

The Urgency of Electronic Notary Protocol Storage in E-Notary Perspective



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ABSTRACT: The more advanced times and technology oblige all elements in society to also participate in these developments, including in the context of the legal field, especially in the field of Notary Public, namely the electronic storage of Notary Protocols. However, there is still no regulation that clearly, unequivocally, and concretely regulates the electronic storage of Notary Protocols in positive law regarding notary affairs in Indonesia, resulting in a legal vacuum (vacuum norm). So, the purpose of this legal scientific research article is to analyze whether the urgency of storing Notary Protocols electronically in the perspective of e-notary and how the legal certainty of storing Notary Protocols electronically in Notary Law. The legal scientific research article method used is a general method, namely the normative legal scientific research article method. So that the results of this legal scientific research articles are first, there is no certainty about how to maintain and store the Notary Protocol to be prone to damage, loss and destruction when stored conventionally, even though in terms of urgency, electronic storage of Notary Protocols is very important to make it easier for Notaries, both in terms of economics and law. Second, the implementation of E-Notary cannot be implemented because there is no legal certainty in the form of laws and regulations that specifically regulate services by Notaries in electronic form. So that there is a need for more specific rules that strictly regulate the mechanisms and responsibilities of Notaries in carrying out their duties and authorities in storing Notary Protocols and it is hoped that the government can create a legal umbrella regarding matters related to technology in the notary world in Indonesia.

KEYWORDS: Protocol Storage, Notary, E-Notary.

A. INTRODUCTION

Electronic media becomes a separate world or has its own peculiarities, this is because electronic media has a nature that is independent of locus or tempus states, universal in the sense of covering the whole world and abstract.¹ Not spared in the field of law is one of the aspects affected or affected, more specifically in the context of this study is a general official or public official who is authorized to provide a public service in a civil context, namely Notary. There are many countries that have implemented an electronic or electronic-based system for public or public officials, namely Notaries, both those who have a *civil* law legal system based on a positivistic legal system and common law based on a socio-legal legal system. So based on this premise, it explains implicitly or explicitly and unequivocally that Indonesia is also a country that must participate in implementing the system of Notaries as stipulated in positive law or *ius constitutum* based or electronically.² The advancement of a civilization based or electronically in various fields, has an impact on all fields in human life, one of which is the impact on the field of law, more specifically the impact on the field of notary. Law Number 30 of 2004 concerning Notary Position juncto Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position has not provided a norm specifically and concretely with the development of notarial services based or in the form of technology, especially related to the storage of Protocol from Notaries. In the Notary Law itself, regulations related to the responsibility of Notaries are regulated expressly and straightforwardly in Article 65. In the context of the Notary's responsibility to a deed submitted to the party who keeps a Notary Protocol, that a public or public official in a civil context, namely in this context, is a Notary Public fully responsible for every deed he makes, even though the Notary Protocol has been fully handed over to the depositor of a Notary Protocol. So that the meaning substantively and materially explains that the responsibility of a public or public official, namely a Notary, is closely related to the storage of the entire Notary Protocol that he owns.

¹ Mariam Darus Badruzaman, *Mendambakan Kelahiran Hukum Saiber (Cyber Law) di Indonesia* (Medan: Pidato Purna Bhakti, 2001).

² Edmon Makarim, *Notaris dan Transaksi Elektronik, Kajian Hukum tentang Cybernotary atau Electronic Notary* (Jakarta: Rajawali Pers, 2013).

The Urgency of Electronic Notary Protocol Storage in E-Notary Perspective

In Indonesia, the practice of archiving carried out to date as based on positive law or *ius constitutum* which regulates related to Notaries as public officials or public officials authorized to do so in the civil context, is still based on conventional, which is stored manually and in the form of physical paper. Article 16 (1) of UUJN explains clearly and straightforwardly that the deed minuta is one form of product or legal document that must be kept by a Notary, this is an obligation for public or public officials, namely the Notary itself. In its storage, public officials who are authorized for it in the civil context, namely Notaries, need to act carefully in storing a Notary Protocol as a form of their obligations as stipulated in positive law or *ius constitutum* in terms of norms related to Notaries, so that it becomes a necessity Notaries have a strategy to store legal files, products or legal documents, namely deeds, so that damage to a deed or agreement in authentic form because it is made by a Notary or made before the Notary can be avoided.

The definition of a Notary Protocol itself is certainly regulated in Article 1 (13) of the Notary Law as a positive law or *ius constitutum* of norms related to Notaries, which is a state archive and therefore must be properly maintained. So that the principle that must be firm and straightforward used by Notaries in maintaining an integrity of a Notary Protocol is the precautionary principle itself, which keeps a minuta of the deed until the term of office expires or for other matters. There are more specific arrangements or norms in the context of storing a Notary Protocol, namely related to Notary Protocols that are more than 25 (twenty-five) years old, this is regulated in Article 63 (5) of the Notary Law, that related to the submission of a Notary Protocol to the Successor Notary, and the file is more than 25 (twenty-five) years old and its submission to the Regional Supervisory Council, this cannot be applied because the Regional Supervisory Board itself does not have the authority and ability to store a large number of Notary Protocols and has had a period of more than 25 (twenty-five) years. So that the Notary Protocol will remain and be stored in the place of the original Notary Office. Again, discussing related to principles or principles within the scope of Notaries, namely prudence, having derivatives of intertwined principles or principles, namely the principle or principle of accountability; Fairness; transparency; independence and responsibility. The disadvantages of physical storage of a Notary Protocol and have had a very long and old age, the negative impact that occurs is loss and damage itself.³

The main principle that has also become very important in the context of carrying out its duties and obligations, namely the principle of *legal certainty*, has become very important both in terms of public services because it is a public official or public official authorized for it in the civil context, as well as in the context of accountability, which must be given by a Notary. So that legal certainty for the storage of a Notary-based Protocol or electronically becomes very important, even its interests are urgent, because if there is a legal problem that harms the parties facing the Notary itself due to the absence of legal protection and other possibilities that can also occur are Notaries as public officials or public officials can be parties to legal cases due to Absence of a clear and concrete legal basis. Therefore, the meaning is that Notaries as public officials or public officials authorized for it in the civil context require a legal basis as a form of legal certainty in terms of acting and carrying out their duties and obligations based or electronically, so that there is a clear measure and limitation related to how a Notary who carries out his duties based on electronically.⁴

As positive law or *ius constitutum*, that Notary as a public official or authorized public official in the civil context has other authorities regulated in the notary law itself but *in open legal policy*, namely that authority can be regulated in positive law or *ius constitutum* others so as to provide opportunities for other laws and regulations, so that they have a principle of *open legal policy*, this is regulated in Article 15 (3) of Notary Law. Dalam urusan penjelasannya menyebutkan bahwa kewenangan lain tersebut hanya to provide a certification or legalization related to all matters related to affairs based or electronically in the context of the scope of Notary as a public official or public official (*cybernotary*). Therefore, the authority of a Notary in terms of *cybernotary* cannot be developed further because there is no further regulation on it. In technological logic, the authority of public officials or public officials, namely Notaries who are authorized to do so in the civil context related to its implementation based or electronically can facilitate its implementation, but from the Notary itself tends to be reluctant to do so because it has a fear of transforming itself. This is broadly also supported by the factor of the absence of a legal umbrella in the form of positive law or *ius constitutum* relating to the authority of Notaries as public officials or public officials to carry out their duties or obligations carried out based or electronically.

So that this scientific research article has a directed purpose to add analytical material related to legal issues regarding the urgent importance of storing a Notary Protocol electronically or electronically in the perspective of E-Notary, the difference between this scientific research article and previous scientific research articles has not discussed more specifically related to the urgency and legal certainty of storing Notary Protocols electronics in the context of UUJN and the E-Notary point of view. As in the thesis written by Faulina, discussing how the legal certainty of an Authentic Deed from a public or public official, namely a Notary, made based on the concept of cybernotary during the COVID-19 pandemic and how a form of legal protection for a public official or public official, namely a Notary, against an Authentic Deed from a Notary using the concept of Cybernotary

³ Naily Zahrotun Nisa', "Aspek Legalitas Penyimpanan Minuta Akta Notaris Secara Elektronik," *Jurnal Civic Hukum* 5, no. 2 (17 November 2020): 205-19, <https://doi.org/10.22219/jch.v5i2.13909>.

⁴ Emma Nurita, *Cyber Notary (Pemahaman Awal dalam Konsep Pemikiran)* (Bandung: Rafika Aditama, 2012).

The Urgency of Electronic Notary Protocol Storage in E-Notary Perspective

during the COVID-19 pandemic.⁵ Another thesis that also raised the same theme from Efwan discussed how the implementation or implementation of making an Authentic Deed from a Notary during the *COVID-19* pandemic and how to arrange the making of a Notary Deed in facing the pandemic period in the future.⁶ So that the formulation of the problem in this scientific research article is whether the urgent importance of storing a Notary Protocol electronically or electronically in the perspective of *E-Notary* and how legal certainty is storing a Notary Protocol electronically in positive law or *ius constitutum*, namely about Notaries.

B. METHOD

This scientific research article uses a type of normative law scientific research article, which is a scientific research article that discusses with legal sources that are literature and *ius constitutum*.⁷ The type of research used is also conflict norm. The nature of this research is *reform oriented-research*, which is an intensive scientific research article evaluating the fulfillment of norms or provisions that in the context of enactment are currently in effect and provide a suggestion of the positive law to be better.⁸ The approach used in this scientific research article is to use the approach of a law or positive law that applies or statute approach; a conceptual approach; and a case approach.⁹ So that this scientific research article is analyzed to find out how Notary honorarium is substandard in the perspective of competition between Notaries.

C. RESULT AND DISCUSSION

THE URGENCY OF STORING NOTARY PROTOCOLS ELECTRONICALLY FOR NOTARIES IN CARRYING OUT THEIR POSITIONS

Current Notary Protocol Storage System in Indonesia

As a public official or public official appointed and authorized by the Government, Notaries are authorized to provide a public service in a civil context, such as making deeds or agreements that have strong, high, and perfect legal force or evidence, namely authentic, so that it has been regulated in positive law, namely Notary Law and other written laws. Because it has the authority to provide public services which actually means it is an obligation for the government but is given to an authorized professional position because it is given through attribution, namely based on positive law to make a deed or agreement that has strong, high and perfect legal force, which is authentic, so as to provide legal certainty to parties facing it such as provide a certainty in the form of *tempus*, storage of an authentic deed or agreement and give a grosse, provide a copy or quotation of an authentic deed or agreement, in the context that such authority according to the source of attribution authority is not assigned or excluded to other professional officials.¹⁰

Related to the theme of this scientific research article, namely about the storage of a Notary Protocol, regulated in its positive law or *ius constitutum*, namely UUJN, becomes one of the authorities of the general official or public official, namely the Notary, either the Notary at that time or the Notary Successor later, which as expressly and straightforwardly stipulated in Article 15 (1); 16 (1) b; 58; 59; and 63 Notary Law. Related to the definition of a Notary Protocol itself explains that a document or legal product that becomes an archive from the state and becomes an obligation and necessity for Notaries as public officials who provide public services in a civil context to store and maintain them as regulated and mandated in the UUJN, this is regulated in Article 1 (13).¹¹

So that in the context of storing a Notary Protocol requires a principle or principle that must be fully implemented, namely prudence. A precautionary process is needed because there are sanctions if the notary cannot maintain the protocol properly. As the sanction is expressly and straightforwardly regulated in Article 16 (11) of the Notary Law, which is like a warning in written form; temporary suspension; honorable dismissal; dishonorable dismissal. Thus, the positive law governing Notaries as public officials or public officials gives the Notary the responsibility to keep its protocol and Notary Law also sanctions Notaries. If interpreted systematically, the obligation to keep the Protocol from a public or public official, namely a Notary, contained in Article 15 (1) of the Notary Law has a relationship with Article 16 (1). In the related article, it is explained that public or public

⁵ Junita Faulina, Abdul Halim Barkatullah, dan Djoni S. Gozali, "Kedudukan Hukum Akta Notaris Yang Menerapkan Konsep Cyber Notary Di Masa Pandemi Covid-19 Di Indonesia," *Notary Law Journal* 1, no. 3 (12 Juli 2022): 247-62, <https://doi.org/10.32801/nolaj.v1i3.28>.

⁶ M. Efwan, "Making Deeds Through Online during the Covid 19 Pandemic" (Thesis, Banjarmasin, Lambung Mangkurat University, 2022), <https://repo-mhs.ulm.ac.id//handle/123456789/22982>.

⁷ Mukti Fajar ND. and Yulianto Achmad, *Dualism of Normative Law Research and Empirical Law* (Yogyakarta: Pustaka Siswa, 2010).

⁸ Dyah Ochtorina Susanti and A'an Efendi, *Legal Research* (Jakarta: Sinar Grafika, 2014).

⁹ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2008).

¹⁰ Habib Adjie, *Sekilas Dunia Notaris dan PPAAT Indonesia: Kumpulan Tulisan* (Bandung: Mandar Maju, 2009).

¹¹ Habib Adjie, *Hukum Notaris Indonesia* (Bandung: Refika Aditama, 2014).

The Urgency of Electronic Notary Protocol Storage in E-Notary Perspective

officials, namely Notaries, have the obligation to bind deeds and make them into books. The point states that Notary Law indirectly wants the storage of the Notary Protocol to be done by physically storing the Notary Protocol. However, the storage of physical forms is still prone to various kinds of risks. Then, considering the theory of law *and* technology that law must be able to be in line with technology. The theory asserts that law and technology can go hand in hand, not always that law lags other sciences.

To provide an ease of how to adapt to the new technology so that the old technology can be adjusted is to provide a legal basis so that the application or implementation of a new technology can be easily applied, and the law is not left behind as usual. Notary Protocol storage in the conventional way is currently an old technology that is less efficient. To respond to this, Notary Law should be able to become a container or basis for rules allowing storage of a Notary-based Protocol or electronically. Indeed, in article 16 (1) letter g it has been implied that the storage of the Notary Protocol desired by Notary Law is to store it conventionally. However, Notary Law does not regulate in detail the maintenance of the Notary Protocol. While the sanctions given if the Notary cannot maintain the Notary Protocol are quite severe for a Notary. So that in Notary Law there is still legal uncertainty.

Advantages and Disadvantages of Conventional Notary Protocol Deviations

At present Indonesia with a legal basis related to the position of Notary itself, especially those that regulate related to the Protocol of Notaries, is still conventionally or physically stored. The development of a technological civilization provides an opportunity for the storage of a state archive in the form of recorded in an electronic or magnetic medium. Of course, related to a concept or a system, certainly and certainly has disadvantages and advantages. Especially related to the storage of a Notary Protocol conventionally or physically, it certainly has shortcomings in it, such as always increasing the archive itself; require continued investment in media from the country's archival deposits; the place of its storage itself which will become limited with the times; requires a manual search of a document of the country's archives; inefficient in searching the country's archives; frequent occurrence of damage due to physical form; Not fast and effective distribution. But the advantage is that it does not depend on a power source itself which is the main source of the system based or electronically; And people related to it have no obligation to be able and able to master computers.

So far, Notaries in maintaining the Notary Protocol, usually by storing the country's archival documents to a neatly and tightly closed vault so that they can avoid water, insects, and so on as a form of prevention of damage or loss of a state archival document. However, in positive law or *ius constitutum* related to Notaries more specifically related to the storage of a Notary Protocol, it is not specifically and concretely regulated how the standard procedure for storing a state archival document, so that there is often improvisation from public or public officials, namely Notaries so that negative tendencies occur loss, damage and so on. The organization that oversees all Notaries in Indonesia, namely the Indonesian Notary Association does not provide or explain the standard rules for the storage of the Notary Protocol, only regulated in the Notary Law, namely based on Article 16 (1) b of the Notary Law which is only mentioned in general.

The matter of storing minuta properly, neatly, and safely and responsibly is the implementation of the oath of a Notary as stipulated in Article 4 (2) of the Notary Law and Article 16 (1) a concerning the Obligation of Notaries to carefully carry out the obligations of their office. Notary Protocol storage until now uses vaults whose capacity can store small and has several risks, such as state archival documents can be eaten by termites, humid weather or the worst thing that can happen is fire. For example, a notary office located on Kayoon Street, Block B-6, Surabaya was severely burned. That right caused the valuable documents of the client of the Notary Public to be exhausted unsaved. If it is associated with the development of technological advances, it is better for the Notary Profession to follow these developments, for example in terms of data storage. As described above, Notaries are required to store their protocols and so far, Notaries only store them through vaults, if the Notary Protocol can be stored electronically then this will make it easier to store and search for the necessary deeds, because Notaries only need to search through a computer and the search will certainly save time.

In certain circumstances a notary can also submit his protocol, for example when the Notary concerned has passed away; his term of office as stipulated in the positive law or *ius constitutum* has expired; at the request of the Notary as a public official or public official itself, it may occur for reasons or grounds of being spiritually or physically unable to continue carrying out his duties for a period of more than 3 (three) years; in context turned out to be appointed state official; suspended for reasons as provided for in the positive law or *ius constitutum*; or for dishonorably discharge as also provided for in the positive law or *ius constitutum*. Furthermore, as in Article 63 (5) of the Notary Law, there is a discussion related to the submission of a Notary Protocol to a Substitute Notary because the state archive documents are more than 25 (twenty-five) years old or more to the Regional Supervisory Council. However, it cannot be implemented or implemented because the Regional Supervisory Board itself does not have the authority or ability to store a Notary Protocol that is 25 (twenty-five) years old or more. So that the Notary Protocol concerned will remain stored in the place or office of the Notary concerned, as well as for the Substitute Notary.

The Urgency of Electronic Notary Protocol Storage in E-Notary Perspective

Electronic Media as Notary Protocol Storage

Technological civilization has provided a very rapid convenience to human life, such as in a form of document or file that can be stored electronically, as well as in the context of making a document or file electronically or electronically based as well. Moreover, this is also supported in Article 68 (1) of Law Number 43 of 2009 concerning Archives. Of course, there is a negative value, namely that there is no norm that regulates expressly and straightforwardly and specifically regulates that the Notary Protocol must or can be stored electronically. When viewed in the context of several aspects, the storage of a Notary Protocol as a form of obligation of Notaries as public officials or the public itself, there are aspects that are supported and get convenience because of it, namely from the economic aspect and the legal aspect itself. In the context of the economic aspect itself, the advantages offered and obtained therefore are the storage of a state archival document is efficient; cheap; practical and safe. In the context of legal aspects, the storage of a Notary Protocol can provide an ease in the evidentiary process of the trial process in the context of evidence-based or electronically. The concept of storing the Notary Protocol electronically will also be related to the development of *cybernotary* in Indonesia.¹² By using the *E-Notary* concept in the use of protocol storage for Notaries in carrying out their positions, it will be easier and faster.

As already explained that cybernotary makes deeds electronically, it is natural that they are stored electronically because these two things are two continuous things. Unfortunately, until now the electronic deed making in Indonesia has not been implemented. In fact, if successfully implemented, the electronic storage of the Notary Protocol can be applied properly. As an illustration, researchers will show *ius constituendum* if E-Notary can run well. Good cooperation between Ministry of Communication and Information Technology, Ministry of Law and Human Rights and Indonesian Notary Association is needed. These three institutions must be able to work together in making a container that can be used as a medium for storing electronic protocols considering that electronic deed making has been implemented.

After that, the steps that can be taken are to create an institution responsible for managing the storage of electronic protocols. One of the tasks of this institution is to keep the electronic Notary Protocol secure; conduct Notary data collection; After being recorded, the Notary will be given a special number that can be used for electronic storage of the Notary Protocol. There are 2 (two) options that the author offers in storing Notary Protocol electronically, namely through data storage applications, in more detail, namely online data storage applications on official websites from the government and can only be downloaded by Notaries; after the application is downloaded, the Notary re-enters the special number to open the application; After the application opens, just download what you want to download into the application. Through sites provided by the government, such as opening official government-owned sites that function as identification and requirements for opening applications; after the site is open, just download what you want to download into the site. Both methods can be applied if Indonesia has fully used the *e-notary* system.

The solution is to view the Archives Law as the *lex specialis* of the Notary Law, in terms of Electronic Protocol Storage. This makes the storage of the Notary Protocol subject to the Archives Law. As already mentioned, in Article 68 paragraph (1) of the Archives Law, it is possible to transfer archival media. Notary protocols that currently use paper can be transferred to electronic media based on this article. The procedure is regulated in Government Regulation 28/2012 on the Implementation of the Archives Law, namely in Article 49. In addition to Article 49 of Government Regulation No. 28/2012, the matter of media transfer is also discussed in National Archives Regulation 9/2018 Dynamic Archives Maintenance Guidelines, precisely discussed specifically in Chapter V concerning media transfer Article 21. Article 21 of National Archives Regulation 9/2018 also confirms that media transfer can be carried out in accordance with technological advances. So that the Notary Protocol, which in fact is seen as a state archive, should also be able to transfer media. If article 49 of Government Regulation No. 28 of 2012 and Article 21 of National Archives Regulation 9/2018 are applied to the Notary Protocol, the transfer can be done by scanning method.

The obstacle that occurs in the context of public or public officials, namely Notaries themselves, is how notaries who have already had conventional protocols. Whether all existing data is entered electronically, which means all protocols must be scanned. If, it is, then it will take a long time for the notary to do that. So, researchers argue that if the notary protocol that has been stored in a conventional way, it will still be a notary protocol, meaning that let it be stored in conventional form, there is no need to transfer the media. However, after Indonesia has a database server, notaries who want to store their notary protocols must go through electronic means.

If the transfer of media is carried out on the Notary Protocol, in accordance with Article 21 paragraph of the National Archives Regulation of the Republic of Indonesia No. 9 of 2018, then the next concern is how the security process is. Whether the process of transferring media from conventional protocols to electronic protocols can be guaranteed security. To respond to this, a cryptographic system can be used.¹³ Cryptography can provide a form of strong and concrete legal assurance in the form of sound;

¹² Nurita, *Cyber Notary (Preliminary Understanding in the Concept of Thought)*.

¹³ Fresly Nandar Pabokory, Indah Fitri Astuti, and Awang Harsa Kridalaksana, "Implementation of Data Security Cryptography in Text Messages, Document File Contents, and Document Files Using Advanced

The Urgency of Electronic Notary Protocol Storage in E-Notary Perspective

documents; images and sound. So according to the author, there needs to be a consideration that the storage of the Notary Protocol must also be done electronically to facilitate the performance of the notary. Its function is to be a form of backup from the conventional storage of state archival documents. Given that Notary Law does not mention the prohibition to store Notary Protocols electronically. Then the focus is so that the reserves of the Notary Protocol have strong, high, and perfect legal and evidentiary force as conventional storage. In short, there are 4 (four) changes needed to reconstruct the regulations regarding the storage of Notary Protocols, namely deleting Article 5 (4) b of the Electronic Information and Transactions Law; strengthen cybernotary-related arrangements in Notary Law; mention the procedures for storing Notary Protocols in Notary Law; norm concretely, firmly, straightforwardly and explicitly that a Notary Protocol is one of the most important state archival documents in the Archives Law.

The four steps above are a form of reconstructing electronic storage settings. If such reconstruction can be carried out then the backup of a Notary Protocol by electronic means or based could have a strong, high, and perfect legal or evidentiary force. So that in storing its protocol a notary has layers of protection, because the protocol is stored in conventional and electronic forms. If something undesirable happens and has a negative impact on a Notary Protocol, then the Notary does not need to worry because the Notary has a reserve that has a strong, high, and perfect legal force or evidence as conventional.

LEGAL CERTAINTY OF ELECTRONIC STORAGE OF NOTARY PROTOCOLS IN THE NOTARY LAW

Legal Basis of Notary in Conducting Electronic-Based Transactions (E-Notary)

In the context of philosophy, electronic transactions as according to Article 2 of the Law on Information and Electronic Transactions that are not as a conventional form, because there are advantages it has that it can be carried out and used anywhere without obstacles, even can transcend state borders. The rights, obligations, duties, and authorities of a public official, namely the Notary Public itself, in the context of cybernotary according to Article 15 (3) of the Notary Law, the reach of the Electronic Information and Transaction Law itself is universal and territorial. Intertwined with legal problems or legal issues regarding the storage of a state archival document from the Notary, the application based or electronically can be an accurate solution. Article 68 (1) of the Archives Law has regulated the opportunity to store a state archival document electronically or electronically. This is because in Notary Law there is no regulation and more explanation about E-Notary. Article 15 (3) of the Notary Law only regulates the certification or legalization of a transaction in the form or electronically based and based, not storing a Notary Protocol.

Even in terms of certification, there is no standard mechanism for notaries who certify electronically. This causes a legal issue of vacuum norm or *vacuum norm*. The storage of a Notary Protocol as one of the state archival documents is still a form of plan and discourse from the government because there is no law or basis underlying it. In the context of effectiveness, of course, this is very effective and facilitates the rights, obligations, duties, and authorities of the Notary as a public or public official, but it must be analyzed more deeply first whether there is a conflict of norms with other positive laws or not. The focus in this scientific research article is whether a Notary Protocol that is kept based or electronically has strong, high and perfect legal or evidentiary force or not, because proof is one of the important elements in a trial. In fact, evidence becomes the basis for judges and an opportunity for litigants to defend their rights and interests. So that the government has the obligation to regulate expressly and straightforwardly related to the storage of a Notary-based Protocol or electronically.

Laws Relating to the Application of Notary Protocol Storage

The norms or provisions regarding the Notary Protocol should be subject to the Archives Law as a *lex specialis* form of notary protocol storage arrangements, which in the law states that the form of procedures for storing Notary Protocol electronically is through media transfer. Returning to the legal principle of resolving the problem of whether the storage of Notary Protocols can be stored electronically is the right step. However, of course this is not legal enough for a Notary Protocol to be electronically usable in Indonesia by a Notary. On this basis, it is also necessary to conduct a deeper study of Notary Law and other intertwined laws regarding the storage of a Notary Protocol electronically or electronically. The law relating to the storage of a Notary Protocol is Law 8/1997 on Company Documents; Notary Law; Archives Act; Electronic Information and Transactions Law; Government Regulation 71/2019 Implementation of Electronic Systems and Transactions.

Regarding the Company Document Law, the transfer of company documents that are conventionally transferred to electronic based can be done according to Article 12, which is stored that is not in the form of physical paper that has a level of security can provide legal certainty from the originality of a document. Corporate documents transferred to electronic must be legalized for their validity to be authentic. Intertwined, electronic documents are also supported and regulated in the Law on Electronic Information and Transactions, that information or documents in the form or electronically are legally valid evidence. The presence of the Company Document Law is the forerunner of conventional document transfer rules to other media, but

The Urgency of Electronic Notary Protocol Storage in E-Notary Perspective

unfortunately only regulates company documents, it should also be able to regulate the storage of Notary Protocols if it is also legitimized by Notary Law.

Electronic storage of Notary Protocols must be able to be in harmony with Notary Law. The storage of a Notary Protocol based or electronically is one entity and part of the cybernotary. Cybernotary itself is a system which is not only about making authentic deeds electronically, but also mandatory to store a Notary Protocol as stipulated in Article 16 (2) of the Notary Law. So, if one of the notary protocols is stored electronically, which storing the protocol is also the duty and obligation of a notary, then, storing the notary protocol electronically is part of the cybernotary. The Notary Law does not regulate clearly and concretely related to cybernotary, but in the explanation of Article 15 (3) which provides an attributive basis for open legal policy to other laws and regulations if you want to regulate related to additional authority from a Notary, such as the authority to certify or legalize a transaction electronically or electronically, make a deed of endowment pledge, and mortgage an aircraft. This sentence is often referenced in several studies that open up cybernotary opportunities in Indonesia.¹⁴ In a Notary Protocol there is a minuta deed that is authentic, in terms of UJUN there are 4 (four) things that are the basis for authenticity, namely the physical presence of the parties and directly facing a public or public official, namely a Notary; the reading of an authentic deed or agreement is directly in the presence of the parties and is clearly understood (unless requested not to be read; the presence and wet signatures of witnesses who do not have incestuous or marital relations (unless otherwise provided by positive law or *ius constitutum*); and put wet signatures on every page by parties, witnesses and the Notary Public itself.¹⁵

According to the Archives Law, it is possible to transfer media to the Notary Protocol, but the Archives Law itself does not discuss at all related to the Notary Protocol. In fact, if categorized, the Notary Protocol is included in vital archives because the Notary Protocol is a basic requirement and foundation related to the sustainability of the operations of a creator of the archive, namely a Notary. The absence of discussion or just mention in the Archives Law is also a concern. The Archives Law should at least mention the Notary Protocol. For example, stating unequivocally that the Notary Protocol is a vital archive. Although, not in the Archives Law does not mention the term Notary Protocol in its law. This does not change the position of the Archives Act as the *lex specialis* of the Notary Protocol depository. Meanwhile, according to the Government Regulation on the Implementation of Electronic Systems and Transactions, the Notary Protocol will be electronically stored in the electronic system. In Articles 1 (1) and 5 of the Government Regulation on the Implementation of Electronic Systems and Transactions provides legitimacy for electronic storage of systems. Meanwhile, according to the Electronic Information and Transaction Law itself, basically the Notary Protocol contains important information belonging to Notaries that must be stored carefully so as not to be damaged, so that technology is a medium that will be used to store the Notary Protocol. It becomes necessary to review the Notary Protocol electronically based on the Electronic Information and Transactions Law. It regulates Electronic Information, Electronic Documents, Electronic Systems, which if it is concluded that the Electronic Notary Protocol is a Notary Protocol stored through a storage-based system or electronically. This is based on Article 1 point 6 of the Electronic Information and Transaction Law which provides an opportunity or *open legal policy* for the existence of a Notary-based Protocol or electronically.

The Electronic Information and Transaction Law is the key to being able to support the development of the use and utilization of technology for the community. This is also in line with Jeremy Bentham's theory of expediency or utility theory which states the purpose of law is to provide a great and broad benefit and great and broad happiness to society.¹⁶ So that the laws made must provide benefits or uses for the community. Associated with the Electronic Notary Protocol, the Electronic Information and Transaction Law has not been able to support the electronic storage of the Notary Protocol, this is because there are articles in the Electronic Information and Transactions Law that make the benefits of the Electronic Information and Transaction Law not maximized. Indeed, there are articles that support the storage of Electronic Notary Protocols, such as the term electronic information, documents, and systems, but these norms are excluded from their presence by Article 5 (4) b of the Electronic Information and Transactions Law which states that:

“The letter and its documents which according to law must be made in the form of a Notary Deed or a deed made by the deed making official.”

This causes the Electronic Information and Transaction Law not to fulfill the purpose in consideration of the Law itself, which is to provide benefits for the development of technology. Thus, although the Notary Law does not prohibit the electronic storage of Notary Protocols, the existence of Article 5 (4) b excludes all matters in favor of storing Electronic Notary Protocols in the Electronic Information and Transactions Law. Because the provisions in the Electronic Information and Transaction Law do not apply to notary documents. This further emphasizes that in terms of expediency, the Electronic Information and Transaction

¹⁴ Siti Rosyidah Hamdan, “Bentuk Pengaturan Hukum Cyber Notary di Indonesia” (Tesis, Banjarmasin, Universitas Lambung Mangkurat, 2022), <https://repo-mhs.ulm.ac.id//handle/123456789/26425>.

¹⁵ Makarim, *Notaris dan Transaksi Elektronik, Kajian Hukum tentang Cybernotary atau Electronic Notary*.

¹⁶ Frederikus Fios, “Keadilan Hukum Jeremy Bentham dan Relevansinya bagi Praktik Hukum Kontemporer,” *Humaniora* 3, no. 1 (30 April 2012): 299–309, <https://doi.org/10.21512/humaniora.v3i1.3315>.

The Urgency of Electronic Notary Protocol Storage in E-Notary Perspective

Law is no longer optimal. All these laws must be able to be mutually sustainable to support the electronic storage of Notary Protocols. Although the Notary Law does not provide a prohibition on electronic storage of Notary Protocol coupled with the Archives Law which allows media transfer, Article 5 (4) b of the Electronic Information and Transaction Law seems to close the opportunity for electronic storage of notary protocols. The existence of Government Regulations on Electronic Systems and Transactions and the Company Document Law should also be able to be the initial basis for reconstructing protocol storage arrangements electronically, because through these two regulations development can be carried out on electronic Notary Protocol storage arrangements.

Notary Liability for Damage to Electronic Stored Notary Protocol Storage

The civilization of a technology in the context of an office, especially in this research article, is within the scope of a Notary, providing extensive opportunities and possibilities for implementing a storage in the form or electronically based. With this, it is expected that legal logic will support the duties of public or public officials, namely Notaries themselves in the context of carrying out their duties and obligations to store a Notary Protocol based or electronically. The obstacle in the context of technological civilization is that there are frequent attacks of viruses; power failures; destruction or destruction and breach.¹⁷

It becomes a form of violation if there is a loss or damage to a Notary-based Protocol or electronically, to provide a loss to parties whose authentic deeds or agreements are kept by the Notary concerned. One form of loss that can be experienced by these parties is the possibility of manipulation of the country's archive files or documents, causing legal uncertainty. This can be categorized as an act against the law or *onrechtmatigedaad* as stipulated in Article 1365 of the Civil Code.¹⁸

In essence, the element of the unlawful act is to give a loss to another party; violate decency and obligation; the incurring of a loss; the guilt of one of the perpetrators; and the norm or loss violated is general.¹⁹ Legal liability of a public or public official, namely a Notary, must be applied if committing a criminal act itself such as fraud.²⁰ Intertwined with a legal responsibility of a Notary Public that the Notary is fully responsible.²¹ According to the theory of *Fautes Personelles*, in the event of a criminal offence or violation of a Notary Protocol depository, the Notary Public himself is fully responsible because he is authorized to do so.

So that Notaries as public or general officials who are authorized to do so are fully legally responsible. In line with the theory of legal liability proposed by Hans Kalsen, the Notary authorized for it, in the context of sanctions, the Notary is responsible. Because there is no firm, straightforward and concrete regulation, it is related to legal responsibility for Notaries as stipulated in positive law or *other ius constitutum* in administrative, criminal, and civil contexts. *Administrative Responsibilities* of Notaries refer to Article 85 of the Notary Law. That is oral or written reprimand; suspended temporarily; honorably or dishonorably discharged. *Criminal Responsibility*, namely if there is fraud or other criminal acts such as deception, the provisions referred to are the Notary Law and the Criminal Code. However, there is a specificity of the norm here, namely if the Notary as a general official or public official does not violate the Notary Law, then the Notary itself is not criminally charged in the context of the scope of the Notary. *Liability from the Civil Court*, if one of the public officials or public officials, namely Notaries, has a detrimental impact on the parties facing him. Article 84 of the Notary Law is an article referred to in the context of civil liability to a Notary, that in carrying out its duties, the rights and obligations are violated so as to cause a deed or agreement that was originally authentic to be degraded or degradation of the quality of value to be under mere hands; null and void; harm the parties to the face so as to give the right to the parties to claim compensation.

D. CONCLUSION

At present in the context of positive law or *ius constitutum*, Notaries as public officials or public officials authorized for it in the civil context do not regulate clearly, concretely and firmly how the standard procedure for storing a state archival document, namely the Notary Protocol, so that from the Notary itself improvise and have a negative tendency to damage it, loss and so on. The urgent importance of a storage in the context of state archival documents, namely the Notary Protocol, can be seen from 2 (two) aspects, namely the economic aspect itself and from the legal aspect specifically. Aspects in an economic context, can provide an efficiency; Practicality; safe and cheap. The legal aspect itself is that it can facilitate in the context of evidence in the trial process.

The application of E-Notary has not been able to be carried out because there is no legal certainty in the form of positive law or *its ius constitutum* related to the storage of a Notary Protocol based or electronically. That the legal responsibility imposed is on

¹⁷ Assafa Endeshaw, *Hukum E- Commerce dan Internet dengan Fokus di Asia Pasifik*, trans. oleh Siwi Purwandari dan Mursyid Wahyu Hananto (Yogyakarta: Pustaka Pelajar, 2007).

¹⁸ Abdul Ghofur Anshor, *Lembaga Kenotariatan, Prespektif Hukum dan Etika* (Yogyakarta: UII Press, 2009).

¹⁹ J.H. Nieuwenhuis, *Fundamentals of the Law of Engagement*, trans. by Djasadin Saragih (Surabaya, 1985).

²⁰ Raden Soegondo Notodisoerjo, *Notary Law in Indonesia: An Explanation* (Jakarta: RajaGrafindo Persada, 1993).

²¹ Salim HS., *Contract Law* (Jakarta: Sinar Grafika, 2008).

The Urgency of Electronic Notary Protocol Storage in E-Notary Perspective

the Notary Public itself. Because UUJN has not regulated the standard storage of notary protocols, liability by Notaries still refers to legal provisions or norms both administratively, criminally, and civilly itself. So that specific rules are needed to expressly regulate the mechanism and accountability of a Notary in carrying out the rights, obligations, duties, and authorities in the storage of a Notary Protocol, and it is expected for the government to be able to create a legal umbrella regarding matters related to technology in the world of notary.

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