

# Strength of Proof of Deeds Stored Digitally

*by fakultas hukum ulm*

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## Strength of Proof of Deeds Stored Digitally

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**Abstract:** Implicitly, the deposit of the minutes of the deed is contained in Article 16 paragraph (1) letter g of the Notary Position Act, which states that the Notary must bind the deed every month. However, the effectiveness of manual storage must be reviewed because it is at risk of fire, natural disasters, is not cost-effective, does not save space, and makes it difficult for Notaries to re-find old deeds that they have made if necessary. Digital storage is a new solution, however, regarding the rules for digitally storing minutes, there is no legal vacuum and the legal certainty is questioned, coupled with Article 5 paragraph (4) letter b of the Electronic Information and Transaction Law which is indicated to make digital storage difficult and making the proof of minutes stored digitally weak. The purpose of this study is to find out about the form of storing minutes of deeds that are stored digitally and to know the strength of proof of minutes of deeds that are stored digitally. This legal research is a normative legal research. The approach in this research is a statutory approach and a conceptual approach. The form of digital Minuta Deed storage is by using sheet scanning on the Minuta Deed, then storing it in a secondary storage device and can also save it using a storage service. In general, the strength of proof of the Minutes of Deed that is stored manually is the power of proof that is perfect and binding. Meanwhile, the minutes that are stored digitally have the power of proof such as an underhand deed. So that the storage of the Minutes of Deed digitally only functions as back up data, does not have the same evidentiary power as the Minutes of Deed and Copies of the deed, because digital documents in the notarial field are not recognized as legal evidence in Article 5 paragraph (4) letter b of the Law. Law on Information and Electronic Transactions

**Abstrak:** Secara implisit, titipan berita acara akta tersebut tertuang dalam Pasal 16 ayat (1) huruf g Undang-Undang Jabatan Notaris yang menyatakan bahwa Notaris wajib mengikat akta setiap bulan. Namun efektivitas penyimpanan manual harus ditinjau kembali karena berisiko kebakaran, bencana alam, tidak hemat biaya, tidak menghemat tempat, dan menyulitkan Notaris untuk mencari kembali akta lama yang telah dibuatnya jika diperlukan. Penyimpanan digital merupakan solusi baru, namun terkait aturan penyimpanan berita acara secara digital, tidak ada kekosongan hukum dan dipertanyakan kepastian hukumnya, ditambah dengan Pasal 5 ayat (4) huruf b UU Informasi dan Transaksi Elektronik yang diindikasikan untuk mempersulit penyimpanan digital dan membuat bukti menit yang disimpan secara digital menjadi lemah. Tujuan dari penelitian ini adalah untuk mengetahui bentuk penyimpanan risalah akta yang disimpan secara digital dan mengetahui kekuatan pembuktian risalah akta yang disimpan secara digital. Penelitian hukum ini merupakan penelitian hukum normatif. Pendekatan dalam penelitian ini adalah pendekatan perundang-undangan dan pendekatan konseptual. Bentuk penyimpanan Akta Minuta secara digital adalah dengan menggunakan scan sheet pada Akta Minuta, kemudian menyimpannya dalam alat penyimpanan sekunder dan dapat juga menyimpannya menggunakan jasa penyimpanan. Secara umum kekuatan pembuktian Berita Acara Akta yang disimpan secara manual adalah kekuatan pembuktian yang sempurna dan mengikat. Sedangkan berita acara yang disimpan secara digital memiliki kekuatan pembuktian seperti akta di bawah tangan. Sehingga penyimpanan Berita Acara Akta secara digital hanya berfungsi



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sebagai data cadangan, tidak memiliki kekuatan pembuktian yang sama dengan Berita Acara Akta dan Salinan akta, karena dokumen digital di bidang notaris tidak diakui sebagai alat bukti yang sah dalam Pasal 5 ayat (4) huruf b UU. Undang-Undang Informasi dan Transaksi Elektronik

## INTRODUCTION

The need for a notary by the global community today is a primary need. Besides fulfilling statutory provisions, the role of a notary is expected to provide legal protection for the community. Based on article 1 number 1 of the 2014 Notary Office Law (hereinafter referred to as the Notary Office Law) a notary is an official authorized to make authentic deeds. The position of Notary is held or his presence is desired by the rule of law with the intention of helping and serving the public who need authentic written evidence regarding circumstances, events or legal actions.<sup>1</sup> Based on this statement, the notary has the authority to make an authentic deed. The authentic deed is one of the documents called the minutes of the deed, so the minutes of the deed are drawn up and prepared by a notary who later the minutes of the deed become state documents/archives that must be cared for and stored carefully so that they are not lost or damaged.<sup>2</sup>

<sup>2</sup> Article 16 paragraph (1) letter b states that, in carrying out his position, a Notary is obliged to make a Deed in the form of Minutes of Deed and keep it as part of the Notary Protocol. From this article, it can be seen that keeping minuta is also an obligation of a notary. Currently, keeping minuta deed is still done manually by a notary. Usually it is put in a safe that can withstand any circumstances, so that the documents are not easily damaged, lost or taken by unauthorized persons.<sup>3</sup> The matter of keeping these minutes is actually also implied in the Law of the Notary Department through Article 16 paragraph (1) letter g which states as follows:

<sup>3</sup>

<sup>1</sup> Habib Adjie. 2018. "Civil and Administrative Sanctions Against Notaries as Officials Public". PT. Refika Aditama: Bandung, p. 32.

<sup>2</sup> Lely, Iwan Permadi, and Bambang Winarno. 2011. *Juridical Analysis of Notary's Negligence in Keeping Minutes of Deeds*. Inside article "Journal of Law, University of Brawijaya", hlm 4.

Article 16 paragraph (1) letter g Binding the Acts made in 1 (one) month into a book containing no more than 50 (fifty) Acts, and if the total number of Acts cannot be contained in one book, the Acts can be bound into more than one book, and note the number of Act Minutes, the month, and the year of their creation on the cover of each book;

Although it is not explicitly stated, from the existence of the Article mentioned above, it can be seen that the storage referred to by the Notary Office Law is by physically storing it. This is because the deed must first be bound. However, regarding conventional storage or by storing minutes physically must be reviewed.

In fact, not all notaries do storage in safes. Based on interviews that have been conducted by researchers with a Notary in Palangkaraya, namely, Oen Roslinawati, he stated that not all of his minuta were stored in a safe that there were some requests that were left to be arranged outside the safe.<sup>4</sup> This will certainly pose a risk to the minutes kept by the notary.

Besides that, the effectiveness of storage in a safe is also questionable. If a appearer asks for a replacement copy because his possession is lost, while the copy is tens of years old, it will be a chore for the notary to find documents that have been stored for a long time. This also applies to appearers who are disputing in this court, so the notary also needs to find minutes to make a copy, which of course takes time if you have to look for data in a safe or in documents.

Moreover, there is a provision in Article 63 paragraph (5) of the Notary Office Law which states that minuta who are over 25

<sup>3</sup> R. Soegondo Notodisoerjo. 1993. *Indonesian Notary Law An Explanation*. Jakarta: Rajawali Press, p. 8.

<sup>4</sup> Interview with Oen Roslinawati. As a Notary in Palangkaraya City. On April 15, 2021 at the Palangkaraya City Notary Office.

3) twenty five) years of age are handed over to the Regional Supervisory Council (hereinafter referred to as the MPD). This article also did not work effectively, because it collided with the problem of not having a storage place because the MPD did not yet have its own building and lack of operational funds.<sup>5</sup> This further proves that conventional storage needs to be reviewed.

Given this, people's lifestyle<sup>2</sup> are starting to shift due to the influence of the development of information technology. Not only is the transaction system carried out digitally, currently data storage can also be done digitally. The influence of information technology on its development also influences notaries in carrying out their duties and positions. At this time, with the very rapid development of technology and information, the making of deeds can also use computers and information technology as a support, even in the development of current storage methods which are also growing. In order to take advantage of technology and information, a notary can actually store various documents in a digital system. The notary's reach in utilizing information technology has great opportunities.

Current technological developments are very relevant when associated with progressive legal theory. The theory states that law exists for humans and not for themselves, then the law is always in status *law in the making* and is not final but must be built continuously, the last law is a moral institution of humanity.<sup>6</sup> For progressive law requires law to develop rapidly in accordance with the needs of society. Thus the notary and its rules must be able to develop and adapt to the current conditions.

Therefore, the solution offered regarding the storage of minuta notarial deeds is to store them digitally. Digital storage will certainly save time, costs, and is practical. Regarding digital storage, there will be another issue regarding the form of storage

and the exact procedure. Notary Oen Roslinawati in carrying out her position, she kept *file* ask him in the computer, so that if at any time it is needed it can be searched easily. However, what he kept was only a form *file* without the signatures of the witnesses.<sup>7</sup> This means that in addition to binding the deed, he also saves *file* in computer. What Notary Oen Roslinawati did was an initiative of her own, because the regulations regarding the forms and procedures for storing minutes digitally are not explained.

In addition to the form of storage, the problem is the strength of the proof. Is the power of proof of minutes that are stored digitally the same as copies and can be recognized in court. In view of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter shortened to the Electronic Information and Transaction Law) in Article 5 paragraph 4 letter (b) states:

Article 5 paragraph (4) letter b Provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) do not apply to:

- b. the letter and its documents which according<sup>2</sup> to the Law must be made in the form of a notarial deed or a deed made by a deed-making office.

Based on this article, proving the minutes of a notarial deed that is stored<sup>1</sup> digitally is a question because it contradicts Article 5 paragraph (4) letter b of the Information and Transaction Law. However, reflecting on the current reality, in fact neither the Law on Notary Office nor the Information and Electronic Transaction Law discusses digital storage by a notary so there has been legal uncertainty.

In accordance with the description<sup>3</sup> described above, therefore the researcher is interested in conducting research with the title "Strength of Proof of Digital Storage of Minutes of Notary Deeds"

<sup>5</sup> Hery Sunaryanto. 2018. *Effectiveness of 25 Years Old Notary Protocol Storage Place*. Article in "Journal of Law and Notary". Vol.2 No.2. p. 300.

<sup>6</sup> Satjipto Rahardjo. 2004. *Legal studies; Search, Liberation and Enlightenment*. Surakarta: Muhammadiyah Press University p. 20.

<sup>7</sup> Interview with Oen Roslinawati. As a Notary in Palangkaraya City. On April 15, 2021 at the Palangkaraya City Notary Office.

## METHOD

This research is doctrinal research. As for doctrinal research, it is a legal research that is prescriptive in nature. The science of law studies the purpose of law, the values of justice, the validity of legal rules, legal concepts, and legal norms.<sup>8</sup> The writer chooses the type of normative research. Research that examines legal issues from the point of view of legal science in depth on the established legal norms. The main subject of the study is law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. So that normative legal research focuses on positive law inventory, legal principles and doctrine, legal findings in cases specifically, legal systematics, level of synchronization, comparison of law and legal history.<sup>9</sup>

This research is prescriptive analysis namely studying the purpose of law, the values of justice, the validity of the rule of law, legal concepts and legal norms.<sup>10</sup>

There are two approaches in this study, namely the statutory approach (*statue approach*) and conceptual approach (*conceptual approach*).

## ANALYSIS AND DISCUSSION

### Digital Notary Deed Minutes Storage Form

Minuta storage digitally will be directly proportional to the development of *cyber notary* in Indonesia. If the deed can be made digitally or with the help of technology, it will automatically be stored in a digital way as well. However, what is happening in Indonesia at the moment is that the deed is still done manually, so storing minutes of digital certificates is still not the main option. As for what is meant by *Cyber notary* according to Emma Nurita is a concept that utilizes technological advances in carrying out the duties and authority of a notary.<sup>11</sup>

In the Notary Office Law itself, related to *cyber notary* used to show the authority of a notary in certifying electronic

transactions, so that it has not been translated as making a deed electronically. This is regulated in the Elucidation section of Article 15 which states that:

"What is meant by "other authorities regulated in laws and regulations", among others, the authority to certify transactions carried out electronically (*cyber notary*), make a deed of waqf pledge, and aircraft mortgages".

From the article above it is clearly written that only transaction certification is carried out electronically (*cyber notary*) not making a deed electronically. Making electronic deeds also creates conflicts with other regulations, such as Article 1868 of the Civil Code which states:

"An authentic deed is a deed drawn up in the form determined by law by or before a public official authorized for that at the place where the deed was made"

From the above article, it can be seen that the elements of making an authentic deed include:

- a. The form is in accordance with the Law
- b. Made by authorized public officials
- c. Made in front of the General Office

Among the three elements above, what often becomes a debate about making a deed *cyber notary* namely in the provision of "before a public official". The use of the words facing, facing, in front of, and facing in the article is a translation of the word *to appear* which means coming to face what is meant in a juridical sense is a real presence.<sup>12</sup> The average word translator facing here is facing physically, not digitally or electronically. Although there are actually those who argue that there should be a shift in meaning regarding the word "in front of". One of those who thinks so is Edmon Makarim, he believes there should be an expansion or shift in the meaning of the word opposite/in front of, that facing does not have to be physical as is currently being done. Physical presence can be replaced by electronic means. By looking at

<sup>8</sup> *Op.Cit.*, Peter Mahmud Marzuki, p. 33.

<sup>9</sup> Abdulkadir Muhammad. 2004. *Law and Legal Research*. Bandung: PT. Citra Aditya Bakti, p. 52.

<sup>10</sup> Peter Mahmud Marzuki. 2008. *Legal Research*. Cet.2. Jakarta: Kencana, p. 22.

<sup>11</sup> Emma Nurita. *Op.Cit.*, hlm 47.

<sup>12</sup> Habid Adjie. 2014. *Indonesian Notary Law Thematic Interpretation of Law No. 30 of 2004 concerning the Position of Notary*. PT. Refika Adiana: Bandung, p. 147.

developments mobile *communication* (3G) today, anyone can make a video conference call and can embed his signature on a telephone card chip (*SIMcard*) or on headset concerned, and real facts can be known where the person concerned is located with satellite facilities via GPS or the map utility provided.<sup>13</sup>

Due to the problem of the meaning of the word before which raises pros and cons, the electronic deed has not yet been made. However, not making the deed electronically does not rule out the possibility for a minute to be stored digitally. By adjusting the existing rules, the deed is made manually but storage is done manually and digitally.

It should be remembered that in accordance with the elaboration in the previous sub-chapter, that the Notary Office Law requires that the storage of minuta deed be done manually. This is implied in Article 16 paragraph (1) letter g. So, as long as the Notary Office Law has not changed or has not been revised, the provisions for binding the deed will remain the responsibility of the notary. Provisions for storing deeds manually will continue to exist. However, storing the deed manually according to the elaboration above, also poses several risks so that as a response to the risks that may occur, digital storage must still be carried out by a notary.

Digitization is one of the solutions for storing minutes of deeds. The following below is the procedure for storing minutes of digital words according to the researcher:

#### a. Do Scanning

The form of saving minutes of manual deed into a digital deed begins with doing *scanning* sheet against the document. As for definition of scan is the process of scanning document objects which will be converted into digital data in the form of files, while a scanner is a tool for scanning documents.<sup>14</sup> So, when the Notary wants to

make a deed, the deed will be written off *scan* sheet to put it in digital form.

Work must do scan it feels like doing double *job*. In the notary's manual storage, all that remains is to directly store the deed in a safe or a place that feels safe. But, if by the way digital then, there must be scanning before saving the deed. *Workscanning* This certainly raises the pros and cons because the effectiveness is questionable. However, according to researchers this is actually more effective than manual storage. The effectiveness of storing minutes of deeds digitally can be felt in the future. If, there is a dispute in the future, which requires a notary to look for minutes of the deed, the notary only needs to open the document and if the notary's office is affected by the situation *force majeure* hence, the notary still has data on digital. This is far more effective than a notary if you lose the deed you have to do the following:<sup>15</sup>

- 1) The notary is required to make an official report which will then be submitted to the Regional Supervisory Council or Regional Supervisory Council. In order to submit a report on the loss or damage to the minuta deed so that the Regional Supervisory Council or Regional Supervisory Council can find a solution to overcome the report.
- 2) After the minutes have reached the Regional Supervisory Council or Regional Supervisory Council, the Regional Supervisory Council or Regional Supervisory Council will impose sanctions in the form of written warnings up to dishonorable dismissal according to the severity of the notary's violation.
- 3) If due to negligence the notary must be subject to sanctions as a form of

<sup>13</sup> Edmon Makarim. 2013. *Notary and Electronic Transactions, Legal Studies on Cybernotary or Electronic Notary*. Jakarta: Rajawali Press, 2nd ed., p. 133.

<sup>14</sup> Tedas.id. 2021. *What is Scanning? Meaning and Function*. Accessed from <https://tedas.id/teknologi/computer/what-itiscan/#:~:text=Definition>

%20scan%20is%20 process %20scan,is %20tool %20for%20scan%20documents. On May 3, 2021

<sup>15</sup> Maya Malinda Pandjaitan. 2015. *Juridical Analysis of Notary Responsibilities in Making and Keeping Minutes of Deeds*. University of North Sumatra thesis. Medan: Postgraduate Masters of Notary Education, University of North Sumatra, page 95.

accountability, but if due to force majeure the notary concerned cannot be held liable because it is a violation he committed unintentionally and outside the powers of the notary concerned.

Without carrying out a series of activities over minutes that are stored electronically, they can be used immediately. This will certainly provide effectiveness to the notary in the future. Actions scanning minutes of deed to be stored electronically, according to the researcher is also a preventive measure from a notary for events that may occur in the future. Notaries basically have to be prepared for what they might face in the future.

So, the first step from storing minutes of electronic deeds is to do scanning against minutes of notarial deed to convert them into digital form.

#### **b. Save On Media Information and Technology**

Once done scanning against the minutes of the notary deed, then the next thing is to save the minutes of the deed. Researchers provide two options in this storage, namely:

##### **1) With Secondary Storage Devices**

Storage media is divided into two, namely primary and secondary storage media.<sup>16</sup> Temporary storage media is called primary storage media or the tool is called RAM. And permanent storage is called secondary storage media.<sup>17</sup> Equipment for secondary storage media is placed inside the (internal) computer, commonly referred to as *Hard disk* and some are outside (*external*) computer. Many types of external storage media are now circulating in the market such as *cakram (CD)*, *floppy disk (disket)*, *zip*, *tape*, *super disk*, dll.<sup>18</sup> The following is

an explanation of each secondary device:

##### **a) Floppy Disk (Disk)**

Diskettes are used if the data stored is not larger than 1.44 MB. Generally suitable text data using floppy disks. But diskettes should not be stored in a damp place for too long, because they will contain jamus. The price is relatively cheap but less efficient.<sup>19</sup> With a small storage space on floppy disk (diskette), it will be difficult if the minutes of the deed must be stored in a form floppy disk (floppy disks), as it will generate a lot of use floppy disks (diskette).

##### **b) CD**

Understanding Compact Disk or what we are usually more familiar with as a CD is a round disc made of metal or plastic. Compact disks have a material that turns out to be electrified so that it becomes magnetic. The CD will store the data, the data is then recorded.<sup>20</sup> After that, the data on the CD can be read by using a conducting coil known as *head*. compact disks are also capable of storing data up to 650 to 870 MB in size.<sup>21</sup>

##### **c) Hard drive**

*Hard drive* has the ability to save the most that is in size *gigabytes*, *hard disk* also has other advantages including access speed, both in reading and writing data, as well as its robustness in storing physical data for quite a long period of time.<sup>22</sup> Unlike CDs, *hard drive* have a longer storage time.

Among the three media above, according to the researcher the most appropriate is the use *hard drive*. This is because *hard drive* has

<sup>16</sup> Edson Judah Putra. 2002. *Selecting Secondary Storage Media*. Article in "Unklab Scientific Journal". Vol.5 No.1, p.17.

<sup>17</sup>

*Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, hlm 23.

<sup>20</sup> Nasabamedia. 2020. *Definition of Compact Disk, Along with History, Functions and How It Works*.

<sup>21</sup> *Ibid.*

<sup>22</sup> Eko Nur Wahyudi. 2005. *Getting to Know Harddisk Closer*. Article in "Dynamic Information Technology Journal". Vol. X No. 3m p. 168.

the largest storage space among the others, and is able to store data longer.

So, after doing *scanning* against the minutes of the deed, the notary only needs to enter the result *scanning* into one of the secondary data options, for example *hard drive*. Once stored in *hard drive*, then just take care *hard drive* to a safe place, for example stored in a deposit box or in a safe.

## 2) Using Storage Services

Apart from the option of storing it on a secondary storage medium, according to the researcher, one of the right options is to store it using a storage service. This storage service can be used *cloud*. As for *cloud* is m-based file storage media *online* or digital which relies on an internet connection for data access. *Cloud storage* is a new breakthrough in the world *storage* or data storage that features many advantages when compared to storage media *offline* like *hard drive* and *flash*. So, the data stored in *cloud storage* will be stored on a number of servers managed by the service provider or what is commonly called *hosting*.<sup>23</sup>

If you choose the option to save using a storage service, then the government's role here is very necessary. The government should be the intermediary or responsible for providing these facilities. So, it is this facility made by the government that is used by the notary in keeping the minutes of the notary deed.

Storage in a digital way certainly also allows for virus infections. To overcome

the possibility of computer virus infection, you can use an antivirus accompanied by the system *backup* the good one. Because sometimes to get rid of viruses on the system you have to delete files infected with viruses.<sup>24</sup> Meanwhile, to overcome data theft, apart from relying on network security such as firewalls and antiviruses, you can also use encryption techniques. Data theft is the same as wiretapping, if the data stored is encrypted, then even if data theft occurs, the data cannot be used because the thief does not understand the contents of the data he stole.<sup>25</sup>

To overcome the occurrence of data modification can use *hash function*.<sup>26</sup> *Hash function* can guarantee data integrity. When the value *hash* if a document changes, it means that the document has undergone modification or change. So it cannot be used as legal evidence in the eyes of the law.<sup>27</sup>

According to Rob Van Esch, because the deed will function as evidence, at least the material used to imprint the writing must meet several requirements, including:<sup>28</sup>

- a) Durability of the type of material used to make a deed.  
Storage of data in electronic form requires *hardware or software* Which *up to date* in order to be able to meet the durability in the time of electronic data storage.
- b) Resistance to counterfeiting  
This can be overcome by using *cryptography*, namely a way to use a secret key that can only be opened with a certain password.
- c) Originality  
To distinguish the original or not by using the method *cryptography* and value *hash*, (*hashward*), namely a technique using a deed of control to

<sup>23</sup> BaktiKominformo.id. 2019. *Cloud Storage: Understanding How It Works and Benefits of Using It You Need to Know*. Accessed from [https://www.baktikominfo.id/id/informasi/knowledge/cloud\\_storage\\_pengertian\\_car\\_a\\_kerja\\_dan\\_keuntungan\\_gunakannya\\_yang\\_perlu\\_anda\\_tahu-930](https://www.baktikominfo.id/id/informasi/knowledge/cloud_storage_pengertian_car_a_kerja_dan_keuntungan_gunakannya_yang_perlu_anda_tahu-930). On May 3, 2021.

<sup>24</sup> Mulyadi. 2018. *Security Analysis of Electronic Deeds in Cyber Notaries According to Law no. 2 of 2014 concerning the Position of Notary (UUJN)*.

Accessed from [t:https://www.researchgate.net/publication/322851781](https://www.researchgate.net/publication/322851781). On May 3, 2021.

<sup>25</sup> *Ibid*.

<sup>26</sup> *Ibid*.

<sup>27</sup> *Ibid*.

<sup>28</sup> Efa Laela Fakhriah. 2017. *Electronic Evidence in the Civil Evidence System*. Bandung: Refika Aditama, page 101.



be able to distinguish which is genuine and which is not.

d) Publicity

In certain cases, interested third parties can easily view the original deed or request a copy. For electronic data/documents, actually getting it will be faster in just a few seconds. The party requesting us will be able to accept it.

e) Can be immediately or easily seen

f) Easy to transfer

By doing digital storage, the notary has implicitly been thorough and careful. The attitude of caution here is created by keeping the minutes of the deed digitally. So, by saving the minutes of the deed digitally, the notary has implicitly:

- a. Take effective and preventive actions in keeping minutes of the deed.
- b. Perform or uphold the precautionary principle and be careful.

According to the researcher, there are two ways to change the storage of minutes of manual notarial deeds to digital:

- a. *Doscanning* per sheet minutes of deed, then save it in a secondary storage device.
- b. *Doscanning* per sheet minuta deed, then store it using a storage service.

### 1. Strength of Proof of Notary Deed Minutes Storage Digitally

a. Strength of Proof of Digital Deed Minutes

The Information and Electronic Transactions Law explains matters relating to electronic transactions as follows:<sup>29</sup>

- 1) Electronic Information, is one or a set of electronic data, including but not limited to text, sound, images, maps, designs, photos, *electronic data interchange* (EDI), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or corporations that have been processed which have meaning or

can be understood by people who are able to understand them.

- 2) Electronic document, is any electronic information that is created, forwarded, sent, received, or stored, in the form of analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, or heard through a computer or electronic system, including but not limited to in writing, sound, pictures, maps, designs, photographs, or the like, letters, signs, numbers, access codes, symbols, or corporations that have meaning or significance or can be understood by people who are able to understand them.
- 3) Electronic signature, is a signature consisting of electronic information that is attached to, associated with or related to other electronic information that is used as a means of verification and authentication. The signatory is a legal subject related to electronic signatures. Electronic signatures are regulated in article 11 of the Electronic Information and Transaction Law and further regulations are regulated in Government Regulations. In its explanation, this law expressly recognizes that even though it is only a code, electronic signatures have the same position as manual signatures in general, which have legal force and legal consequences.
- 4) Electronic verification, this is regulated in Article 5 and Article 6 of the Electronic Information and Transaction Law, where electronic information and/or electronic documents and their printouts are stated as valid legal evidence as long as they can be accounted for.

So if a notary wants to take action digitally, he must be accountable with

<sup>29</sup> Danrivantho Budhijanto. 2010. *Telecommunications Law, Broadcasting and*

*Information Technology*. Bandung: Refika Aditama, page 140.

evidence. This is intended to prove that the will of the parties as outlined in a minutes of deed is really an embodiment of a deed that has legal force and can be used as evidence for other parties and can be used as evidence in court.

In accordance with what has been described above, the notarial deed or minuta deed has perfect and binding evidentiary power. However, if the notary does not meet certain requirements, the notary deed will be degraded. The term degradation according to the Big Indonesian Dictionary has the meaning of decline, regarding rank, quality, morals and so on, setbacks, decline or can also place in a lower level or position.<sup>30</sup> Degradation of the power of proof of a Notary deed can occur if in its making there is a violation of the provisions of the requirements based on applicable law. Some examples of things that result in the degradation of notarial deeds are, the making of deeds that are not in accordance with the facts, the notary in making the deed does not guarantee the formal correctness of the deed, the parties do not appear before the notary, the deed made is not read by the notary to the appearers and witnesses -witnesses, and the deed was not signed on the same date by the appearers.<sup>31</sup>

Regarding the degradation of authentic deeds discussed in Article 1869 of the Civil Code, namely:

A deed that cannot be treated as an authentic deed, either because of the lack of authority or incompetence of the public official concerned or because of a defect in its form, has the force of writing under the hand when signed by the parties.

Based on this article, it can be seen that the reason for the degradation of an authentic deed is as follows:

1. The official who makes the authentic deed is not authorized to make it

<sup>30</sup> Ministry of Education. 2008. *Big Indonesian Dictionary Language Center, Fourth Edition*, Jakarta: Gramedia Pustaka Utama, p. 304,

<sup>31</sup>

2. Officials who make authentic deeds do not speak law

3. Defective authentic deed form.

Following below are several articles in the Notary Office Law which emphasize violations of Article 1869 of the Civil Code which cause the notary deed to be degraded.<sup>32</sup>:

- 1) Article 16 paragraph (1) letter m and Article 16 paragraph (7) and paragraph (9) UUJN are included in the definition of defects in the form of a notary deed, because the reading of the deed by a notary in the presence of the parties and witnesses is an obligation to explain that the deed has been made in accordance with the will of the parties and after reading it must include at the end of the notarial deed that a reading has been carried out similarly if the notary does not read it and the parties wish to read the deed that has been drawn up, such matter must also be included at the end of the notary deed. If this is not done, then there are formal aspects that are not fulfilled and result in the deed being flawed in terms of its form.
- 2) Article 41 UUJN which refers to Article 39 and Article 40 refers to the ability to act to carry out a legal act. Violations of this article include the inability of public officials, in this case the notary concerned, to understand the general limits of adulthood to carry out legal actions.
- 3) Article 41 UUJN which refers to Article 40 letter e and Article 52, if there is a violation of this article then it is included in the incompetence of the public official concerned, meaning that there is a barrier for the Notary to exercise his authority.

In addition to Article 1869 of the Civil Code, there are also other requirements which, if not fulfilled, can make the power of proof of an authentic deed become a deed under the hand. The other requirements in

<sup>3</sup> Jaifurachaman. 2011. *Aspects of Notary Liability in Making Deeds*. Bandung: Mandar Maju, 2011, p.122.

<sup>32</sup> Habib Adjie. 2015. *Cancellation and Cancellation of Notary Deed*. Bandung: PT Refika Aditama, p. 83.

making an authentic deed that must be met are formal and material requirements. The formal requirements for making an authentic deed are as follows:<sup>33</sup>

- 1) Made by or in front of an authorized officer
- 2) Attended by the parties
- 3) Both parties are known or known to the officials
- 4) Attended by 2 witnesses
- 5) State the identity of the notary, appearers and witnesses
- 6) Mention the place and time of making the deed
- 7) The notary reads the deed in front of the appearers and witnesses
- 8) Signed by all parties
- 9) Confirmation of reading, translation, and signing on the cover chart of the deed
- 10) Position of notary in regency or city area;

The material requirements for making an authentic deed are as follows:<sup>34</sup>

- 1) Contains information on the agreement of the parties
- 2) Fill in the information about the legal act
- 3) Making a deed deliberately made for proof.

From this it can be seen that a notarial deed will always have perfect and binding evidentiary power as long as it fulfills the formal and material requirements for making a deed. If it is not fulfilled, the notarial deed can change its degree or be relegated to a private deed. With regard to minuta storage, both in terms of formal and material requirements, once again there is no regulation regarding storage. A conclusion that can be drawn is that as long as the deed is made in a manner that is in accordance with Article 1868 of the Civil Code and meets the formal and material requirements of a notary deed, it will always be an authentic deed.

Means that in the Civil Code and in the Notary Office Law, deed made in the conventional way and stored digitally has perfect and binding evidentiary power, and is a valid evidence. However, if you reflect on the

<sup>1</sup> Electronic Information and Transaction Law in Article 5 below:

#### Article 5

- (1) Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence.
- (2) Electronic Information and/or Electronic Documents and/or printouts as referred to in paragraph (1) are an extension of valid evidence in accordance with the applicable Law of Procedure in Indonesia.
- (3) Electronic Information and/or Electronic Documents are declared valid when using Electronic Systems in accordance with the provisions stipulated in this Law.
- (4) Provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) do not apply to:
  - a. a letter according to the law must be made in written form; And
  - b. the letter and its documents which according to the Law must be made in the form of a notarial deed or a deed made by a deed-making office.

<sup>1</sup> Thus, the power of proof of the minutes of a notarial deed is questioned because a notarized deed is <sup>3</sup> exception. This means that even though the minutes of the deed made by the notary have fulfilled the formal requirements and material requirements of making the deed, it still cannot be considered as valid evidence if it is in the digital realm. So that minutes stored in electronic form do not have perfect <sup>3</sup> and binding evidentiary power. But only has the power of proof as well as an underhand deed.

Minutes of deeds that are stored digitally are considered to have equal strength with private deeds, due to the existence of Article 5 paragraph (4) letter b in the Electronic Information and Transaction Law. Article 5 paragraph (4) letter b of the Law on Information and Electronic Transactions is being questioned about its current use because basically the law is to follow social

<sup>33</sup> Endang Purwaningsih. 2015. *Forms of Notary Law Violations in Banten Province and Law Enforcement*. Article in "Journal of Pulpit Hukum". Vol. 27. No. 1, p. 16-17.

<sup>34</sup> Vivien Pomantow. 2018. *Legal Consequences of Formally Defective Authentic Deeds Based on Article 1869 of the Civil Code*. Artikel dalam "Private Law Journal Vol. VI. No. 7, p. 94.

changes. The law must be able to respond to social changes if there are social changes in society. Benefit is the most important thing in a legal purpose, regarding the discussion of the purpose of the law, first it is known whether what is meant by its own goals and what has only human goals, but the law is not a human goal, law is only one of the tools to achieve goals in social and state life . The purpose of law can be seen in its function as a function of protecting human interests, law has goals to be achieved.<sup>35</sup> The law must be able to respond to the times. The researcher is of the opinion that Article 5 paragraph (4) letter b of the Law on the Position of Notary, when it is related to the current state of society, is now irrelevant.

Minutes of deeds stored electronically also cannot function as copies, due to Article 5 paragraph (4) letter b of the Electronic Information and Transaction Law. So that minutes of deeds that are stored electronically only function as *back up* just. The existence of Article 5 paragraph (4) letter b does not necessarily mean that digital storage does not have to be done by a notary. According to researchers, digital storage still has to be done even if it only functions as *back up* just.

#### b. Digital Evidence in Court

Article 164 RBg and Article 1868 of the Penal Code, regulate the evidence that can be used in the settlement of civil disputes in court in a limitative manner and arranged sequentially from letter evidence, witness statements, allegations, confessions and oaths.<sup>36</sup> As time has progressed, other evidence has begun to appear outside of the Civil Code. Starting with the emergence of photocopies until the birth of digital evidence or electronic evidence.<sup>37</sup>

Researchers have discussed that the Company Documents Law is the starting point for its recognition as a means of proof for the transition of manual documents to digital documents. The enactment of the company document law is the beginning of Indonesian law which has begun to reach electronic

<sup>2</sup> evidence, because it has provided company documents as authentic written evidence for safekeeping through storage in the form of micro films<sup>38</sup>. In addition, Article 5 of the Electronic Information and Transaction Law recognizes electronic evidence.

<sup>1</sup> The Electronic Information and Transaction Law discusses electronic information and documents. The explanation is as follows:

#### 1) Electronic Information

Constitution of electronic information and transaction

##### Article 1 point 1

Electronic Information is one or a set of electronic data, including but not limited to writing, sound, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegrams, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or processed perforations that have meaning or can be understood by people who are able to understand them.

#### 2. Electronic Documents

Constitution of electronic information and transaction

##### Article 1 point 4

Electronic Documents are any Electronic Information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and/or heard through a Computer or Electronic System, including but not limited to in writing, sound, pictures, maps, designs, photographs or the like, letters, signs, numbers, Access Codes, symbols or perforations that have meaning or significance or can be understood by people who are able to understand them.

<sup>1</sup> Based on the provisions contained in Article 5 of the Law on Information and Electronic Transactions. Thus, the evidentiary power of Electronic Information and Electronic Documents is valid evidence. In connection with the

<sup>35</sup> Muhammad Ridwansyah. *Realizing Justice, Certainty and Usefulness of Law in the Aceh Flag and Symbol Qanun*. p. 13. Journal of the Constitution, Volume 13, Number 2, June 2016.

<sup>36</sup> Efa Laela Fakhriah. 2017. *Op.Cit.*, hlm 43.

<sup>37</sup> *Ibid.* hlm 46.

<sup>38</sup> *Ibid.*, hlm 24.

above article, the minutes of notarial deeds that are stored digitally are part of electronic documents. This is because the minutes of the deed contain information that is stored in digital form which can be displayed through a computer system.

Provisions in Article 6 of the Law on Information and Electronic Transactions which state that:

#### Article 6

In the event that there are provisions other than those regulated in Article 5 paragraph (4) which require that information must be in written form or original, Electronic Information and/or Electronic Documents are considered valid as long as the information contained therein can be accessed, displayed, guaranteed for its integrity, and can be accounted for so as to explain a situation.

Article 6 of the Electronic Information and Transaction Law discusses the requirements for electronic information and documents to be recognized as legal evidence, including:

- 1) Accessible
- 2) can be displayed
- 3) Its integrity can be guaranteed
- 4) Can be accounted for

By this means, as long as an electronic information and document fulfills the four elements above, the strength of proof is valid. If it is related to electronic storage, the minutes stored should have valid evidentiary power. Based on the explanation contained in Chapter II of this study, digital storage can be guaranteed secure through several systems that guarantee data integrity, digital storage is also easy to access and display on a computer. Regarding accountability, as with manual storage, storage responsibility is the responsibility of the notary who keeps the minuta.

However, regarding digital proof regarding minutes of notarial deed, it is hindered by Article 5 paragraph (4) letter b. This article immediately breaks the provisions in the

previous paragraph and the provisions in Article 6 of the Electronic Information and Transaction Law. So that the strength of proof of minutes that are stored digitally has the status of an underhand deed.

Apart from the existence of Article paragraph (4) letter b which seems to hinder digital storage. This also makes the power of proof of minutes stored digitally cannot be said to be the same or equivalent to an authentic deed, meaning that the value of proof of minutes stored digitally is still ordinary evidence, cannot stand alone in sufficient minimum proof limits, therefore must be assisted by one of the other means of evidence, namely supported by the testimony of witnesses or expert witnesses. The value of the strength of evidence is left to the judge's consideration.

Until now regarding dElectronic documents do not yet have arrangements for submission procedures in court, procedures for showing them to opposing parties and regulations are currently being drafted regarding the standardization of electronic certification provider services. The procedure for submitting and showing electronic documents at trial can be answered through the development of practice at trial but to provide legal certainty it needs to be regulated in the Civil Procedure Code or compiled in a Supreme Court Regulation.<sup>39</sup>

Article 5 paragraph (1) of the Law on Electronic Information and Transactions does state that digital information and documents are valid evidence. However, the existence of this article is not explained regarding the procedure for proving it during the trial so that this matter is also a legal vacuum which causes legal uncertainty.

Basically, proving in civil cases related to electronic evidence can be carried out based on the provisions of Article 1866 of the Civil Code j.o Article 5 paragraph (1) and paragraph (2) of Law Number 11 of 2008 Concerning Electronic Information and Transactions, namely by searching for evidence as specified in Article 1866.<sup>40</sup>

<sup>39</sup> Supreme Court. 2018. *The Existence of Electronic Documents in Civil Courts*. Accessed from <https://www.mahkamahagung.go.id/id/art>

ikel/3048/ekssisten-kode-elektronik-di-persi dan an-perdata. On June 18, 2021.

<sup>40</sup> Refly Aditia Mamitoho. 2014. *Use of Electronic Evidence in Examination of Civil Cases*. Artikel

In Chapter II it has been stated that the form of storing minutes of deeds digitally is by using the method *scanning*. Position *scanning* equivalent to a photocopy. Then the strength of proof of photocopying rests on Article 1888 of the Civil Code which states that:

"The strength of proof of written evidence is in the original deed. If the original deed exists, then the copies and summaries can only be trusted, only the copies and summaries are true to the original, which can always be ordered to show them.

Based on the above article, it means that the power of minutes stored digitally, if it fulfills the elements in Article 6 of the Electronic Information and Transaction Law, can be legal evidence. However, the existence of Article 5 paragraph (4) letter b of the Electronic Information and Transaction Law is an obstacle to the success of storing minutes of deed digitally. The solution offered is to delete Article 5 paragraph (4) letter b so that Article 1888 of the Civil Code and Article 6 can strengthen digital storage.

One solution that can strengthen digital storage is to revise the Notary Office Law. In accordance with the discussion in Chapter II, the safekeeping of the minutes of the deed in accordance with the Notary Office Law is to store them manually, in accordance with Article 16 paragraph (1) letter g. By adding norms or adding Articles regarding digital storage procedures, digital storage can be carried out. For example, adding an article regarding procedures for proving minutes of deeds that are stored digitally in court. The procedure is to:

- 1) *Printscanning* from the minutes of the deed that are stored digitally
- 2) Result *scan* it will be stamped by the Notary as a form of authenticity.

The stamp serves to certify that the document printed is the original document belonging to the Notary. It should be remembered that the essence of a notary is a public official. Through the status of a public official owned by a notary, what products issued by a notary are guaranteed to be true by the state. This is because the Notary is an extension of the Government, this is proven by the Notary being appointed by the Minister.

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dalam "Journal Law and Society". Vol. II. No. 1, p. 72

Thus, with the existence of this stamp, the deed that is stored digitally can be proven in court.

## CONCLUSION

The form of storing Act Minutes electronically is by using scanning per sheet on the Minutes of Deed, then save it in a secondary storage device, such as a hard *disk*, *flash disk*, or *CD*. Apart from that, the form of storing minutes digitally can also be done in a way *scanning* per sheet on the Minutes of Deed, then save it using a storage service.

In general, the strength of proof of Minutes of Deeds stored manually is perfect and binding. Meanwhile, minutes that are stored digitally have the power of proof such as private deeds. So that digital storage of Minutes of Deed only functions as *back up* data only, does not have the same evidentiary power as Minutes of the Deed and Copies of the deed. This is because digital documents in the notary field are not recognized as valid evidence in Article 5 paragraph (4) letter b of the Electronic Information and Transaction Law.

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- Law Number 30 of 2004 Concerning the Position of Notary



# Strength of Proof of Deeds Stored Digitally

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