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LEGAL CERTAINTY ARTICLE 15 PARAGRAPH (3) LAW NUMBER 2 OF 2014 CONCERNING AMENDMENT TO LAW NUMBER 30 OF 2004 CONCERNING NOTARIES

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ABSTRACT

This study discusses the ambiguity of norms in Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notaries (Amendments to the Notary Law) which affect legal certainty in the regulation of the authority of a notary related to "authority others regulated in the Legislation". This provision causes confusion regarding the scope and limits of a notary's authority in carrying out his duties. This study also analyzes the impact of the ambiguity of these norms on the implementation of the authority of a notary in legalizing electronic transactions. Through a normative legal research approach, the author analyzes the relevant articles in the Notary Law and related laws and regulations to understand the legal context related to the authority of a notary. This research finds that the ambiguity of norms in Article 15 paragraph (3) creates ambiguity regarding the limits and scope of a notary's authority in terms of "other authorities regulated in Laws and Regulations". The impact of the ambiguity of this norm can be seen in the implementation of the authority of a notary in legalizing electronic transactions. Without clarity regarding the scope of this authority, notaries may face difficulties in determining whether they have the authority to certify certain electronic transactions, which in turn can affect the legal certainty in such transactions. This study suggests the need for clarification of norms in Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notaries. A clear clarification will provide clarity to notaries regarding the limits and scope of their authority in relation to "other authorities stipulated in Laws and Regulations", so as to increase legal certainty and the effectiveness of the implementation of notary powers in validating electronic transactions.

Keywords: Legal Certainty, Authority of a Notary, Article 15 Paragraph (3), Law on Notaries.

INTRODUCTION

The ambiguity of norms in Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notaries (Amendments to the Notary Law). This provision stipulates that in addition to the authority referred to in paragraph (1) and paragraph (2), the Notary has other authorities regulated in the Laws and Regulations. In the elucidation of this article it is stated that what is meant by "other authorities regulated in Laws and Regulations" includes the authority to authorize electronic transactions, make charitable pledge deeds, and aircraft mortgages.

This article raises the ambiguity of norms in Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notaries (Amendments to the Notary Law). This provision stipulates that apart from the authority referred to in paragraph (1) and paragraph (2), the Notary has other authorities as regulated in the Laws and Regulations.¹ In the elucidation of this article it is stated that what is meant by "other authorities regulated in Laws and Regulations" includes the authority to authorize electronic transactions, make charitable pledge deeds, and aircraft mortgages. This article raises the ambiguity of norms in Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notaries (Amendments to the Notary Law). This provision stipulates that in addition to the authority referred to in paragraph (1) and paragraph (2), the Notary has other authorities regulated in the Laws and Regulations. In the explanation of this article it is stated that what is meant by "other authorities regulated in Legislation" include the authority to authorize electronic transactions, make charitable pledges, and aircraft mortgages.²

The legal issue raised in this article regarding the Office of a Notary is the blurring of norms in Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notaries. so that the author will examine the problem, namely how legal certainty norms in Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notaries (Amendments to the Notary Law) affect legal certainty in regulating authority notary related to "other authorities regulated in the Laws and Regulations". and how What is the impact of unclear norms in Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notaries (Amendments to the Notary Law) on the implementation of the authority of a notary in validating electronic transactions, making deed charitable pledges, and airplane mortgages.

RESEARCH METHOD

Normative legal research methods can be used to analyze issues of legal certainty norms in Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notaries (Amendments to the Notary Law) and their impact on the implementation of authority notary in legalizing electronic transactions. The following are the steps in the normative legal research method.

Collection of related statutory legal data, including the Notary Law and its implementing regulations, as well as court decisions or expert opinions relevant to the issues studied. Identify and select legal regulations related to Article 15 paragraph (3) of the Notary Law and the arrangement of notary authorities related to "other authorities regulated in Laws and Regulations".

¹ Kadek Setiadewi and I Made Hendra Wijaya, 2020, "Legalitas Akta Notaris Berbasis Cyber Notary Sebagai Akta Otentik". *Jurnal Komunikasi Hukum (JKH)*. 6(1), h. 128.

² Fadhila Rizqi and Siti Nurul Intan Sari D., 2021, "Implementasi Cyber Notary Di Indonesia Ditinjau Dalam Upaya Reformasi Birokrasi Era 4.0" *Jurnal Hukum dan Kenotariatan*, 5(1), h. 46.

Relevant literature studies such as articles, books and journals that discuss similar topics. Analysis of expert views and legal approaches applied in the context of legal certainty and implementation of notary authority. so that by using normative legal research methods, researchers can study existing laws and regulations, analyze relevant provisions, and evaluate their impact on legal certainty and implementation of notary authority in legalizing electronic transactions.

DISCUSSIONS

1. Norm Legal Certainty in Article 15 Paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notaries

The notary's task is to provide assistance in making authentic deeds. And so, it is important for a notary to be able to understand the provisions stipulated by law so that the general public who do not know or do not understand the rule of law can understand correctly and not do things that are contrary to law.³ In this context, it is important for a notary to have a good understanding of the applicable legal regulations. This is intended so that the notary can provide a clear and accurate explanation to the general public who may not have in-depth knowledge or sufficient understanding of the rule of law. With a good understanding, notaries can assist the public in understanding the legal consequences of the actions or agreements they will enter into. In addition, the notary also has an important role in preventing actions or agreements that conflict with the law. By providing proper understanding to the parties involved, a notary can prevent the public from being at risk of violating the law or being involved in an adverse transaction. The task of a notary in providing assistance regarding making authentic deeds involves the responsibility to understand and follow applicable legal provisions. With a good understanding, a notary can provide proper explanations to the general public, so that they can understand correctly and avoid actions that are contrary to law.

Notaries have other authorities as regulated in the Laws and Regulations. In the elucidation of this article it is stated that what is meant by "other authorities regulated in Laws and Regulations" includes the authority to legalize electronic transactions (cyber notary), make charity pledge deeds, and aircraft mortgages. Notaries have other authorities as regulated in the Laws and Regulations. In the elucidation of this article it is stated that what is meant by "other authorities regulated in Laws and Regulations" includes the authority to authorize electronic transactions, make charitable pledge deeds, and aircraft mortgages.

The authority referred to in the elucidation of the article is unclear in defining and responding to notary services in filling out developments in Indonesia. The conventional notary paradigm of becoming a digital notary or known as a business notary is urgent in advancing the economy. Thus, notaries have full authority in carrying out their functions and roles as Public Officials to support public services in electronic business transactions. Notaries have the responsibility to provide assistance and support to parties involved in electronic business transactions, such as certifying electronic documents, drafting electronic agreements, and providing guarantees of legal validity for business transactions conducted electronically. The role of a notary in electronic business transactions is very important to maintain security, legitimacy and legal certainty in the digital business world. The business notary plays a role in ensuring that electronic transactions are carried out in accordance with applicable legal provisions and in providing protection to the parties involved in the transaction.

Notaries in carrying out their duties and functions, Article 15 paragraph (3) Amendments to

³ Latifah Latifah, 2021, "Tanggung Jawab Notaris Dalam Pelanggaran Kode Etik Notaris". *Jurnal Officium Notarium*, 1(1), h. 152.

the Notary Law stipulates that apart from the powers referred to in paragraphs (1) and (2), notaries have other authorities as regulated in Laws and Regulations. What is meant by "other authorities" contained in the article is that the elucidation of the article has provided a scope. Other authorities in Article 15 paragraph (3) of the Law refer to the authority that authorizes electronic transactions, makes charity guarantee deeds, and aircraft mortgages. This provision aims to make it easier for parties who live far apart, so that with the existence of a cyber notary, distance is no longer a problem. Cyber Notary is intended to facilitate or accelerate the implementation of the duties and powers of a notary in making authentic deeds of all actions or agreements or decisions required by Laws and Regulations or desired by interested parties to be stated in an authentic deed.⁴

Cyber notary is designed to facilitate and accelerate the implementation of the duties and powers of a notary in making authentic deeds of various actions, agreements or decisions regulated by laws and regulations or desired by the parties concerned to be included in an authentic deed. In practice, electronic notaries use digital technology and electronic communications to make it easier for parties involved in legal transactions to access notary services. With a cyber notary, the process of making authentic deeds can be done electronically, including data collection, identity verification, and digital signing. The scope regulated by Laws and Regulations, electronic notaries have the authority to make legally binding authentic deeds. This allows the parties involved in the transaction to obtain the same legal protection as an authentic deed made conventionally by a conventional notary. One of the main advantages of an electronic notary is the ease of access and flexibility. Parties in remote locations can access electronic notary services without having to be physically present at the notary's office. This provides time and cost efficiencies, and removes geographical constraints in carrying out legal transactions. The electronic notary has the responsibility to ensure that the process of making an authentic electronic deed still meets the requirements and provisions of the applicable law. The validity and reliability of the documents produced must also be guaranteed, so as to provide trust and legal certainty to the parties involved.

With the existence of a cyber notary, the process of making authentic deeds can be done electronically, which allows parties who are in remote locations to access notary services without having to meet physically. This provides convenience and flexibility in conducting legal transactions, especially in the context of electronic transactions which are growing rapidly. The purpose of this provision is to meet the needs of the public who are increasingly relying on digital technology and to facilitate access to notary services. so that people can take advantage of digital technology to obtain notary services in a more efficient way. They don't need to travel long distances or attend face-to-face meetings with a notary, because all processes can be done online. This makes it easier for parties who are in far-flung locations, especially in situations where a physical meeting becomes difficult or impossible. This provision is intended to meet the needs of the public who are increasingly relying on digital technology in carrying out various legal transactions. In the increasingly advanced digital era, electronic transactions are one of the ways that are commonly used in business and daily activities. Therefore, the existence of a cyber notary provides a practical and efficient solution to meet the needs of the community in accessing notary services.

The purpose of a cyber notary is to provide easy access to notary services, speed up the legal transaction process, and respond to increasingly rapid technological developments. By using an electronic notary, parties involved in legal transactions can save time and costs required in the

⁴ Devi Alincia and Tundjung Herning Sitabuana, 2021, "Urgency of Law Amendment as Foundation of The Implementation of Cyber Notary". *Law Reform*, 17(2), h. 226

process of making authentic deeds. In addition, an electronic notary can also improve the security and reliability of the documents produced, because the process is carried out electronically using a system that is recognized by law. In carrying out their duties, electronic notaries must still comply with the terms and conditions regulated by the Laws and Regulations. The validity and reliability of the documents produced must be guaranteed, so as to provide legal certainty for the parties involved in the transaction. It is important for electronic notaries to secure data and information provided by related parties, and to maintain confidentiality and privacy in the use of digital technology.

With the existence of a cyber notary, the process of making authentic deeds can be carried out efficiently and practically, without reducing the validity and reliability of the legal documents produced. In order to carry out these other authorities, a notary has the responsibility to ensure that electronic transactions are carried out in accordance with applicable legal provisions and provide legal protection to the parties involved in the transaction. The notary's responsibilities include ensuring that electronic transactions are carried out in accordance with applicable legal provisions.⁵ The notary must check and ensure that the documents made in electronic transactions meet the requirements set by the relevant laws and regulations. This aims to ensure that the documents produced have legal force, are valid and reliable. In addition, notaries also have the responsibility to provide legal protection to parties involved in electronic transactions. The notary must ensure that the rights and interests of all parties are properly maintained. This involves informing relevant parties about the legal implications of electronic transactions, as well as providing necessary advice and guidance. In carrying out their responsibilities, a notary needs to have a good understanding of the laws and regulations governing electronic transactions. They must master the digital technology used in the process of making authentic deeds, and maintain the confidentiality and security of the data involved in the transaction.

2. The Impact of Unclear Norms in Article 15 Paragraph (3) of the Notary Law on the Implementation of Notary Authority

The impact on the authority of a notary to legalize electronic transactions can be found in Article 15 paragraph (3) Amendments to the Notary Law through the writing "besides the authority set forth in paragraphs (1) and paragraph (2), notaries have other authorities. as stipulated in the Laws and Regulations ". According to the explanation, it states that other authorities that refer to the article include "electronic certification transactions". Accordingly, the existence of this provision and its explanation creates multiple interpretations of the authority of a notary which is not in line with the principle of legal certainty. The question is on the electronic transaction certified authority being equated with (cyber notary). To what extent can a notary certify in electronic transactions? Does a notary certify in electronic transactions? Fundamental question, what is the certification mechanism? Does certification in this provision mean verifying documents, validating documents or certifying documents for them? Differences in views on the meaning of certification raise context problems. The problem with this context is the absorption of foreign languages which are directly contained in a part of the law. The grammatical interpretation in the context of electronic transaction certification (cyber notary) is stated to be inconsistent with the juridical basis.⁶

According to the theory of legal certainty put forward by Soedikno Mertokusumo states

⁵ Cyndiarnis Cahyaning Putri and Abdul Rachmad Budiono, 2019, "Konseptualisasi Dan Peluang Cyber Notary Dalam Hukum". *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 4(1), h. 31.

⁶ Alincia and Sitabuana, *Op, Cit*, h.228.

that legal certainty is a justifiable protection against arbitrary actions, which means that a person will be able to obtain something expected in certain circumstances.⁷ So that when it is related to the provisions of Article 15 paragraph (3) Amendments to the Notary Law that the ambiguity contained in the norm will lead to an arbitrary action due to the uncertainty of the rule of law, therefore an interpretation that is not based on law will arise which will later will castrate what is the ideal of law. so that the legal consequences of legal norms are unclear or vague, this can hinder legal ideals that should protect certainty and justice. Uncertainty about the rule of law can affect public confidence in the legal system and can trigger arbitrary actions. Therefore, it is important for the legal norms governing the authority of a notary to be interpreted clearly and consistently so that there is no abuse of power or violation of justice. In an effort to maintain legal certainty, the government and related institutions need to evaluate and improve legal provisions that have ambiguity. This can be done through improving the laws and regulations governing the authority of notaries, so as to provide clarity and certainty for legal actors, including notaries. With clear provisions, a notary can carry out his duties and authorities appropriately and in accordance with applicable legal principles, and prevent arbitrary actions from occurring in the performance of a notary's duties.

Legal ideals can be understood as a construction of the mind which is a necessity to direct law to the ideals desired by society. Moreover, law as a system is very necessary for Indonesia as a developing country. Gustav Radbruch argues that the legal ideal serves as a benchmark that regulates and builds. Without legal ideals, legal products will lose their meaning.⁸ Therefore, from the description above, it is necessary to reformulate the wording of Article 15 paragraph (3) Amendments to the Notary Law. The "other authorities" in authorizing electronic transactions should be mentioned in the article itself and not in the explanation. Certification is not intended to provide certificates, but to strengthen electronic transactions so that multiple interpretations do not occur in the future regarding the elucidation of Article 15 paragraph (3). so it is necessary to reformulate the wording in Article 15 paragraph (3) Amendments to the Notary Law. The term "other authority" which refers to the authorization of electronic transactions should be clearly stated in the article and not in the explanation of the article. The aim is to avoid multiple interpretations in the future regarding the elucidation of Article 15 paragraph (3). Certification in this context is not intended to provide a certificate, but rather to strengthen the validity of electronic transactions so that there are no doubts or various interpretations of the elucidation of this article in the future. With clearer and firmer reformulations in legal regulations, it is hoped that this will create legal clarity and certainty, as well as strengthen the legal basis for notaries in carrying out their duties and authorities related to electronic transactions.

The impact of changing the clause in the norms of Article 15 paragraph 3 becomes "The authority of a notary as a trusted third party in strengthening transactions carried out electronically". Notary as a trusted third party in electronic transactions is a form of transaction that is non-face and non-sign (no face to face and no signature). This transaction is paperless (no written documents), borderless (no geographic boundaries) and the parties making the transaction do not need to meet in person.⁹ In this case, transactions are stated as methods of communication and information storage that use alternative media beyond things written on paper (information or documents written on paper). Electronic transactions are forms of transactions that do not involve

⁷ Denny Fernaldi Chastra, 2021, "Kepastian Hukum Cyber Notary Dalam Kaidah Pembuatan Akta Autentik Oleh Notaris Berdasarkan Undang-Undang Jabatan Notaris", *Indonesian Notary*, 3(2), h. 256.

⁸ *ibid*, h. 258.

⁹ I Putu Suwantara and Putu Angga Pratama Sukma, 'Konsep Cyber Notary Dalam Menjamin Keautentikan Terhadap Transaksi Elektronik' [2021] *Acta Comitatus*, 6(1), h. 179.

direct meetings between the parties. This transaction is carried out non-face and non-sign, meaning that there is no physical face-to-face or signature. In this case, electronic transactions do not involve conventional written documents, but use alternative media for communication and information storage. In the role of a trusted third party, a notary has the responsibility to ensure the legitimacy and reliability of electronic transactions. The notary verifies and validates the transaction by referring to the applicable legal provisions. Thus, the presence of a notary in electronic transactions provides trust and legal guarantees to the parties involved. The change in this clause reflects legal adaptation to technological developments and people's needs in conducting electronic transactions.¹⁰ It also provides an opportunity for notaries to play an effective role in strengthening electronic transactions and providing legal certainty in an increasingly digital environment.

The impact on cyber notary relations in providing legal certainty and legal justice for the parties in making agreements and so that the contract is valid according to Article 1320 of the Civil Code. without boundaries (no geographic boundaries) and the parties to the transaction do not need to meet in person. In this case, transactions are stated as methods of communication and information storage that use alternative media beyond things written on paper (information or documents written on paper). Cyber notary relations in providing legal certainty and legal justice for the parties in making agreements and so that the contract is valid according to Article 1320 of the Civil Code. without boundaries (no geographic boundaries) and the parties to the transaction do not need to meet in person. In this case, transactions are stated as methods of communication and information storage that use alternative media beyond things written on paper (information or documents written on paper). Cyber notary relations in providing legal certainty and legal justice for the parties in making agreements and so that the contract is valid according to Article 1320 of the Civil Code.

CONCLUSION

Legal uncertainty Article 15 paragraph (3) Amendments to the Notary Law stipulate other notary powers by mentioning the words electronic transaction certification which are equated with the tendency of cyber notaries to obscure the notary's meaning. so the government needs to reformulate it by defining the phrase "other authority" which is specifically related to electronic transaction certification as a means to strengthen electronic transactions in the article itself and not an explanation to avoid multiple interpretations. In addition, the government is also encouraged to provide infrastructure and human resources by granting permission to notaries as Sub CAs (Certification of Authorities) so that electronic documents as agreements between the parties related to electronic signatures can have valid means of proof in their original form.

The main impact of the ambiguity of this norm is the lack of legal certainty in carrying out electronic transactions that require notary approval. Notaries may face difficulties in determining whether they have the authority to certify certain electronic transactions. This can create uncertainty for the parties involved in the transaction, hindering efficiency and trust in the business environment. To overcome this negative impact, it is necessary to clarify the norms in Article 15 paragraph (3) of the Notary Law. A clear clarification regarding the limits and scope of a notary's authority in relation to "other authorities regulated in laws and regulations" will provide clear guidelines for notaries in carrying out their duties. This will increase legal certainty in implementing the authority of a notary in legalizing electronic transactions, thus facilitating the

¹⁰ Syamsul Bahri, Annalisa Yahanan and Agus Trisaka, 2019, "Kewenangan Notaris Dalam Mensertifikasi Transaksi Elektronik Dalam Rangka Cyber Notary" *Repertorium*, 17(1). h. 226.

growth and development of the business sector that relies on electronic transactions.

Reference:

- Cyndiarnis Cahyaning Putri and Abdul Rachmad Budiono, 2019, "Konseptualisasi Dan Peluang Cyber Notary Dalam Hukum". *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 4(1).
- Denny Fernaldi Chastra, 2021, "Kepastian Hukum Cyber Notary Dalam Kaidah Pembuatan Akta Autentik Oleh Notaris Berdasarkan Undang-Undang Jabatan Notaris", *Indonesian Notary*, 3(2),.
- Devi Alincia and Tundjung Herning Sitabuana, 2021, "Urgency of Law Amendment as Foundation of The Implementation of Cyber Notary". *Law Reform*, 17(2),
- Fadhila Rizqi and Siti Nurul Intan Sari D., 2021, "Implementasi Cyber Notary Di Indonesia Ditinjau Dalam Upaya Reformasi Birokrasi Era 4.0" *Jurnal Hukum dan Kenotariatan*, 5(1).
- I Putu Suwantara and Putu Angga Pratama Sukma, 'Konsep Cyber Notary Dalam Menjamin Keautentikan Terhadap Transaksi Elektronik' [2021] *Acta Comitatus*, 6(1),.
- Kadek Setiadewi and I Made Hendra Wijaya, 2020, "Legalitas Akta Notaris Berbasis Cyber Notary Sebagai Akta Otentik". *Jurnal Komunikasi Hukum (JKH)*. 6(1).
- Latifah Latifah, 2021, 'Tanggung Jawab Notaris Dalam Pelanggaran Kode Etik Notaris'. *Jurnal Officium Notarium*, 1(1),.
- Syamsul Bahri, Annalisa Yahanan and Agus Trisaka, 2019, "Kewenangan Notaris Dalam Mensertifikasi Transaksi Elektronik Dalam Rangka Cyber Notary" *Repertorium*, 17(1)..