Public Notary & e-Transaction

by:

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<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
<th>Book/Legal Framework</th>
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<tbody>
<tr>
<td>2003</td>
<td>Indonesian Telematics Law/Cyberlaw (legal framework)</td>
<td>Modul Perkuliah + Buku Ajar: Kompilasi Kajian Hukum Telematika</td>
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<td>2009</td>
<td>Electronic System Provider Liability for Implementing the IT Governance</td>
<td>Buku Ajar: Tanggung Jawab PSE</td>
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<td>2010</td>
<td>Telematics and Constitutional Rights and Liability Development</td>
<td>Artikel Jurnal Nasional dan Internasional serta Buku Ajar</td>
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<td>2010</td>
<td>Notary and e-Transaction (cybernotary)</td>
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<td>2011</td>
<td>Privacy &amp; Data Protection,</td>
<td>Revisi Buku Ajar + RUU Intersepsi Masukan Rancangan Peraturan Menteri Kominfo ttg Privacy dan Informasi Komersial (spamming)</td>
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<td>2014</td>
<td>Information Security &amp; Resilience</td>
<td>RUU Sandi + Rancangan Perpres Cybersecurity</td>
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<td>2014</td>
<td>Trust Services by Community: Community Certification Authority</td>
<td>Artikel Jurnal Nasional dan Jurnal Internasional serta revisi Buku Ajar</td>
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<tr>
<td>Cyber Law (law for ICT convergence) [Telecommunication, Media &amp; Informatics]</td>
<td>Short Description</td>
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<tr>
<td>We do not have one particular Law for ICT convergence</td>
<td>Optimizing the Law No.11 Year 2008 (&quot;UU-ITE&quot;) to reduce the linearism of Telecomm and Media</td>
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<tr>
<td>Privacy &amp; Data Protection</td>
<td>Human Rights Act, Consumer Protection Act, Art.26 UU-ITE, Telecomm, etc</td>
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<td>Content and/or Multimedia regulation</td>
<td>UU-ITE + Pornography Act + Indonesian Criminal Code</td>
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<td>IPR’s related matters</td>
<td>Copyright Law + UU ITE</td>
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<td>E-contract</td>
<td>UU ITE + Indonesian Civil Code + Consumer Protection Act</td>
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<td>Advertising and Consumer Protection</td>
<td>Consumer Protection Act + UU-ITE + Indonesian Trade Law</td>
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<td>Cybercrime &amp; Evidence</td>
<td>UU-ITE + Indonesian Criminal Code (KUHP) + Indonesian Procedural Code (KUHAP)</td>
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<td>Taxation</td>
<td>No specific regulation for Online Transaction + ACH</td>
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<td>e-Government and e-Public Services</td>
<td>UU-ITE + Public Services + Ombudsman + Government Adm Act</td>
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<td>National e-ID</td>
<td>Citizen Administration Act + Presidential Regulation of e-KTP</td>
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<td>e-Archives and Corporate Document</td>
<td>Archives Law + Corporate Document Law</td>
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<td>e-Payment System + e-Money</td>
<td>UU-ITE, Fund Transfer Act + Ind. Central Bank reg. e-money</td>
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<td>Unfair Competition related with ICT</td>
<td>Optimizing the Antitrust + Unfair Competition Law</td>
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<td>Insurance</td>
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CyberNotary = e-Notary?

Cybernotary: ABA Information Security Committee 1994

Electronic Notary: French Delegation, Trade EDI system (TEDIS) legal workshop, EDI Conference, EU-Brussels 1989

Certification Authority (T3P)

- UETA + E-sign => E-notarization

Cybernotary can authenticate a document:
- validating its legal contents
- validating the digital signature
- validating the identity of the signer
- validating the capacity of the signer
- validating the authority of the signer, and
- validation of the digital certificate

- This conference proposed that various industry associations and related peak bodies could act as an "electronic notary" to provide an independent record of electronic transactions between parties.

- Notary can have a supporting function in ICT as T3P
  - Depositing or facilitating the source code escrow (e.g. Dutch)
  - Registration Authorities of legalization or verification of the conventional ID before they having the e-certificate from CSP

- Delivering the Notarization services by e-system to the public.
  - E-authentic deeds
Indonesian Law No.2/2014 revision of the Law 30/2014

**Article 15**

(1) A Notary is authorized to make an Authentic Deed of all acts, agreements and stipulations required by law and/or desired by interested parties to be declared in an Authentic Deed, guaranteeing the date of making the Deed, keeping the Deed, granting Grosse, and quotations of the Deed, all of which during the making of the Deed are not also assigned or excluded to other officials or other persons as may be prescribed by law.

(2) In addition to the authority referred to in paragraph (1), the Notary is also authorized:

a. Authorize signatures and specify the date of the letter under the hand by registering in a special book;
b. Record a letter under the hand by enrolling in a special book;
c. Make copies of the original letter under the hand in the form of a copy containing the description as written and described in the corresponding letter;
d. To certify a photocopy match with the original letter;
e. Provide legal counseling in connection with the making of the Deed;
f. Make a deed related to land; or

(3) In addition to the authority referred to in paragraph (1) and paragraph (2), Notary has other authority regulated in the law.

**Elucidation of Article 15**


Paragraph (2)

Letter a This provision is a legalization of a deed under the hand made solely by an individual or by parties on paper stamped simply by way of registration in a special book provided by a Notary.

Letter b Self-explanatory.

Letter c Self-explanatory.

Letter d Self explanatory.

Letter e Self-explanatory.

Letter f Self explanatory.

Subparagraph g This provision means that the appointment of Notary to be Class II Auction Officer, appointed by the minister who conducts government affairs in the field of finance in accordance with the provisions of legislation.

Paragraph (3) "Other authorities provided for in the laws and regulations", inter alia, the authority to certify electronic transactions (cyber notary), make deeds of pledges of waqf, and mortgage of aircraft.
Certifying:

- cer·ti·fy (sûr'tə-fî′) v. cer·ti·fied, cer·ti·fy·ing, cer·ti·fies  v.tr.
  1. a. To confirm formally as true, accurate, or genuine.
     b. To guarantee as meeting a standard: butter that was certified Grade A. See Synonyms at approve.
  2. To acknowledge in writing on the face of (a check) that the signature of the maker is genuine and that there are sufficient funds on deposit for its payment.
  3. To issue a license or certificate to.
  4. To declare to be in need of psychiatric treatment or confinement.
  5. Archaic To inform positively; assure.

v.intr. To testify: certify to the facts.

Sources:  http://www.thefreedictionary.com/certifying
**Government Regulation 82/2012 => e-system & transaction**

**Article 59**

1. The Operator of Electronic Systems for public service shall have an Electronic Certificate.
2. Electronic System Organizer for nonpublic service must have Electronic Certificate.
3. The Operator and Users of Electronic Systems other than those referred to in paragraphs (1) and (2) may have Electronic Certificates issued by electronic certification providers.
4. In order to have Electronic Certificate, the Operator and User of Electronic System must apply to the electronic certification provider.
5. Further provisions concerning the procedure of owning Electronic Certificate shall be stipulated in a Ministerial Regulation.

**Elucidation of Article 59**

Paragraph (1) Sufficiently clear.
Paragraph (2) Sufficiently clear.
Paragraph (3) Ownership of Electronic Certificate is one of the efforts to improve the security of Electronic System implementation in addition to other security efforts. Ownership of Electronic Certificate serves to support the security of Electronic System implementation which includes confidentiality, authenticity, integrity, and non-repudiation.
Paragraph (4) Self explanatory.
Paragraph (5) of the Ministerial Regulation shall contain, among other things, arrangements concerning the procedure for applying for electronic certification which may be submitted through a notary.

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**Diagram:**

- Registration
  - Yes → Sertifikasi Kelaikan
  - No → Coordination with related sector
    - trustmark
      - Public Notary
Cybernotary’s opportunity in Indonesia

- Certifying e-transaction
- Trust Services (e-signatures, e-certificate, e-document, e-registered delivery services, e-time stamping)
- Registration Authority for CA’s services/CSP
- Trustmark supporting services
- Source code escrow?
- sub-CA for the Notary’s client
- Public Document Repository for first original copy of the authentic deeds.
- Etc.
Indonesian National e-Identity Management => e-KTP


- KTP based on NIK (Citizen Number) embedded with Chip, loading the **Security Code** and **e-Records** as a means of verification and validation of the identity data of the citizen.
- The security code is a tool to identify that shows the citizen’s identity more precisely and accurately as a personal-authentication that ensures the citizen’s document belonging to those person.
- Electronic record contains:
  - biographical data,
  - signature,
  - photographs, and
  - fingerprint
Models Regulations of PKI

Cross Recognition
• Self-Regulation => communities PKI
• "Mesh" PKI => Peer-to-peer
• "bridge" CSP.
Related Database:
- legal entity Database
- Company Registration Database
- Tax Number Database
- Bankruptcy Database

Physically appearance:
- ID verification
- Pembacaan (reading)
- Penandatanganan (Signing)
- Stempel + meterai (time stamping & seal)
- Pencatatan (registering on notary log record)
- Pelaporan (reporting & sending authentic e-copy)
Thank You
### Common Law (US, UK)

**US Model Notary Law**

§ 5-1 Powers of Notary.

A notary is empowered to perform the following notarial acts:

1. acknowledgments;
2. oaths and affirmation;
3. jurats;
4. signature witnessings;
5. copy certifications;
6. verifications of fact; and
7. any other acts so authorized by the law of this [State].

**§ 17-1 Authorized Electronic Notarial Acts.**

The following notarial acts may be performed electronically:

1. acknowledgment;
2. jurat;
3. signature witnessing;
4. copy certification; and
5. verification of fact.

### Civil Law (Dutch)

**Section 2 Dutch Notary Act**

1. The office of notary confers the power to execute authentic notarial acts in the cases in which he is entrusted with this by law or a party requires this and to perform other activities with which he is entrusted by law.

The law requires a notarial deed for a number of agreements and legal transactions. The most important are:

1. conveying real property in the Netherlands;
2. creating and cancelling mortgages;
3. incorporating public and private limited liability companies (NVs and BVs) and altering their articles of association;
4. establishing foundations and associations (including cooperatives) and altering their constitution;
5. drawing up, altering and executing wills;
6. drawing up and altering marriage contracts (i.e. usually ante-nuptial settlements) and registered domestic partnership agreements;
7. transferring registered shares;
8. legalising signatures;
9. providing for gifts and donations in a notarial deed.

**Section 53**

1. Further rules concerning the data and declarations that should be included in copies and execution copies of and extracts from notarial acts may be adopted by order in council.
2. Rules concerning the manner in which electronic copies of and electronic extracts from notarial acts are produced may be adopted by or pursuant to order in council.

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**NOTARIES PRACTICE RULES 2009**

“notarial act” means any act that has validity by virtue only of its preparation, performance, authentication, attestation or verification by a notary, and includes any such act carried out by electronic means.
EU Regulation 910/2014

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<th>STORK QAA level</th>
<th>Description</th>
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<tr>
<td>1</td>
<td>No or minimal assurance</td>
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<tr>
<td>2</td>
<td>Low assurance</td>
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<tr>
<td>3</td>
<td>Substantial assurance</td>
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<tr>
<td>4</td>
<td>High assurance</td>
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E-Signatures

eIDAS Regulation Part II

eIDAS – Mutual recognition of eIDs

Mandatory recognition of electronic identification

- Voluntary notification of eID schemes
- "Cooperation and interoperability" mechanism
- Assurance Levels: "high" and "substantial" (and "low")
- Interoperability framework
- Access to authentication capabilities: free of charge for public sector bodies & according to national rules for private sector relying parties

eIDAS Regulation Part III

eIDAS – Trust services

Horizontal principles: Liability; Supervision; International aspects; Security requirements; data protection; Qualified services; Prior authorisation; trusted lists; EU trust mark

Electronic signatures, including validation and preservation services
Electronic seals, including validation and preservation services
Time stamping
Electronic registered delivery service
Website authentication