



MAKING OF TREATMENT OF AUCTION DEED FOR NOTARY BY METHOD CYBER NOTARY

Mursalati Urfa, Abdul Halim Barkatullah, Saprudin

Fakultas Hukum Universitas Lambung Mangkurat

Abstrak

This research is legal research normative using a statutory approach (statute approach) and a conceptual approach (conceptual approach) to analyze the problem, pThis research aims to examine and analyze the auction treatise deed made by a notary by cyber notary, where the conceptcyber notary turns out to have a norm conflict with Article 16 paragraph (9) regarding the word element before which is a formal requirement for the validity of an authentic deed as stated in Article 16 paragraph (9) regarding the position of Notary. Apart from that, there is also legal obscurity in Article 15 paragraph (2) letter g of the UUJN, for this reason, a revision of the UUJN is needed, especially in Article 15 paragraph (2) letter g by adding a clause that a notary who can make auction minutes is a notary who has been appointed first by the Minister of Finance of the Republic of Indonesia.

Kata Kunci: Notary, Minutes of Auction, Cyber Notary.

INTRODUCTION

Globalization is an era that must be lived as a consequence of living one another. This era is unavoidable, because basically, globalization provides good benefits to segments of human life, one of which opens opportunities (*Opportunity*), and Challenges (*Challenge*).

At this time, Indonesia, which is in the era of globalization, is characterized by the era of information and communication technology (ICT)

which introduces cyberspace (*cyberspace, virtual world*) through the internet network, communication with electronic media without paper. Based on current developments, a Notary must be able to prepare it, because information technology influences behavior, including facilitating various needs and human work. Likewise, the role of a Notary must be able to understand information technology for the management of the resulting legal product. For example, Land Registration,

Checking Certificates, Online Mortgage Rights, and others. In fact, in the land registration process, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency issued a land-based registration program *electronics system*. Draft *cyber notary*, According to Emma Nurita, temporarily it can be interpreted as a notary who carries out his duties or authority based on information technology, which is related to the duties and functions of a notary, especially in making deeds.²

According to the Notary Office Law, it is known that a notary can become a class II auction official at the place of domicile where the notary holds office. Class II auction officials are private auction officials authorized to carry out Voluntary Non-Execution Auctions.

The history of auctions in Indonesia was started by *United East India Company* (United East India Company) or VOC. When the VOC had a monopoly on trading activities in Asia, the VOC held auctions for plantation and agricultural products. The auction system was first used for tea commodities in 1750.³ Auction institutions in Indonesia, begins with the presence *Sold Payment* (Law or Auction Regulations) at the beginning of the 19th century in 1908. The Dutch colonial government stipulated the Auction Regulations as contained in *Ordinance State Gazette* 1908 Number 189 as amended several times, the last with *Official Gazette* of 1941 Number 3), which came into effect on April 1, 1908. In principle, matters regulated in *Sold Payment* concerning the main points of sale (buying and selling) carried out in public (auction). Regulations for the implementation of auctions are regulated most recently by Regulation of

the Minister of Finance of the Republic of Indonesia Number 213/PMK. 06/ 2020 concerning Instructions for Conducting Auctions. Auction institutions regulated through the legal system are intended to meet the needs of society.

In this day and age auctions have begun to be carried out via the Internet media where auction buyers do not need to be present. During the pre-internet auction implementation, it can be seen that there has been a considerable change where the auction procedure does not go through the real world anymore but through the real world *cyber*. In carrying out auctions, of course there are several problems, as well as in the case of carrying out auctions through internet media, of course there are the same problems as those that occur in non-internet (conventional) auctions, but new problems that exist in the implementation of the internet world are not well known in real world. One of the problems encountered in carrying out auctions via the internet is the problem of the role of a notary as an auctioneer and the extent of his responsibility towards auction participants according to the regulations for conducting auctions via the internet media in carrying out auctions via internet media with problems that arise such as: an application occurs broken auctions, internet connection, crime *cyber crime*, timing in cyberspace or *cyber*, auction applications that are set to the detriment of the parties, and other problems that arise.

In Regulation of the Minister of Finance Number 213/PMK.06/2020 concerning Instructions for Implementation of Auctions (PMK 213/2020), in Article 1 paragraph 12 an auction without the presence of

² Emma Nurita. 2012. *Cyber Notary, Early Understanding in Thinking Concepts*. Bandung; Aditama Refika. p. 12.

³ *Ibid*. hlm.7

participants is Auctions that are not physically attended by Auction Participants at the auction venue or conducted through the Auction Application or Platform *e-Marketplace Auction*. Referring to this definition, the implementation of an auction via the internet is a form of electronic transaction as defined in the Electronic Information and Transaction Law (UU ITE), and from the implementation of the auction will produce a product called minutes of auction. According to Article 1 number 32 PMK 213/2020, the auction minutes are minutes of auction implementation made by the Auction Official which is an authentic deed and has perfect evidentiary power. In other regulations, in this case, namely the Notary Office Act (UUJN) Article 15 paragraph (2) letter "j" states that UUJN also authorizes a notary to make a deed of minutes of auction. The public official referred to in this article is generally known to be a notary. UUJN defines a notary as a public official authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws. Thus it can be understood that in general the person authorized to make authentic deeds is a notary, but in the context of carrying out an auction of authentic deeds in the form of auction minutes it can also be made by the auction official contained in Office of the State Property Service and Auctions (KPKNL). Based on what has been described above, it can be seen explicitly that in preparing auction minutes, auction officials at the KPKNL essentially have the authority possessed by a notary.

The authority of a notary to make a deed of minutes of auction *cyber* regulated in other authorities as stated in Article 15 paragraph (3) of Law Number 2 of 2014 concerning the Office of a Notary. In the elucidation of Article 15 paragraph 3 it is stated that one of the other authorities referred to as having

the concept of making deeds electronically is certifying transactions, making deed of waqf pledges, and aircraft mortgages. There is, concept *cyber notary* it turns out to have a norm conflict with Article 16 paragraph (9) regarding the word element before which is a formal requirement for the validity of an authentic deed as stated in Article 16 paragraph (9) regarding the position of Notary.

To resolve conflicts of norms that occur, it is necessary to use these two articles as long as they comply with the provisions of Article 16 paragraph (7) of Law Number 2 of 2014 and the fulfillment of the authenticity of the deed stipulated in Article 1868 of the Civil Code. So that in carrying out its duties and functions with the concept *cyber notary* can be said to be valid as an authentic deed because the law has given this authority to a notary.

RESEARCH METHODS

The research used is normative juridical research, namely research that only refers to secondary data that is already available in the form of legal materials. Research that focuses on legal principles, legal systematics, and the level of synchronization *vertical* and *horizontal* law. The approach used in normative research is the statutory approach (*statute approach*), by searching for and collecting legal materials to produce specific conclusions from the problems studied by researchers, knowledge generated from inductive thinking processes is the essence of the facts collected. This approach is carried out by analyzing the rules regarding the concept *cyber notary*.

RESULTS AND DISCUSSION

Making Deeds of Auction Minutes for Notaries by Cyber Notary as Class II Auction Officials

In Article 1 number 1 UUJN, a notary is defined as a public official

authorized to make authentic deeds, then in Article 15 paragraph 3 it is stated that a notary also has other authorities as referred to in the Elucidation of UUJN regarding the concept *cyber notary*.

The definition given by UUJN refers to the duties and powers carried out by a notary. This means that a notary has a duty as a public official and has the authority to make authentic deeds and other authorities regulated by UUJN.⁴

In making these authentic deeds, the notary has a very important role, where the notary acts as a public official. Prof. Hamaker outlines the duties of a notary by saying that a notary is appointed for and at the request of people who take legal action, present as a witness to the legal actions they take and write down (constitute) what they witness, or in other words, a notary is a witness to an act. - legal actions carried out by the parties concerned.⁵

In article 15 article (1) also explains that: The notary has the authority to make authentic deeds regarding all actions, agreements and stipulations required by laws and regulations and/or which are desired by interested parties to declare stated in an authentic deed, guaranteeing the certainty of the date of manufacture deed, provide grosse, copy and quote deed, all of that as long as the making of the deed is not also confirmed or excluded from other officials or other people determined by law. Then in UUJN article 15 paragraph (2) letter g states that a notary has the authority to make a deed of minutes of auction. This article provides flexibility that a notary can make an auction minutes deed, because UUJN gives a mandate to a notary to be

able to make an auction minutes deed. In the Formulation of Article 15 paragraph (2) letter g this can lead to many interpretations, and the interpretation of this article gives rise to two views regarding the meaning within the authority of a Notary in relation to the deed of minutes of auction, namely:⁶

a. First, every Notary is automatically authorized to draw up minutes of auction deed, meaning that the position of a Notary and the position of auction official are unified, as soon as he becomes a Notary he automatically carries out the jobs of the auction official. Thus, if a person has been appointed as a Notary, he does not need to be appointed as an auction official.

b. Second, not all Notaries have the authority to make auction brochures even though Notaries and auction officials have the same qualifications as public officials, only Notaries who have been certified and designated as class II auction officials are authorized to make auction brochures.

Noting that there are several different opinions as described above, in interpreting Article 15 paragraph (2) letter g UUJN is not only understood by reading literally the words in the Article, but Article 15 paragraph (2) letter g UUJN must be understood as a system that is not separated from articles, explanations of articles and general explanations of the UUJN, as well as with national law as a whole, to interpret it it must be connected with Article 1 number 32 PMK 213/2020, regarding the Instructions for Conducting Auctions, in that article also states that the minutes of the auction are made by the auctioneer which is an authentic deed and has

⁴ Abdul Ghofur Ansari. 2009. *Indonesian Notary Institution Legal and Ethical Perspective*. Yogyakarta. Tim Ull Press. Hlm. 13-14.

⁵ G.H.S Lumban Tobing. 1983. *Notary Position Regulations*. Jakarta; Erlangga PT. p. 42.

⁶ Sjaifurrachman & Habib Ajie. 2011. *Aspects of Notary Liability in Making Deeds*. Bandung. CV. Mander Forward. p. 85

perfect evidentiary power. As we know that a notary is a public official, as stated in Article 1 Law Number 30 of 2004 the definition of a notary is stated, that a notary is a public official authorized to make authentic deeds and other authorities as referred to in this Law. In order to become a Class II Auction Officer, there are conditions that must be obtained and implemented, including notaries. One of them is in the Regulation of the Minister of Finance Number 189/PMK.06/2017 concerning Class II Auction Officers Article 2 contains Class II Auction Officials appointed and dismissed by the Director General on behalf of the Minister and must meet the requirements including passing education and training for Class II Auction Officials organized by the Financial Education and Training Agency of the Ministry of Finance and has attended work practices (apprenticeship).

The authority of a Notary to make a deed of auction minutes in practice cannot directly make a deed of minutes of auction because in making a deed of minutes of auction, a Notary must be appointed and appointed first by the Directorate General of State Assets and must attend education and training organized by the Ministry of Finance then there is an obligation for apprentices. So that Article 15 paragraph (2) letter f UUJN cannot be implemented automatically, but must comply with the procedures and conditions that apply in the Ministry of Finance.

In the science of law there are various types of interpretation, one of the types of interpretation that is conventionally known in the science of law is systematic interpretation. The substance of this interpretation is to put forward the same provisions along with

the premise to make a conclusion, if this interpretation is used, according to Yusril Ihza Mahendra, the words to make an auction minutes deed as contained in 15 paragraph (2) letter g UUJN must be read as follows, the authority of the Notary as an official authorized to make minutes of deeds which is the authority of the auction official so that the Notary also has the authority as an auction official who leads the course of an auction and other authorities are regulated in *Sold Payment*. Yusril said emphatically that it would be better if the position of Notary and the position of Auction Officer were unified, once he became a Notary he would automatically carry out the jobs of the auctioneer. Thus if a person has been appointed as a Notary Public, he does not need to be appointed as an auction official.⁷

In the author's opinion, the application of the above systematic interpretation is not quite right because if you use a systematic interpretation to interpret what is contained in Article 15 paragraph (2) letter 9 of the UUJN, you must look at the provisions related to the minutes of the Auction as a whole. Systematic interpretation is a way of interpreting laws as part of the entire legal system by connecting them with other laws.⁸ Therefore, to interpret the provisions of Article 15 paragraph (2) letter f UUJN using a systematic interpretation, the main point is the minutes of the auction. In the provisions of Article 15 paragraph (2) letter 9 UUJN it is stated that a Notary has the authority to make a deed of minutes of auction. However, the meaning of the minutes of auction is not found in the UUJN. So what is used is the meaning of the auction minutes contained in the Regulation of the Minister of Finance Number: 213/PMK.06/2020 concerning

⁷ PPAT automatic notary. Renvoi Magazine. 03 February 2006. p. 15

⁸ Sudikno Mertokusumo. 1999. *Know the Law an Introduction*. Yogyakarta; Liberty. Hlm. 157

Guidelines for Conducting Auctions, which states that the minutes of auction are minutes of auction implementation made by auction officials which are authentic deeds and have the strength of evidence perfect for parties. What is meant by an auctioneer mentioned in Regulation of the Minister of Finance Number: 213/PMK.06/2020 is a person who is specifically authorized by the Minister of Finance to carry out the sale of goods by auction. According to the Ministerial Regulation, the person authorized to make tender minutes is someone appointed by the Minister of Finance.⁹

Based on what has been described above, the application of Article 15 UUJN cannot be applied just like that. This means that a Notary cannot immediately assume office as an auction official. This is because the appointment of bidders is carried out by the Minister of Finance, while the appointment of a Notary is carried out by the Minister of Law and Human Rights.¹⁰ UUJN has provided an expansion of authority to Notaries in carrying out their positions as public officials. One of them is regarding the authority contained in Article 15 paragraph (2) letter g, that a Notary has the authority to make a deed of minutes of auction but this regulation cannot be applied directly without appointment from the ministry of finance, because in this case a public auction is assigned to make minutes auctioneer is an auction official contained in the regulation *Sold regulation*, then the Notary authorized to make the auction minutes deed is a Notary who has met the requirements and qualifications as an auction official and has been appointed and determined by the Minister of Finance to carry out his position as a class II auction officer. The purpose contained in Article 15 UUJN is that a Notary is given the freedom to

concurrently serve as an auctioneer and to become an auctioneer, a Notary must follow the rules made by the Minister of Finance. Where a notary who wants to become an auction official is obliged to be appointed by the Directorate General of State Assets and fulfill all the conditions that have been determined.

If we link back PMK 213/PMK.06/2020 with the Notary Office Law Number 02 of 2014, Article 15 paragraph (2) letter g, that a Notary has the authority to make a deed of minutes of the auction, then there is similar authority between the notary and the auctioneer who contained in the KPKNL. In connection with this similarity of authority, the Law on Notary Office (UUJN) and PMK 213/PMK.06/2020 stipulates that auction officials contained in the KPKNL are class I auctioneers, while notaries or other private parties who meet the requirements to be appointed as a bidding official is called a class II auctioneer. Thus, the authority of a notary to make a deed of minutes of the auction as stipulated in Article 15 paragraph (2) letter "g" UUJN is a notary who in his capacity is also designated as a class II auction official. Referring to the various descriptions above, it can be seen that class I auction officials and notaries have the same authority, in the context of making auction minutes as an authentic deed. The notary authorized to make the deed of minutes of this auction is a notary who has met the requirements and qualifications as an auction official and has been appointed and determined by the Minister of Finance to carry out his position as a class II auction officer.

Based on what has been described above, the element which contains that rules must be clear and consistent is of course not fulfilled because it creates legal uncertainty in society, The ideal law is where a legal rule that applies in society must be a law

⁹ *Ibid.*

¹⁰ *Ibid.*

that cannot be contradictory with other legal rules so that it does not become a source of doubt, which can result in different implementations of these rules and community non-compliance with these rules.

Making Deed of Minutes of Auction for Notaries by Cyber Notary

In Article 87 to Article 90 Minister of Finance Regulation Number 213/PMK.06/2020 concerning Instructions for Conducting Auctions stipulates the structure of the section in the auction minutes deed which states that the minutes of the auction minutes contain:

1. Head Section:

- a. day, date and time of auction is written in letters and numbers
- b. full name and location of the Auction Office
- c. full name, occupation, domicile or domicile, and mechanism of presence of the Seller
- d. the place where the auction is held
- e. the nature of the goods being auctioned and the reason for the goods being auctioned
- f. in the event that the Auction Object is in the form of immovable property in the form of land or land and buildings it must be described:
 1. Title status or other documents explaining proof of ownership;
 2. Number and date of Land Certificate (SKT)/Land Registration Certificate (SKPT) from the Land Office; And
 3. Other incriminating evidence, if any;

- g. in the event that the Auction Object is in the form of movable goods, the quantity, type and specifications of the goods must be described;
- h. in the case of the Auction Object in the form of Enjoying Rights, the terms of sale from the Seller, if any, are described;
- i. in the event that the Auction Object is in the form of a claim right, the terms of sale from the Seller are described, if any; And
- j. Auction terms and conditions.

2. Body Parts :

- a. Buyer's identity which includes name, occupation and address, on behalf of himself or as a proxy on behalf of a legal entity/business entity/other person
- b. creditor financial services institution as a Buyer for a person or legal entity or business entity whose name will be appointed, in the case of a creditor financial services institution as a Buyer,
- c. Auction Price with numbers and letters spelled out, And
- d. description of items sold.

3. leg section

- a. The number of items offered or auctioned, written in numbers and letters spelled out
- b. the number of goods sold, written in numbers and letters spelled out

- c. the total price of goods sold, written with numbers and letters spelled out
- d. the amount of the price of goods held, written with numbers and letters spelled out
- e. the number of documents or letters attached to the Minutes of Auction, written with spelled out numbers and letters
- f. the signature of the Auction Officer and the Seller or the Seller's proxy, in the case of an Auction of movable goods
- g. signature of the Auction Officer, the Seller or the Seller's and the Buyer's proxies or the Buyer's proxies, in the case of immovable goods auctions, And
- h. signature of the witness for the Mandatory Execution Auction and Non-Execution Auction of immovable property by bidding without the presence of the Auctioneer via postal drum, electronic mail(*e-mail*), or Auction Applications with closed bids(*closed bidding*).

In Making Minutes of Auction Through the Internet (*cyber notary*) in the Regulation of the Minister of Finance Number 213/PMK.06/2020 concerning Guidelines for Conducting Auctions there is no detailed regulation regarding the preparation of tender minutes which are made individually *cyber*. The implementation of making auction minutes deed via the internet is the same as making auction minutes deed with conventional implementation. The difference is only limited to the implementation, if conventional direct

face-to-face but if via the internet then without the presence of bidders, regarding the contents and structure of the deed in the minutes of the auction deed itself is the same from the main or initial part, body part or content and in the closing part.

Based on what has been described above, it can be concluded that for the making and form of auction treatise deeds both via the internet and not via the internet are the same (no difference), the difference lies only in the procedure for implementing it, while for the making and form of the deed between auctions conducted conventionally and cyber are the same, thus according to the author there are a number of things that can become a problem in terms of making cyber auction treatise deeds, especially those found in Development of a reliable and accountable database for the need to prepare Auction Minutes and/or tender reporting and administration as well as application improvements in order to minimize errors or network problems, in addition to that, new rules must be made regarding *cyber notary* or it could be by synchronizing the relevant laws and regulations *cyber notary*.

The Legitimacy of the Deed of Auction Minutes for Notaries Made By Method *Cyber Notary*.

Definition *cyber notary* according to Professor Hikmahanto Juwana states that the term *cyber notary* appeared in 1994 released by The *Information Security Committee of the American bar Association*, This committee illustrates that there is a profession that is similar to a public notary, but the documents that are made and those in that profession are electronic-based, in which case the profession has a function to increase trust in the documents that are made. Within this scope, *cyber notary* has a role to identify documents that are electronically based, which of these

document authentication can be authenticated *print out* wherever and whenever. *Cyber Notary* also has a role to provide certainty to parties in other countries whether when conducting transactions in a country it is truly on their own accord and without any coercion or threats to sign these electronic-based documents.

Cyber Notary has the main function of verifying and authenticating electronic transaction traffic. The certification itself has the meaning that a notary has the authority to act as *Certification Authority (trusted third party)* so the notary can issue *digital certificate* to interested parties. It's different with functions *authentication* relating to legal aspects that must be fulfilled in the implementation of electronic transactions.¹¹ In connection with the description above it can be concluded that the term *cyber notary* used in this study refers to a notary official as a public official who is officially appointed based on statutory regulations to carry out his authority as stated in Article 15 paragraph (3) of Law Number 2 of 2014 is not a *Certification authority* which is a technical non-legal institution whose principles have similarities with *cyber notary*. Based on the norm conflict theory in writing this research, this theory cannot be used because the conflict between Articles 15 and 16 paragraph (1) of Law Number 2 of 2014 is two articles that are in one law. Article 15 of Law Number 2 of 2014 is the authority given by a notary to certify transactions in person *cyber notary* and Article 16 of Law Number 2 of 2014 is in line with the elements of the authenticity of the deed contained in article 1868 of the Civil Code.

Electronic documents can be used as legal evidence. This is in accordance with Article 5 paragraph (1) of the ITE Law. In connection with other authorities granted to a notary, namely to certify transactions using *cyber notary*, then the results of the print out of the certification can also be categorized into electronic documents. Where the electronic document must also fulfill the elements in article 1868 of the Civil Code regarding the authenticity of the deed.

The form and procedure for making a notarial deed can be said to be valid if it has fulfilled the provisions stated in Article 38 of Law Number 2 of 2016 above. So it can be concluded that the authority of a notary to certify transactions using a cyber notary has the consequence that the deed is valid to be called an authentic deed. As for the reading of the deed by a notary, it is an obligation in making an authentic deed. This has been regulated in the provisions of Article 16 paragraph (1) letter m of Law Number 2 of 2014 so that the reading of the deed is part of the *past* or the inauguration of the reading and signing of the relevant deed. If the deed is drawn up by a notary, it must also be read out by the notary concerned, not by a third party, for example a notary employee. *past* is a verb taken from the word *past* which is interpreted as having been made. This last word comes from old Dutch and is no longer used in everyday language and is only used in the field of law, especially in the world of notaries.¹²

According to G.H.S Lumban Tobing who stated that if the notary himself reads the deed, the appearers on the one hand have a guarantee if they have signed what they heard before (the reading carried out by the notary) and on

¹¹ Great Dawn Matra. 2012. *Implementation of Cyber Notary in Indonesia in terms of Law Number 30 of 2004 concerning the Position of Notary*, Jakarta. Thesis. p. 58.

¹² Tan Thong Kie. 1987. *All About Notary Knowledge*. Bandung: alumni. p. 11.

the other hand the appearers and the notary obtain confidence if the deed really contained what the appearers wanted¹³. If the reading above is related to the function of an authentic deed in proof, it can be seen that in making a notarial deed, reading the deed is something that must be done by a notary in carrying out his duties.

As for violations committed if the reading of the deed is not carried out by a notary, the deed will have the power of proof as a deed under the hand or in other words the deed has lost its authenticity. This has been regulated in Article 16 paragraph (9) of Law Number 2 of 2014 which reads: "If one of the conditions referred to in paragraph (1) letter m and paragraph (7) is not met, the deed in question only has the power of proof as a deed under the hand".

In conclusion, the notary still has to read the deed he made even though the parties wish to read the deed in question so that the deed remains an authentic deed or does not lose its authenticity because the notary does not read the deed. This is intended so that in carrying out his duties, the notary can use technological sophistication without having to violate the laws governing the implementation of his office duties and other laws relating to this matter. The procedure for making a notarial deed is: *cyber notary* According to the author, it has the same procedure as making a notarial deed that has been carried out so far.

The thing that distinguishes the two procedures is in terms of facing, where so far facing here is done by being physically present but facing in relation to *cyber notary* done by using electronic devices, for example *teleconference* or *video call*. The procedure for making a notarial deed using *cyber notary* is The

parties appear before the notary using *teleconference* or *video call* to convey the intent and purpose of going to a notary and submitting the deed to be made, the parties must clearly show their identity to the notary by sending their identity via electronic means, for example *facsimile* and the notary matches the identity with the person who is inside *teleconference* or *video call*, after that, the notary makes the deed in accordance with the form determined by the law which is then read in front of the parties where in the reading of the deed both the notary, witnesses and the parties use *teleconference* or *video call* at the same time, and after the completion of the deed read and understood by the parties concerned, the deed is signed by the parties, witnesses and notaries using digital signatures.

With regard to digital signatures, these signatures require 2 stages which are explained as follows:¹⁴ Formation of a digital signature uses a kind of fingerprint generated from documents and private keys and verification of digital signatures, which is a process of checking digital signatures by referring to the original documents and public keys that have been given, so that it can be determined whether the digital signature is created for the same document that uses the private key.

If these two processes have been fulfilled, a digital signature can also fulfill the juridical elements as contained in a conventional signature. A person who affixes his digital signature is deemed to acknowledge everything he has written in the electronic document in question. Thus, digital signatures have the properties *one signature document*" which if there is even the slightest change in the text sent, the digital signature will also change and will no longer be valid.

¹³ G.H.S Lumban Tobing. 1996. *Notary Position Regulations*. Jakarta; Erlangga. p. 201.

¹⁴ Great Dawn Matra. *op.cit*. Hlm. 54

Based on the theory of authority in the procedural aspect of making a notarial deed, the validity of the transaction certification uses *cyber notary* done by the notary has 3 (three) conclusions, namely:

1. Notary deed as referred to in Article 1 paragraph (7) of Law Number 2 of 2014, namely Notary Deed, hereinafter referred to as Deed, is an authentic deed drawn up by or before a Notary according to the form and procedure stipulated in this Law,
2. If the certification listed in the elucidation of Article 15 paragraph (3) of Law Number 2 of 2014 is the same as a private letter legalized by a notary (legalization), then the certification in question is not an authentic deed. This is because in legalization, the notary must provide certainty of the date and signature of the parties/appearers, in other words, a private letter is made by the parties themselves but the letter must be read and signed in the presence of a notary or the parties. In the presence here is meant to be physically present, not through an electronic device. So that the notary has the responsibility to provide certainty of the date and signature carried out by the parties/appearers and
3. whereas if the certificate has the same meaning as a private letter registered by a notary (*authentication*). If this is what is meant then the certification itself is not an authentic deed so even if it is done by using *cyber notary* will not cause problems because the notary has no

responsibility either for the certainty of the date, time or content as well as the form of the letter made by the parties/appearers. The action referred to in this case is a legal act, not an actual act. So that legal actions are actions that have the aim of creating a right or changing an existing right or terminating it

Based on the description above, the contents of the transaction certification itself must contain legal acts, agreements and stipulations that are not prohibited by law. With regard to agreements which are the contents of a notarial deed, the notary must be aware of agreements that are prohibited by law, one of which is contained in Law Number 5 of 1999 concerning Business Competition. In addition to this, the agreement must also comply with Article 1320 of the Civil Code. If conditions 1 (one) and 2 (two) are not met, the agreement becomes null and void. Likewise, if conditions 3 (three) and 4 (four) are not met, they can be cancelled. So that the contents of the certification of transactions carried out by a notary must also fulfill the elements of the agreement referred to in Article 1320 of the Civil Code.

Legal Strength of the Auction Leaflet Act for Notaries Made by Cyber Notary

In the Civil Case Proof Law, the proof is contained in the H.I.R (*Revised Indonesian Rules*) that apply to the Java and Madura regions are contained in Articles 162 to 177, R.Bg. (*Legal Regulations for the Outer Regions*) applies to outside the Java and Madura regions found in Article 282 to Article 314, Stb. 1867 no. 29 about the evidentiary force of the deed under hand, and BW (*Civil Code*) or the Civil Code Book IV Article 1865 to Article 1945. Based on Article

1866 of the Civil Code/Article 164 H.I.R, evidence recognized in civil matters consists of written evidence, witness evidence, conjecture, confession and oath. Written/written/letter evidence, placed in the first order. This is consistent with the fact that in civil matters, letters/documents/deeds play an important role.

In every dispute settlement that is submitted to court, the judge requires proof of each event submitted by the parties. Based on the theory of evidentiary law, Munir Fuady is of the opinion that the law of proof must firmly stipulate that the burden of proof (*burden of proof, burden of producing evidence*) on whose shoulders? In this case it is said on whose shoulders the burden of proof is placed by law, it will directly determine how the end of a legal process in court. For example, in a civil case where both parties cannot prove their case. Therefore, if the burden of proof is on the plaintiff, but the plaintiff cannot provide evidence, even if the defendant cannot provide evidence, then the plaintiff is deemed to have lost the case. Conversely, if the burden of proof is borne by the defendant and it turns out that the defendant cannot prove it, then the defendant will lose the case even though the plaintiff may not be able to prove it. Therefore, in determining who bears the burden of proof, it is necessary to pay attention to the principles of prudence and justice¹⁵.

About evidence (*evidence*), There are several forms or types. M. Yahya Harahap stated that the evidentiary law in force in Indonesia until now still adheres to certain types of evidence. And beyond that, it is not justified to submit other evidence. In other words, that the evidence submitted outside of what is determined by law is invalid or not

recognized as evidence, therefore the evidence has no evidentiary value to strengthen the truth of the arguments or objections put forward.¹⁶.

In this current era, since the world has entered the era of information technology, there has been a shift in the regulation of evidence in civil cases in Indonesia. Thus, arrangements regarding evidence are regulated in Article 1866 of the Civil Code juncto. Article 164 H.I.R juncto. Article 284 RBg. has undergone changes and has increased with a number of evidence previously regulated in a number of statutory regulations. Signature (*signature*) for example, which is an important piece of evidence in documentary evidence, where the signatures are affixed by the parties in the agreement or contract of sale and purchase, leasing, and so on. In its development it has also been known as "electronic signature", which according to Article 1 number 12 of Law Number 11 of 2008 concerning Electronic Information and Transactions, it is formulated that: "Electronic Signature is a signature consisting of Electronic Information attached, associated or related to other Electronic Information that is used as a means of verification and authentication." Then, in Article 11 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions, it indicates that electronic signatures are considered to have legal force and legal consequences with the provisions: "Electronic signatures have legal force and legal consequences. lawful as long as it fulfills the following requirements:

- a. Electronic Signature creation data is related only to the Signer

¹⁵ Munir Fuady, Theory of Proof Law (Criminal and Civil). 2006. Bandung: Citra Aditya Bakti. p. 45.

¹⁶ M. Yahya Harahap. 2004. *Civil Procedure Law concerning Lawsuits, Trials, Confiscations, Evidence, and Court Decisions*. Jakarta: Sinar Graphics. p. 554.

- b. the data for making an Electronic Signature during the electronic signing process is only in the power of the Signer
- c. all changes to the Electronic Signature that occur after the time of signing can be known
- d. all changes to the Electronic Information related to the Electronic Signature after the time of signing can be known
- e. there is a certain method used to identify who the Signatories are, And
- f. there are certain ways to show that the Signatory has given consent to the relevant Electronic Information.”

As for the strength of proof of an authentic deed, it is known as 3 (three) kinds of evidentiary powers, namely:

- a. Outward evidentiary power(*external evidence*) The strength of external proof of an authentic deed is the ability of the deed to prove itself as an authentic deed. A deed is said to be an authentic deed when it is made by or before an authorized public employee. The conclusion of this statement is that the signature contained under an authentic deed must be accepted as a signature that actually comes from the public employee who made it. Thus, the burden of proof is on those who dispute it. Finally, it should be noted here that the external evidentiary force applies to anyone.
- b. Formal evidentiary strength (*formal evidentiary value*) An

authentic deed has the power of formal proof which means that everything written on the signature of the public employee who made the deed in question must be considered valid as an authentic deed. Anyone who disputes this, for example if there is a change in the text after signing, must prove this. In the sense of a formal deed, authentic proof regarding the correctness of the date of the deed, the identities of those present(*appearances*) along with witnesses, signatures contained in the said deed, as well as the place where the deed was drawn up¹⁷

- c. Strength of material proof (*material evidential value*) The strength of material proof is the strength of proof that is recognized by Article 1870 of the Civil Code, namely relying on a statement of will (*advance directive*) of the parties themselves. Legal scholars agree that an authentic deed, in addition to proving that the parties have correctly explained what is written in it, also proves that what is explained is true. This material evidentiary power is meant by law as stated in Articles 1870, 1871 and 1875 of the Civil Code, namely that between the parties and their heirs and the people who obtain rights from them an authentic deed is perfect evidence of what is contained in it, with the exception of what is contained in it as a mere narrative and which has

¹⁷ *Ibid.* Matter. 25

no direct relationship with what is the subject of the deed.

Thus, regarding the three kinds of strength of authentic deed mentioned above, it can be concluded that all three have perfect evidentiary power (*full evidentiary value*) or binding. In other words, against proof to the contrary (*evidence to the contrary*) is possible by using ordinary means of proof that are permitted by law. Thus an authentic deed never has absolute and decisive evidentiary power (*conclusive evidential value*), namely the strength of evidence that does not allow the submission of evidence to the contrary.

As has been discussed in the previous chapters, the notary has the authority to make the minutes of auction deed as stated in article 15 paragraph (2) letter g UUJN, so that in this case the Notary is no longer a Notary but will first temporarily release or leave his position as a Notary, so that the Notary only enough to be called a Class II Auction Officer.

In Article 1 paragraph 32 of the Minutes of Auction Minister of Finance Regulation Number 213/PMK.06/2020 concerning Instructions for Auctions are minutes of auction implementation made by the Auction Officer which is an authentic deed and has perfect evidentiary power.

In accordance with the wording of Article 1868 of the Civil Code that "An authentic deed is a deed made in a form determined by law by or before a public official who is authorized to do so at the place where the deed was made." So, when referring to the Minister of Finance Regulation Number 213/PMK.06/2020 concerning Instructions for Implementation of Auctions Article 1 number 44, the definition of an Auction Officer is a person based on laws and regulations given special authority to carry out an Auction. As a general official,

the Auction Officer in every auction conducts a product in the form of Auction Minutes

During the execution of his duties as an Auction Officer, a Notary must adhere to the procedures set out in *Sold Payment* and Regulations of the Minister of Finance, a Notary cannot make a Minutes of Auction deed as is appropriate for a Notarial deed because the Notary when exercising his authority as an Auction Officer leaves his position as a Notary. As previously explained, the authentic auction minutes deed can be seen from the way the auction minutes are made. The deed of Minutes of Auction is said to be an authentic deed if the making or occurrence of the deed is carried out by and or in the presence of a Public Official who is authorized to make it, namely the Auction Officer.

However, the position of an authentic deed as a perfect means of evidence can be imperfect and non-binding, which is due to the non-fulfillment of the elements contained in making an authentic deed, so that its position has decreased to a deed under the hand or in other words has been degraded in terms of the power of proof. Although an underhanded deed can also be used as evidence, the strength of proof of an underhanded deed is different from an authentic deed. The strength of the proof of an underhanded deed is not as perfect as the strength of an authentic deed.

CONCLUSION

1. A notary authorized to make a deed of minutes of auction according to Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the position of a notary is a Notary who has met the requirements and qualifications as an auction official and has been

appointed and determined by the Minister of Finance to carry out his position. as a class II auction official. In order to become an auction official, a Notary must follow the rules made by the Minister of Finance. Where a notary who wants to become an auction official is obliged to be appointed by the Directorate General of State Assets and fulfill all the conditions that have been determined.

2. There is a similarity in authority between the Notary Position Law (UUJN) and PMK 213/2020 which stipulates that auction officials contained in the KPKNL are class I auction officials, while notaries or other private parties who meet the requirements to be appointed as bidder officials are called bidders. class II. This makes the notary's authority to make the auction minutes deed as stipulated in Article 15 paragraph (2) letter g "UJN has similarities with related class auction officials in the context of making auction minutes as an authentic deed, this causing legal uncertainty in society, because hThe ideal law is where a rule of law that applies in society must be a law that cannot be contradictory with other rules of law so that it does not become a source of doubt.which can result in different implementation of these rules and community non-compliance with these rules.
3. The implementation of making auction minutes deed

via the internet is the same as making auction minutes deed with conventional implementation. The difference is only limited to the implementation. In Making Minutes of Auction Through the Internet (*cyber notary*) in the Regulation of the Minister of Finance Number 213/PMK.06/2020 concerning Instructions for Conducting Auctions there is no detailed regulation regarding the minutes of an auction which are made individually *cyber*, therefore new rules should be made regarding *cyber notary* or it could be by synchronizing the relevant laws and regulations *cyber notary*.

4. UUJN can present a concept *cyber notary* with a view to other authorities, but the implementation of the concept *cyber notary* has a broad understanding, that is, all the functions and duties of a Notary are carried out online. By concept *cyber notary* The extensive agreement in making Authentic Deeds is still contrary to the terms and mechanisms in the Authentic Deed itself, both regulated in the Civil Code, UUJN and UU ITE. Where there is an element of "dealing with" as a formal requirement that must be fulfilled by the Notary and the parties in making an Authentic Deed, so that if these conditions are not met, the status of the deed which was originally considered an Authentic Deed which has the strongest evidentiary power

can be changed to a deed under the hand. Also, there are conflict norms that lead to unclear arrangements regarding the form of proof of Authentic Deeds made electronically.

5. The deed of Minutes of Auction drawn up by a Notary in his position as an Auction Officer has perfect and binding evidentiary power, but the position of the deed made in the draft *cyber notary* in the opinion of the author, it still cannot be equated with a deed made conventionally. Because the existence of a digital signatory has not been acknowledged (*digital signature*) in UUJN. Apart from that, in Indonesia itself there is still no clear legal umbrella that can cover the application and implementation *cyber notary*, and it is also necessary to have the readiness to operate a reliable, safe electronic system so that it can operate comfortably and safely.

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