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Responsabilidade pela Violação dos Princípios de Confidencialidade em Ação Eletrônica se Conectada à Lei do Notariado e à Lei da Informação e Transação Eletrônica
Liability for Breach of Confidentiality Principles in Electronic Action if Connected to Law of Notary Service and Law of Electronic Information and Transaction
Responsabilidad por incumplimiento de los principios de confidencialidad en la acción electrónica si está conectado a la Ley de Servicio Notarial y la Ley de Información y Transacciones Electrónicas

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Resumo

No processo de crescimento do mundo dos negócios equilibrado pelo desenvolvimento de tecnologia que também é cada vez mais rápida. Evidências em campo podem ser vistas no site de negociação on-line. O ponto é que, na compra e venda on-line, existe um processo que surge de um acordo que é derramado on-line ou eletronicamente. Este contrato eletrônico, se analisado no mundo dos notários e no domínio da lei nacional, também influencia indiretamente. A validade do contrato ainda é questionável, porque nenhum deles está claramente indicado nas disposições da lei. Na lei nacional baseada na lei que rege a ação em si, a saber, a Lei da Posição Notarial e o Código Civil, a aplicação dessas disposições ainda não será claramente regulamentada em ambas as leis. O princípio da confidencialidade que deve ser respeitado no artigo 16 da Lei ainda deve ser cumprido, mesmo na realização de atos eletrônicos. Este estudo utiliza um método jurídico normativo, que descreve, explica e ao mesmo tempo explica a responsabilidade do notário em defender o princípio da confidencialidade na realização de uma ação notarial eletrônica. Seja uma ação autêntica ou

não. A responsabilidade do notário não sustenta o princípio da confidencialidade de acordo com o artigo 16 da UUN; o notário deve ser responsável por todo o conteúdo da escritura

Palavras-chave: Responsabilidade, Escritura Eletrônica, Princípio da Confidencialidade

Abstract

In the process of business world growth balanced by the development of technology which is also increasingly rapid. Evidence in the field can be seen on the online trading site. The point is that in buying and selling online there is a process which then arises an agreement that is poured online or electronically. This electronic agreement if analyzed in the world of Notaries and the National Law domain indirectly also influences. The validity of the agreement is still questionable, because none of them are clearly stated in the provisions of the law. In the national law based on the law governing the deed itself, namely the Law of Notary Position and the Civil Code, the application of these provisions will not yet be clearly regulated in both laws. The principle of confidentiality that must be upheld in Article 16 of the LawJN must still be carried out even in making electronic deeds. This study uses a normative juridical method, which describes, explains and at the same time explains the notary liability in upholding the principle of confidentiality in the making of an electronic notary deed. Be an authentic deed or not. Notary liability does not uphold the principle of confidentiality according to Article 16 of the UUN, the notary must be responsible for all the contents of the deed

Keywords: Liability, Electronic Deed, Confidentiality Principle.

Resumen

En el proceso de crecimiento del mundo empresarial equilibrado por el desarrollo de tecnología que también es cada vez más rápida. La evidencia en el campo se puede ver en el sitio de comercio en línea. El punto es que en la compra y venta en línea hay un proceso que luego surge un acuerdo que se vierte en línea o electrónicamente. Este acuerdo electrónico, si se analiza en el mundo de los Notarios y el dominio de la Ley Nacional, también influye indirectamente. La validez del acuerdo aún es cuestionable, porque ninguno de ellos está claramente establecido en las disposiciones de la ley. En la ley nacional basada en la ley que rige la escritura en sí, es decir, la Ley de Posición Notarial y el Código Civil, la aplicación de estas disposiciones aún no estará claramente regulada en ambas leyes. El principio de confidencialidad que debe respetarse en el artículo 16 de la LawJN debe llevarse a cabo incluso al realizar escrituras electrónicas. Este estudio utiliza un método jurídico normativo,

que describe, explica y al mismo tiempo explica la responsabilidad notarial en la defensa del principio de confidencialidad en la realización de una escritura notarial electrónica. Sea un hecho auténtico o no. La responsabilidad notarial no respeta el principio de confidencialidad según el Artículo 16 de la UUNJ, el notario debe ser responsable de todo el contenido de la escritura.

Palabras clave: Responsabilidad, escritura electrónica, principio de confidencialidad

1. Introduction

The emergence of digital technology is a manifestation of the rapidly developing world of technology. Basically, in the development of technology is more rapidly can precisely gives the easiness to change the effectively to communicate for the user to trade the information and data (Sitompul, 2012).

The internet world now is regarded as significant needs, now has been change the business world which used to depend only on the old-fashioned way and then got the business visionaries is ready to start the contribution in effectively and with smaller capital, but by logging from web it is able to collect the costumer and results of billions of dollars towards the beginning of the twenty-first century (Tutik, 2014).

The internet world which is applied to the business world, the business world has an amazingly fast progress, this can be seen from the understanding or agreement with digital model or electronic. The Progress in utilizing data innovation is happening at the moment although it is still has some problems, such as utilizing the innovation in understanding of e-contract which can make it easier for the parties who may not be present to make an agreement.

Later, the agreement has been agreed and then set forth in an electronic deed which the practice is from one of the party especially the seller who post the product on the application in internet, then from the buyer can choose what is needed to be purchased and implement the transaction. This thing is more easily and later the buyer is not needed to gives the signature as the final sign in process to make an electronic agreement.

The law of ITE Constitutions on electronic signature has been arranged in clearly. In fact, the electronic signatures must be able to provide the certainty and legal protection for all the consequences of their actions. Practically, the needed of notary to Indonesia Citizen is very necessary to gives the help or legal protection on needed of notarial deed.

The notary professions seen by society as a profession that is very trusted and respected. Where the position of notary directly is a profession that is not a civil servant and it

is not paid by the State but is sworn in by the State, which will later be required to provide a guarantee for a legal deed product (Makarim, 2014).

After, the increasing of notaries in Indonesia is driven by fundamental arrangements from this legal authority. During the frame time of change, the notary condition has been changes in basically, this is also shows to indicate the issuance of legal guidelines identified with Notary Constitutions Number 30/2004 regarding to the notary position or usually alluded as UUJN. The basic law is the update from renewal of a legal premise according to Dutch law, and more specific with the Situation Guidelines for Notary Public (Stb. 1860-3) and Reglement Op Het Notary Ambt in Indonesia (Stb 1860; 3) in the Article 1 paragraph 1 UUJN stated that “Notary public is an authority that people generally agree to do real actions and have different specialists as mentioned by now under different laws”.

Notary calls are also not really safe to implement their obligations, the existence of moral code maintain the classification of its customers also in a very unsafe although all people have must be expanded to offering this type of assistance to the general public. In this thing, it needed to get an official Law degree. It must take the special curriculum previously and public notary it is doesn't depend as far as the capacity because, you must have the option to provide a valid inquiry that is identified with a valid item.

The legal framework in Indonesia is also attach to general legal framework in significant effect on notary world, because remembering to the Legal authorities have appointed positions that have the option to make actions that have legal force as formal evidence. Hence, this is part of notary in law conventions based on the legal precedents given by notaries do not have legitimate power despite the fact that notaries are clearly managed in law.

Authentic deed has made by notary can be used by all signal. Notary have expert ideas about open authority which get from Nation to do the legal capacity and general until they have they have characters who can have their own dangers in directing the making of an authentic deed.

Notary must have the option to keep confidentiality of the deed and transparency with all the meeting that connected in making the authentic deed. Open notaries must also follow the notary moral code that has been directed by the Constitutions.

In this case, the notary is not depending on the moral code, it will not get the trust from citizen. The commitment to keep the deed is disclosed in article 2 paragraph 2/2014 referred “that I will keep the deed substation and data obtained in my position”. Even more, from now on as the regulation in Article 16 paragraph 1 point e UUJN is clarified that,

implement the position, the notary obligate to keep all the mystery about the deed that has made and all the data has get to make the deed corresponding to the oath and office guarantee, with the exception if the law stipulates otherwise.

Whereas, in the Article 54 UUJN is clarified a notary just can gives focus, or illuminating the substance of the deed, Grosse deed, duplicate deed or quote deed to individuals who are directly interested in the Deed, the benefit recipients or individual to get the right, except decided in any case by law and guidelines.

Situation that faced as a notary is trust, so someone wishes to bless their tendency to do deeds to a notary. The legal rules and moral which is the specific data must not to be revealed, because of the natural classification of the data. The data privation is appears in an expert connection, there are:

- a) The special insight that appeared from the connection between bank and client as known as the secret of the bank;
- b) The fact of people appears from the connection between government authority and administration as known as mystery workplace
- c) The mystery is appears from association of bookkeeper and customer;
- d) The mystery is appears from the supporting association and customer
- e) The mystery is appears from specialist association and patient;
- f) The special insight appears from the linkage between the notary and customer;

Usmar Seno Adji stated that if the commitment to keeping the office secret must to fulfill the accompanying needs:

- a) There must be commitment to keeping secret because the job or position and calmness;
- b) This problems in connection with the receipt given to the mystery officer

as indicates by Constitutions, letters in the form of deed has made in front of the notary is the right deed, everyone who denies the fact of authentic deed, who denies must have to choose to shows something else.

The openness notary must not side in one side party; it implies a notary helps the parties to making the deed, obligate to focusing in the problems of the party and the obligation to keep the mystery identified with the substance of the deed are made. Especially if there is a contest between two parties, which is brings the notaries deed. The reason for the examination is to find and gather evidence.

Confidentiality related to the deed there are three (3), namely:

- a) The data during the time spent makes the deed is put together by the customer.
- b) The character is uniting by meetings dealing with public accountants.

c) Information on joining the minuta.

This is fulfilling one of the laws which fulfill as regulation to solve the work of notary office, to specify the trust guidelines, where the notary is the trust place in accordance with the individual, who conducts the workplace of a notary public as a reliable individual. One structure is notary commitment to protect everything about the deed has been made and all data must to be made the deed corresponding to the promise/law, except if the constitution is set something else. 98 as the causing in the philosophy background, the mystery of position is a tool for securing individual privileges of the party as identified by a deed made by a legitimate officially. With the way, is not the way to reduce the instrument in terms of securing a notary public.

Using the special right to hide the things to identify the position is also controlled as contained in criminal procedure, general law and the Criminal Code (KUHP). In the Article 170 paragraphs 1 KUHP stated that the individuals as the results of their work, pride, or position are required to remain silent can demand to be freed from the use of the privilege to provide data as witnesses, especially about the problems bestowed on him. Furthermore, in the Article 1909 Paragraph 2 from the general code stated that the states that all people, because of their position, occupation or position as indicated by law, are required to keep something confidential, but only exclusively with respect to matters of their insight, it depends on them. In the Article 322 paragraph 1 KUHP stated that anyone who deliberately unravels the mystery that must be protected because of his position or business, both now and before, it is compromised with a maximum jail sentence of nine months or a limit of six hundred rupiah.

The task that causing damage to individuals who make a notaries deed as called as joint risk. If the notary is cannot keep the secret, it is causing by the privacy abuse from the worker, it is also very disturb by the worker. Hence, can the notary be exposed to the risks of a joint obligation of an outsider or a person who has made a deed to him if the electronic deed is not properly stored, especially because the classification of material for misconduct is handled by another party. ³ The purpose of this study is to analyze the Liability for Violation of the Principle of Confidentiality in an Electronic Deed if it Is Linked to the Law of Notary Position and the Information and Electronic Transactions Law.

2. Methodology

The method used here is qualitative method with normative law which later provides an in-depth study of the duties and responsibilities of certain position such as the notary and his works make the notarial deed and when obtained the problem or negligent then the extent of the responsibility given.

Peter Mahmud Marzuki in his book to express the opinion related the law study which is a process that used to review the rules until the doctrine as the basic law to gives the answer on the problem arises in citizen (Marzuki, 2011). Furthermore, this research used normative law to obtain the basic problem and extent the general problem arises.

3. Discussion

If examined in terms of UUJN that the electronic deed made by a notary, is still currently causing controversy. This is causing the position of electronic deed does it have legal force to proving it to be an authentic deed, or is it equivalent to a deed under the hand. As in the article 7 UUJN stated that the definition of notary deed is the authentic deed generated and made before a notary public as stipulated in the regulation.

Relaas acten or authentic deed that authentic deed generated by public officials, who have the content regarding the description as requested by both parties. Where the activity is obtained by both the parties can be recorded as an authentic deed which is directly made by a notary. The result from the authentic deed contains the truth which cannot be contested, other than by judging that the deed is fake.

Partij acten or deed the parties which made in front of officials and contains of all things about the agreement which is desired by both parties who indeed deliberately want to make, and ordered the deed to be issued. The result from the authentic deed can be contested by the parties themselves without having to judge that the deed is fake.

As a notary, it is the trusted position, this means someone already has been trust him to hear the secret that the client told him. To be stated in the deed or not stated in the deed. It can conclude that a notary is the trust people which are obliged to pour everything that is conveyed and desired to be included in the authentic deed. After the deed is completed, so it is also obligate to read it, the parties who made, can clearly understand the contents of the authentic deed.

Law of Notary Position Article 4 and 16 paragraph 1 point f gives the obligate to the notary to keeping the secret for all matters relating to the contents of the deed and all forms of information he obtained during the process of making the authentic deed as a professional

oath that has been attached to the notary himself. If notary implement the violation as stated, so as the Article 16 paragraph 11 UUJN Notary, the sanctions can be in the form of verbal reprimands to dismissal with no respect.

In the article 4 UUJN is defined that the obligation of a notary to keeping secret of the client, it is including all forms of broader information that have been submitted by the client to him. As a position carried by a Notary, as a position of trust so that the community is comfortable and entrust the problems that he buried to be conveyed.

As a trusted man, notary has the connection about the trust with the client. As a client who tells everything to the Notary, as related to the contents of the authentic deed. Then, notary is obliged to keep all matters related to matters that are notified by the client to him. As a trusted man of citizen, Notary is obligate to keeping secret about all the information that given by the client. This is the application of confidential profession (trusted position) as a form of embodiment of a notary as a person who is trusted, even though the relationship between the client and the notary has ended, a notary is still bound to keep it a secret. The right of denial is owned by a notary public official who must hold fast to not divulge the secret of his client. While the notary position as state officials who keeping public interest to solve the legal process to get the results that are beneficial, fair, and certainty as stipulated in the ⁵ Article 16 paragraph 1 point e UUJN and in the Article 54 UUJ explained that the contents in the deed could be disclosed to parties who did not have an interest, on the conditions that the rules are based on the law.

As a Notary, he must obey the rules that limit his performance as contained in the Law of Notary Position. As contained in UUJN contained the rights and obligation as a notary to implement his term of office. All form of neglect and the things that are contrary to the content of UUJN, then a Notary may be the subject to sanctions based on article 84 of the Law.

The elements of civil liability to the notary, such as:

- a. There is an action, the appearance of typing errors on the authentic deed.
- b. PMH (Unlawful Act).

As stated in Article 16 paragraph (1) point aof UUJN, that a Notary is obliged to implement an act with due consideration, so that the Notary Public does not commit an act that is contradicted by the law and the Law.

- c. Element of error.

There is a typo in the authentic deed, which indicates the negligence committed by a notary public.

d. Element of losses for the client.

There is a Mistake in typing to a notary deed is substantive. Example of the typing mistake is: In the credit agreement the due date should be dated August 20, but written in deed of the August 30. Then it has a detrimental impact on creditors.

e. There is a causal relationship due to the behavior of the loss.

Typing mistake which is conducted by a notary, example the typing mistake of the amount of sale and purchase which written in the deed not as it is turns out. This is causing loss for unauthorized party, thus causing the land notarial deed to be valued differently in the future which should have been written IDR. 50.000.000,- (fifty millions rupiah) but it is written in the deed only IDR. 30.000.000,- (thirty millions rupiah), while the parties concerned sell the land they only bid for IDR. 50.000.000,- (fifty millions rupiah). Thus, the interested party experiences a loss on the price of the land he has purchased.

In Article 41 UUJN stated: “violation on the regulation as it means in the Article 38, 39, and 40 is causing the deed only have the power to proof as deed under Sumatera Utara University 100 hands.” As a result of the negligence of a notary public, it causes losses to the parties concerned with the notarial deed, then as stipulated in the Article 84 of the UUJN, the interested parties may request compensation in the form of costs, as well as the amount of loss caused by the negligent act.

Article 15 UUJN stated: in making authentic deed on habit, the stipulation and agreement as mandated by law and regulation in making authentic deeds of behavior, stipulations and agreements mandated by legislation and / or as the wishes of the parties agreed to be contained in the deed, ensuring certainty of making based on the date of the deed, depositing the deed, granting the certificate, quoting the deed and copy of the deed. All of these things in the process of making the notarial deed are also not given an assignment and are excluded to other officials or someone.

Some authority of notary has been explained above, there are another the notary authority which is in authorize the signature and certainty of the date of the letter carried out under the hand accompanied by registering in a special book, codifying the underhanded letter by registering in a special book, as well as copying from the original data of the under-hand letter containing and containing and written as the original.

Furthermore, the power of proof this strength arises from the fact that the notary public in a civil law state has a formal obligation that was born out of the implementation of the tabellionis officium fideliter exercebo principle. The obligation is in the form of obligation of a notary require to dating, hearing and seeing of each process in making a deed and the

signature both by notary and the authorized party, and it is obligate to read it in directly by the notary. The signature must be the original signature of the notary public and the signatures of the parties concerned (not represented) (Wijaya, 2012).

In view of ITE which is *Information security in general is defined as process of protecting the confidentiality, integrity and activities need handicraft effort. This means that ideas availability of data from accidental or intentional misuse.* (Laudon,2006) on the definition known a secret and security of information system is very important thing. One of the models who are already very famous related with the information security is CIA model (*Confidentiality, Integrity, and Availability*). (*Confidentiality*) refers to information security from their access who is not authorized, (*Integrity*) information refers to information security from the changes that implemented by the unauthorized party. (*Availability*) information refers to certainty that the authorized party can be access the information when it needed.

Then, as the regulation in article 5 paragraph 4 point a and b to ITE Constitutions, stated if a document has been made in the form of authentic deed is not in the field of electronic documents and electronic information. Then, notarial deed that made in electronic is never get the power of law to be used as the legal evidence as in the regulation of ITE Constitution. Then, the limitation that contained in the article 5 paragraph 4 point a and b stated, that the authentic data has made by the electronic system by notary cannot be a legal evidence. So, the validity of the notarial deed has been made by notary is not fulfilled.

Then it can be conclude that law substation on making notarial deed is not accommodate in maximal in UUJN and ITE Constitution. It must be already accommodate in UUJN and ITE Constitution from the new changes, realizing UUJN and ITE Constitution is basic law from the way of notary working on the chance for system progression of information technology and communication in era 4.0 nowadays. Although UUJN and ITE Constitution not yet accommodate the necessary, but some chance on the notary deed electronic system is still open as in regulation RUPS teleconference. But, in this thing to apply it is not yet implemented, realizing the juridical problem that faced by notary.

4. Final Considerations

In the previous discussion, an analysis of existing problems has been carried out. From the results of the analysis obtained several problems solving, Thus, it can be concluded that:

1. Radar / Arpa navigation tool on the KM boat. BINAIYA has been used, but the observation needs to be increased when bad weather and limited vision by

maximizing the use of the menus contained in the Radar / Arpa navigation tool, in order to detect and analyze data and the presence of targets around the ship such as CPA and TCPA for avoid the danger of collision.

2. Cadet on duty and the helmsman on duty has prepared himself to assist the task of the officer on duty to make observations around. But the function and role of the observer need to be improved. The watch keeping cadet also plays an important role in helping the watchmaker by maximizing the use of the Radar / Arpa navigation tool and is more alert in reporting the dangers of the officer on duty in order to avoid collision.

Thus, for further research suggested to be more alert in reporting the dangers on duty to avoid collision. And further research can examine about bad weather within other subject matter.

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