code if the agreement has been agreed upon by both parties regarding the object agreed upon (Desy, 2010).

The research concept is contained in article 1319 of the Civil Code which reads, "That agreements, both those with a special name and those that are not known by a certain name, are subject to the general regulations contained in the Civil Code". The law governing agreements contained in Book III of the Civil Code has an open nature where its provisions can be set aside so that they are only regulatory. The nature of openness in question is Article 1338 of the Civil Code, namely the principle of freedom of contract. In this case the freedom to contract is meant that everyone is free to determine the form, type and content of an agreement as long as it does not conflict with the applicable laws, the principles of decency and public order, and the legal terms of the agreement contained in Article 1320 of the Civil Code (KUH Perdata). Heriani, 2022).

The terms of the validity of an agreement are as follows:

- a. Agreed for those who bind themselves;
- b. The ability to make an engagement;
- c. A certain thing;
- d. A lawful reason.

Agreements is a contract, and contracts in online agreements can be made via e-mail. Online agreements via e-mail can provide convenience because the parties do not have to meet face to face or meet physically. Making an online agreement is made using computer equipment and can even use a smartphone connected via the internet network. Technological sophistication, especially on the internet network, cannot be separated from problems related to interference on the internet network which can result in e-mails not being sent, and intervention or interference by third parties on e-mail so that special security is needed.

In a contract, the parties will expect the authenticity of the contract that has been made so that it can be used as evidence if something unexpected happens. One of the legal actions that can be taken is to make the contract notarized. The problem is how far a Notary can play a role in supporting online contracts into a legally valid deed formulation so that they can provide strong and perfect evidence in the context of legal protection for the parties.

### 3.3. Online contracts

*Online contracts* can also be called E-Contract is a contract or agreement made by the parties through an electronic system. Where the laws and regulations in Indonesia and even internationally have never determined an absolute form of contract and contract format. The parties are free to determine the form of a contract that is agreed but still follows all the main conditions in the contract and has been regulated by law, namely the agreement of the contracting parties, so that the E-Contract is valid and legally binding (Aniningdyah, 2022).

Until now the concept of Cyber Notary has not been able to be fully and fully implemented, but there are still efforts to realize the concept of Cyber Notary. This is demonstrated by the existence of the concept of Electronic Notarization which has been introduced by the state of Florida, United States of America. Electronic Notarization is an activity carried out by a notary in his position of notarizing. Related to the Notary Public function where Electronic Notarization develops with the requirements that must be met in forming an authentic deed. Therefore, the term notarization is equated with the legality of signatures on electronic documents using a certain system. The United States is the only country that has implemented Electronic Notarization as evidenced by the issuance of the Electronic Signature in Global and National Commerce Act (E-Sign Act) and the Uniform Electronic Transaction Act (UETA). With the enactment of the E-Sign Act, all notaries in the United States have the authority to legalize using digital signatures (Jennifer, 2022).

### 3.4. Electronic Notarization

*Electronic Notarization* and electronic documents are no different from notarization activities carried out by notaries on conventional documents that use paper media (Jennifer, 2016). The function of Electronic Notarization is as a substitute for a notary's stamp and conventional notary's signature as a form of notarization of conventional written documents.

Until now, Indonesia does not have a law that regulates how notaries must carry out their positions through cyberspace. Notaries are currently regulated in the Notary Office Act (UUJN) which are general in nature, for this reason it is necessary to re-regulate from regulatory updates that help notaries to play a role in e-commerce. Before arriving at the description, the author will illustrate how the process of a simple electronic transaction takes place as follows. The company has a website in which there are various kinds of product information, including unit prices, payment and delivery procedures, as well as various kinds of information in it. A person named company B is interested in buying products from company A. Before buying the product, company B must fill out a purchase form that was made by company A. Then company B completes the purchase form by affixing its signature, followed by an act of payment from the purchase form agreement. Then company A will approve and follow up by sending the product ordered according to the address listed. Most of the processes in electronic transactions are carried out virtually (virtual) except for the delivery of goods and payments.

### 3.5. Important Elements in Notary Deed

Important elements in the Notary Deed are at the beginning and end of the deed where if read carefully the editorial cannot be fulfilled by the form of an e-commerce agreement so that the contract will become legally invalid if the Notary continues to do so. For example the legalization of e-commerce agreements without the presence of the parties making the agreement. The sentence referred to is, "...facing me...", and "...then immediately the appearers, witnesses, and notaries sign this deed...". If you see the sound of the sentence, if you want to make an agreement the parties must deal with a Notary. This is also emphasized in the provisions of Article 1 number 7 UUJN-P (Notary Office Act - Substitute), the use of the word facing, facing opposite,

In line with the above, the opinion expressed by Notary Hendri Final that if mere warmerking is still possible to do, but if it is to be legalized with the intention of obtaining a legal force of evidence, the parties must still appear before the Notary (Desy Minarsih, 2010, 78). At the bottom of the letter that a Notary wishes to legalize, there is a statement which reads as follows, "I am the one who signed this... The Notary here... explained that I have read and explained the contents of this letter to... whom I, the Notary know or introduced to me, the notary and after that then.... The person affixes his signature on this letter in the presence of a Notary." If following the legalization as mentioned above, then it will obscure the meaning of e-commerce itself because the principles of efficient time, cost, and effectiveness will also weaken (Desy Minarsih, 2010:78). In transactions in e-commerce, what may be difficult to account for is the formal signature of the party, where the Notary must be able to witness the signatures of the parties carrying out a transaction.

### 3.6. Certificate Authority

*Certificate Authority* or also called CA is an organization that is trusted to verify a digital certificate on a website. The purpose of this verification is none other than to ensure that the website used is safe for website users. Likewise, the owner of the website will gain the trust of its users that a website is not a random website and can be trusted.

*Certificate Authority* It can also be interpreted as when someone is going on vacation or traveling abroad, requiring an identity that is recognized internationally, namely a passport. To verify a passport, we must have done a face scan to prove whether the face matches the one in the passport book. So the officer can find out whether it is true that person or someone else is using our data or falsifying our data.

*Certificate Authority* a trusted agency will issue certificates to an organization. A trusted Certificate Authority is independent and cannot be controlled by the organization that requests it.

From this provision it can be concluded that it is not impossible in the future that authentic deeds can be made electronically, namely by involving a Notary Public who assists the position of the Certificate Authority certification body. To achieve this, it is necessary to update regulations or rules specifically for Notaries so that in the future electronic deeds can also be made in the form of authentic deeds so that they become legal and perfect evidence and Notaries can also take a bigger role in protecting buyers in buying and selling online.

## 4. CONCLUSION

For a deed of agreement or electronic contract, currently there is no role that can be performed by a Notary in making an authentic deed electronically, but the role that can be played in terms of issuing an electronic certificate together with the Certificate Authority as a third party whose validity is trusted (third party) trusted parties). However, in practice this cannot be found because there are no clear rules for Notaries. However, looking at the provisions of Article 6 of the ITE Law which states that, "In the event that there are provisions other than those regulated in Article 5 paragraph (4) which require that an information must be in written or original form, electronic informatics and or electronic documents are said to be valid if as long as the information contained therein can be accessed, displayed, guaranteed integrity, and can be accounted for so as to be able to describe a situation. The strength of proof of a notarial deed through Cyber Notary, especially in buying and selling online, based on the authenticity requirements of a deed Article 1868 of the Civil Code is that it does not have perfect proof or does not meet the requirements for the authenticity of a deed. At present, electronic deeds are only limited to private deeds which are equated with ordinary documents and letters because there are no laws governing them. based on the authenticity requirements of a deed, article 1868 of the Civil Code, is not having perfect evidence or does not meet the requirements for the authenticity of a deed. At present, electronic deeds are only limited to private deeds which are equated with ordinary documents and letters because there are no laws governing them. based on the authenticity requirements of a deed, article 1868 of the Civil Code, is not having perfect evidence or does not meet the requirements for the authenticity of a deed. At present, electronic deeds are only limited to private deeds which are equated with ordinary documents and letters because there are no laws governing them.

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