



Protection of Personal Data in The Implementation of Cyber Notary Based on Law Number 27 Of 2022 Concerning Protection of Personal Data in Conjunction With Law Number 19 of 2016 Concerning Amendments to Law Number 11 Of 2008 Concerning Information and Electronic Transactions

Iriani Ratna Dewi

Master of Notary Program, Pasundan University Bandung

e-mail : iriani@gmail.com

i5

ABSTRACT

Article history:

Received 210324

Revised 020824

Accepted 280824

Keyword:

cyber notary, personal data protection, data security and confidentiality, notary responsibilities

Developments in the notarial world are known as the Cyber Notary system; this opportunity also raises challenges regarding the vulnerability of data misuse in cyberspace. The purpose of this research is to see how personal data is used by Notaries in the implementation of a Cyber Notary, as well as the extent of the notary's responsibility for this Personal Data according to the Personal Data Protection Law in conjunction with the Electronic Transaction and Information Law. This research uses a normative juridical approach, emphasizing library research, to obtain secondary data. The research specifications used are analytical descriptive. The research stage was library research, which was then supported by field research. The data collection techniques that have been collected are analyzed qualitatively. The research results show that the Personal Data Protection Law provides legal certainty regarding the responsibility of the Notary as Data Controller in using the Personal Data of the Applicant, as well as providing limitations to the notary regarding the extent of responsibility for the security of the personal data belonging to the notary by the notary which is also regulated in Article 15, 16, 17 and 19 of the Information and Electronic Transactions Law that the notary must be reliable and guarantee the security and confidentiality of the client or party concerned. Regulations regarding personal data protection protect and guarantee citizens' fundamental rights, provide legal certainty to citizens and protect notaries in carrying out their duties.



©2024 Authors. Published by Notariat UNPAS.. This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License. (<https://creativecommons.org/licenses/by-nc/4.0/>)

INTRODUCTION

1. Background

The position of a Notary is that of a public official (private notary) assigned by the public authority to serve the public's need for authentic evidence that provides certainty in civil legal relations. So, as long as the State's legal system still requires authentic evidence, the position of a notary will continue to be necessary in society. According to Ranti Fauza Mayana, in an event held through a Webinar regarding Opportunities and Challenges for Notary Candidates: Utilization of Technology in Optimizing Notary/PPAT Services, delivered in the Webinar on Progressiveness of Notary/PPAT Services in the Era of Digital Disruption in Bandung on April 20, 2021, Currently various various human needs have widely implemented the support of the internet and the digital world as a vehicle for interaction and transactions, such as marketplace/e-commerce, Sharing Economy, Smart Applications and e-Education. It is the new face of world economic activity in the 4th Industrial Revolution.

A notary is required to be able to understand information technology for managing the resulting legal products. Apart from that, in responding to this phenomenon, Notaries need to understand the characteristics of Personal Data for the Security of Data Providers. Because the notary's position is a position of trust, this includes the obligation to maintain the security or protect Personal Data provided for the notary's administration.

The Personal Data Protection Law's passing provides legal certainty and security for personal data owners. Apart from that, the role of personal data storage is huge in reducing the occurrence of crimes related to personal data. A notary is one of the parties whose role is to store personal data. It is because the notary, in the deeds that the notary makes, is required to write down the personal data of the parties who appear before him. The part of the notarial deed that describes personal data is called the comparison. If the person appearing before the notary is an individual, then the matters that must be mentioned in the comparison include:

1. Full Name
2. Place and Date of Birth
3. Citizenship
4. Job/Position/Position
5. Residence
6. Personal identity (Electronic KTP by stating the Population Identification Number)

Apart from the comparison, in the notarial deed, there is another part of the notarial deed that describes a person's data. This section is located at the end of the deed and describes the witness's data in the same terms as the person mentioned above.

Keeping the deed and its contents confidential is an obligation of the notary's position as stated in Article 16 paragraph (1) letter e of Law Number 30 of 2004 concerning the Position of Notary. Violation of these obligations also has legal consequences. According to Article 16 paragraph (11) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, it is stated that a notary who violates these obligations will be subject to sanctions in the form of:

1. Written warning
2. Temporary Dismissal
3. Dismissal with honor; or
4. Dishonorable discharge

Apart from that, violations of the notary's obligation to keep the deed and its contents confidential are also permitted by law to be a reason for the party who suffers losses due to the violation to demand compensation from the notary; this is as stated in Article 16 paragraph (12) of the Law -Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. For this reason, by adequately carrying out his obligations in keeping the contents of the deed confidential, which includes the personal data of the presenters and witnesses, a notary plays a role in efforts to protect personal data by not disseminating the personal data of the presenters and witnesses to other parties who have no connection to the deed.

The role of a Notary in hacking his or her computer device must start with preventive measures, such as increasing the security of the computer device. However, the notary's responsibility for the security of this digital deed is limited to loss or damage to the protocol stored electronically by the notary and maintaining the confidentiality of the deed.

Article 16 Letter B of the law on the Position of Notaries determines what a Notary must do: making an authentic deed in minute form and storing the deed as part of the notary's protocol. If the deed minutes are lost or damaged due to the notary's deliberate intention, which causes losses to the parties and causes a lack of legal certainty, then this constitutes a violation. Article 16, letter f of the Law on Notary Positions stipulates that a Notary must "keep confidential everything regarding the Deed he or she makes and all information obtained to make the Deed in accordance with the oath/promise of office unless the Law determines otherwise." Violations of Article 16 Letters B and Letter F of the Notary Public Law can be subject to sanctions as regulated in Article 75 of the Notary Public Law in the form of a verbal, written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal.

2. Problem Identification

Based on the description above, the problems can be described as follows:

1. How is the Notary's Personal Data Used and Protected by the notary in implementing Cyber Notary?
2. How is the notary's responsibility in using the Applicant's Personal Data in implementing a Cyber Notary related to the Personal Data Protection Law jo. Constitution of electronic information and transaction?

RESEARCH METHODS

1. Research Specifications

The research specification used in this research is descriptive analysis. It aims to provide an overview of the facts and an accurate analysis of applicable laws and regulations linked to legal theories and practices in implementing legal protection for Cyber Notary users.

2. Approach Method

This research uses a Normative Juridical approach, namely research carried out with an emphasis on research and study of library data or what is also called secondary data. The Normative Juridical approach method discusses statutory provisions relating to the cyber world.

3. Data Analysis

The data analysis method is used to analyze data and draw conclusions from the research results on both legal materials, namely primary data and secondary data, which are analyzed using qualitative methods, intended as data analysis based on efforts to discover principles and information of nature monographic expressions from respondents. The data will be presented in descriptive form, describing the research results again to explain the problem and arrive at a conclusion.

RESULTS AND DISCUSSION

1. Use and Protection of the Personal Data by the notary in the implementation of Cyber Notary

The concept of a Cyber Notary is that a notary carries out his position by carrying out his duties and authority through an information technology system related to his duties in terms of doing deeds electronically. Cyber Notary is a concept that utilizes technological advances for notaries in carrying out their daily tasks, such as digitizing documents, signing deeds electronically, holding General Meetings of Shareholders via teleconference, and other similar things. Some time ago, the world of notaries indeed socialized Cyber Notary, although it is still only a concept up to now. There is no facilitation in the form of a law regulating Cyber Notary, so the concept of Cyber Notary is only a concept in the context of the digital era 4.0 and still needs to be connected.

Online services are hampered because formal requirements must be fulfilled to support the validity of the Notarial Deed. The formal requirements are: First, it is made in the presence of an authorized official (Article 15 paragraph (1) of the law on the Position of Notaries). Second, it is attended by the parties (Article 16 paragraph (1) letter l). Third, both parties are known or introduced to the Notary (Article 39 of the Notary's Office Law). Fourth, two witnesses are present (Article 40 of the Notary's Office Law). The formal requirements for the presence of the parties are cumulative and not alternative, meaning that even one condition is not fulfilled, resulting in the Notarial Deed containing formal defects and meaning; as a result, it is invalid and has no evidentiary value, the authentic nature of a notarial deed must still be maintained. So, normatively, the Cyber Notary concept has yet to be accommodated in the Law on Notary Positions.

Currently, opportunities to take advantage of advances in information technology can be carried out concerning other notary authorities apart from making authentic deeds, including:

- Legal Entity Administration System (SABH) relating to applications to obtain a Decision on the legalization of a limited liability company legal entity from the Minister of Law and Human Rights electronically
- Validate the signature and determine the certainty of the date of the underhand letter (legalization, Article 15 paragraph (2) a of the Notary Position Law) as carried out by a notary public with authentication;
- Send an online report by a notary or his attorney in writing, a copy that has been validated from the register of deeds and other registers made in the previous month no later than 15 (fifteen) days of the following month to the Regional Supervisory Council (Article 61 paragraph (1) of the Law notary position act);
- Send online a list of deeds relating to wills or a nil list to the Minister of Law and Human Rights cq Central Register of Wills every month within 5 (five) days of the first week of each following month (Article 16 paragraph (1) i of the Law Notary Position);

- Inquire online whether or not the testator has made a will before making a Certificate of Inheritance by a notary to the Minister of Law and Human Rights cq Central Register of Wills.

From the benefits of advances in information technology that can be carried out by Notaries, of course, some personal data or files are accessed and processed through technology. Ranti Fauza Mayana Tanwir, based on the results of interviews, states that Notaries transfer data from and to various parties, for example, partner banks, ministries (for example, data related to companies when carrying out processes on the AHU system and carrying out the process of installing electronic HT on the ATR system BPN, etc.).

Based on the general provisions of point 7 of the Personal Data Protection Law, "every person is an individual or corporation," so Conventional Notaries and Cyber Notaries are subject to obligations as Data Controllers, also as stated in the general provisions of article 1 "for electronic systems and non-electronic." Anyone who collects personal data, especially for their work, is required to be careful. In this case, Notaries must prepare themselves for this phenomenon; they must see what personal data is collected and what kind of data it includes, as well as who has access to this personal data because if there is a data leak, there will be legal consequences in the end. Claims from Data Subjects who feel disadvantaged are resolved by the Institution (currently still being formed). The personal data monitoring institution mandated in this regulation is under the president's authority. Their duties and authority require them to be impartial or independent in examining and imposing sanctions on the management. The Personal Data Protection Law gives 2 (two) years to prepare the infrastructure from October 2022 to October 2024; however, you can sue in court if losses occur.

The Personal Data Protection Law provides a sense of security for society because it provides legal protection for personal data, which has implications for increasing opportunities for more comprehensive digital transformation, including implementing a Cyber Notary. However, Personal Data Protection is only one of the many aspects needed to support Notaries in carrying out their duties and functions as a trusted service. Apart from that, other things that are needed include implementing regulations from the Personal Data Protection Law concerning notary duties and positions as a bridging between the Notary Position Law and the Personal Data Protection Law, which would be even better if fixed in the form of a clear code of conduct as a reference and guide that is in line with the Notary Code of Ethics. Apart from that, support for technological infrastructure and personnel upgrading includes digital literacy and increasing notary knowledge and skills in the era of digital disruption.

Because no law regulates Cyber Notary, up to now, Cyber Notary is only a concept. Cyber Notary is not only about Notaries in terms of doing deeds electronically, but all actions or process activities carried out by Notaries in carrying out their duties and positions using or taking advantage of technological advances, as the meaning of Cyber itself, according to the Big Indonesian Dictionary (KBBI) is a computer and information system, cyberspace, connected to the internet.

So, Notaries who take advantage of technological advances connect to the internet by using computers to carry out their duties and authority. According to the author, this includes cyber activities carried out by Notaries. Currently, for these activities, some data is processed and accessed from and by Notaries as described above.

2. The responsibility of the notary in using the Personal Data of the Applicant in the implementation of Cyber Notary is related to the Personal Data Protection Law jo. Constitution of electronic information and transaction

In the Personal Data Protection Law, there are differences in responsibilities between data controllers and data processors. If there is a data leak or, in other words, there is a failure to protect personal data. Then, the data controller is the party who will be held responsible first because the processor data is the party requested to process data by the data controller. However, it is not only the Personal Data Protection Law. The Information and Electronic Transactions Law also states that every user of electronic services must ensure that information data, especially data confidentiality, is maintained. Even if a data leak occurs, they must inform the client that this has just happened (Social Engineering Attack). The Personal Data Protection Law essentially protects data. Whoever manages the data should ensure that it is secure, at least guaranteeing that they have collaborated with a third party selling security services. If, one day, there is a data leak that is not due to client negligence, the data controller is obliged to compensate for the loss.

According to the theory of legal protection, Philipus M. Hadjon stated that the purpose of this theory is that it has an essential function in agreements and guarantees the legal certainty of a policy. It functions to protect parties who have a weak position in law. The notary should keep the deed and its contents confidential in accordance with the provisions of the Notary Position Law. The consequences arising from this violation are in the provisions of the Law on Notary Positions, Article 16 paragraph (11), which states that a notary who commits a violation (does not keep the deed and its contents confidential) will receive sanctions/punishments in the form of a written warning, temporary dismissal within a specified time, and finally, honorable dismissal or dishonorable dismissal as stipulated in the provisions of Article 16 paragraph (12) of the law on the Position of Notaries which explains that apart from administrative sanctions, the sanctions regulated by the law are in the form of compensation given by the person facing the notary as a result of suffering a loss.

Notaries are required to be careful in inputting the data of the witnesses in the comparison section of the deed as well as the data/identity of the witnesses in the closing section of the deed. The personal data included in the deed must be checked carefully to ensure the validity of the identities of the parties through the documents sent by the party.

According to the Progressive Legal Theory of Prof. Satjipto Rahardjo, the law is formed for humans, not humans for the law. Do not let humans follow the law; the law must follow humans. Because it is not humans for the law but the law for humans, if one day a pandemic occurs and it repeats itself, do not let people have problems with the law because they cannot meet face-to-face with a notary (in the case of doing a deed by a notary). So, it should not be trapped by regulations because of technological incompetence. Ideally, the technology should be developed together with regulations. However, notaries who face these technological advances must be careful to go as far as possible when the tools are ready, so they must first ascertain all potential problems that might occur when they finally have to fully migrate to Cyber Notary or Digital Notary. When it is ready, the notary profession will slowly enter the electronic world. Do not rush it because the client and the notary will be the victims. Because the electronic world has potential big problems, extra caution is needed, but refrain from being anti-response to technological advances.

Rosa Agustina explained that forms of liability in civil law can be grouped into two parts, namely, contractual liability and liability for unlawful acts. The definition of against the law initially contained a narrow meaning as an influence of the teachings of legalism. The understanding adopted is that an unlawful act is an act that is contrary to legal rights and obligations according to the law. In other words, acts against the law (*onrechtmatige daad*) are the same as acts against the law (*onwetmatigedaad*). The element of fault in an act is not much different from the element of being against the law, and this element emphasizes the combination of the two elements above where the act (which includes intention or negligence) fulfills the elements of being against the law. The element of fault states that a person is declared responsible for detrimental consequences that occur due to wrongful actions. For this reason, the notary is careful in checking and verifying the personal data of the parties, processing the data transfer in the notary's activities to carry out his duties, showing that notaries play a role in efforts to protect personal data in Indonesia.

In processing Personal Data, the Personal Data Controller is obliged to maintain the confidentiality of Personal Data and is obliged to supervise every party involved in processing Personal Data under the control of the Personal Data Controller, as regulated in Article 36 and Article 37 of Law Number 27 of 2022 About Personal Data Protection. It is in line with Article 16 letter b of the law on the Position of Notaries; a Notary must make an authentic deed in minute form and keep the deed as part of the notary's protocol. If the deed minutes are lost or damaged due to the notary's deliberate intention, which causes losses to the parties and causes a lack of legal certainty, then this constitutes a violation. Article 16, letter f of the Law on Notary Positions stipulates that a Notary must "keep confidential everything regarding the Deed he or she makes and all information obtained to make the Deed in accordance with the oath/promise of office unless the Law determines otherwise." Violations of Article 16 Letters B and Letter F of the Notary Public Law can be subject to sanctions as regulated in Article 75 of the Notary Public Law in the form of a verbal, written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal.

Article 4, paragraph (2) of the Notary's Office Law regulates the notary's oath of office. These secrets that must be kept are known as Position Secrets. A notary automatically creates an obligation to keep confidentiality, whether regarding the contents of the deed or matters submitted by the client to

him, including all Personal Data from the client or the Applicant, unless the law determines otherwise. It is because of the Principles of Trust attached to the notary as a position of trust service.

Therefore, if the notary does not implement the principle of prudence or is negligent in carrying out his duties, resulting in a data leak or dissemination of personal data due to the notary's error or negligence, then not only has the notary violated the oath of office as well as the provisions regarding the notary's official obligations contained in Notary Position Law only, but Notaries can also be held accountable as Data Controllers based on the Personal Data Protection Law.

CONCLUSION

1. The use of Personal Data by Notaries in the implementation of Cyber Notary is contained in activities carried out by Notaries in carrying out their duties and positions which use or take advantage of technological advances such as the Legal Entity Administration System (SABH), Validating signatures and determining the certainty of the date of the letter below. hand (legalization), or in the efficiency of sending routine reports that are required to be carried out by notaries, such as sending reports online by the notary or his proxy in writing, a copy that has been legalized from the list of deeds and other lists to the Regional Supervisory Council, Sending online the list of deeds regarding wills or nil registers to the Minister of Law and Human Rights cq Central Register of Wills, Inquire online whether or not the testator makes a will before making a Certificate of Inheritance by a notary to the Minister of Law and Human Rights cq Central Register of Wills, Transfer data from and to various parties, for example, partner banks, ministries (for example, data related to the Company when carrying out processes on the AHU system and carrying out the process of installing electronic HT on the BPN ATR system, etc.). The notary protects the data used by the notary in the implementation of Cyber Notary as the Data Controller by applying the precautionary principle as regulated in the Notary's Code of Ethics and the Notary's Oath of Office Article 4 paragraph (2) of the Notary's Office Law. The notary also checks and verifies data related to efforts to protect personal data as a Data Controller. It is in accordance and in line with what is regulated in Article 29 of Law Number 27 of 2022 concerning Personal Data Protection.
2. Responsibilities of the Notary in using the Personal Data of the Person in implementing Cyber Notary. With the passing of the Personal Data Protection Law, notaries must prepare themselves for this phenomenon because whether a Notary is a Conventional or Cyber Notary, there will still be consequences if a data leak occurs. The law and Notaries can be held responsible as Data Controllers for all processing of personal data, and this is also regulated in the Information and Electronic Transactions Law, which states that every user of electronic services is obliged to ensure that information data, especially data confidentiality, is maintained.

REFERENCES

Books :

- Alwesius, *“Dasar-Dasar Teknik Pembuatan Akta Notaris”*, cet.1, LP3H “Inp Jakarta”, Jakarta, 2018
- Hartanti Sulihandari dan Nisya Rifiani, *“Prinsip-Prinsip Dasar Profesi Notaris”*, Dunia Cerdas, Jakarta, 2013
- R.A Emma Nurita, *“Cyber Notary Pemahaman Awal Dalam Konsep Pemikiran”*, Refika Aditama, Bandung, 2012
- Rosa Agustina, *“Perbuatan Melawan Hukum”*, Program Pascasarjana Fakultas Hukum Indonesia, Jakarta, 2003
- Ronny Hanitijio, *“Metodologi Penelitian Hukum dan Jurimetri”*, Ghalia Ind., Jakarta, 1994
- Sunaryati Hartono, *“Penelitian Hukum Di Indonesia Pada Akhir Abad Ke-20”*, Alumni, Bandung, 1994.
- Peraturan perundang-undangan :
- Kitab Undang-undang Hukum Perdata (Burgerlijk Wetboek), ditermahkan oleh R. Subekti dan R Tjitrosudibjo, Balai Pustaka, Jakarta Timur 2014.
- Undang-Undang Republik Indonesia Nomor 02 Tahun 2014 Tentang *perubahan atas undang-undang Nomor 30 Tahun 2004 tentang Jabatan Notaris.*
- Undang-Undang Nomor 19 Tahun 2016 Tentang *Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik.*
- Undang-Undang Nomor 27 Tahun 2022 Tentang *Pelindungan Data Pribadi.*

Journal :

- Bhakti, R T A. *Kedudukan Pihak Yang Lemah Pada Perusahaan Yang Melakukan Merger Dengan Memberikan Perlindungan Hukum Terhadapnya*. 2015, Jurnal Cahaya Keadilan Universitas Putera Batam. Vol.3 No.1.
- Dharmawan, N. K. S., Kasih, D. P. D., & Stiawan, D, *Personal data protection and liability of internet service provider: a comparative approach*. *International Journal of Electrical and Computer Engineering*, 2019
- Ridwan, M. *Reconstruction Of Notary Position Authority and Implementation Of Basic Concept Of Cyber Notary*. 2020, Jurnal Akta. Volume 7 Issue 1. 61-68. p.61. DOI: 10.30659/akta.v7i1.9432