

AUTHENTICITY OF ELECTRONICALLY STORED NOTARIAL PROTOCOLS

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Abstract

Current technological developments allow storing Notarial protocols that are more practical, efficient, inexpensive, and secure using electronic documents. This research aims to examine the legal status of Notarial protocols as electronic documents and identify legal certainty in verifying the authenticity of electronically stored notarial protocols. This research is normative and conducted by analyzing legal norms and applicable provisions. In addition, this research also examines the application of normative law in practical situations, especially in the context of electronic storage of notarial protocols. The results show that notaries are responsible for storing notarial protocols and archives following the Notary Public Office Law. To avoid damage or loss of notarial protocol documents in printed format, notaries can convert them to electronic format by scanning and storing them in electronic storage devices. Meanwhile, the storage of notarial protocols in electronic form can be done through electronic identification and electronic authentication systems on websites or other electronic media. In archiving notarial protocols electronically, paying attention to security and precautionary aspects is essential. However, from a legal perspective, the storage of notarial protocols in an electronic format still needs to be clarified in the laws and regulations related to authentic deeds.

Keywords: Technology Enhancement, Notary Protocol Storage, Electronic Documents, Legal Status, Authenticity, Normative Legal Research.

I. INTRODUCTION

As social beings, humans always need interaction with other humans to fulfill their needs and constitutional rights, including legal certainty regarding their assets and rights. In this context, the notary's position is essential in providing valid written evidence regarding events, circumstances, or legal acts [1]. (Law Number 30 of 2004 jo. Law Number 2 of 2014 and the Notary Code of Ethics stipulate that notaries are officials with the authority to make authentic deeds with strong evidentiary power, providing legal certainty for all parties involved. The role of a notary covers the legal rights and obligations of individuals in society, serves as a preventive measure to address future legal issues, and creates legal guarantees and protection through authentic deeds produced under the supervision of an authorized notary. Authentic deeds produced by notaries are related to legal status, rights, obligations, and other legal issues that can be raised in court [2]. Notaries, as public officials who act following the law, play an essential role in determining the legality of actions and preventing violations of the law, so they

are fully responsible for every action and deed they produce, so that the deed is recognized as an authentic deed with executorial power [3].

Based on the authorities and obligations stipulated in Article 15 and Article 16 of the UUJN, notaries must make authentic deeds and keep notary protocols. The notary protocol is a collection of documents that a notary must keep and supervise following statutory regulations. The Notary Protocol includes the deed minutes, deed registry book or repertorium, deed registry book under the hand, name registry book, protest registry book, will registry book, and other registry books determined by laws and regulations. Traditionally, notary protocols are stored physically in a notary's storage using paper media, in line with the provisions in Article 16 paragraph (1) letter g of UUJN, which requires notaries to bind deeds in the form of physical books. However, this storage method has limitations in terms of space and vulnerability to damage. Therefore, the application of technology is required to increase the effectiveness and efficiency of notarial protocol storage.

[4] Technology development is experiencing rapid progress, affecting various aspects of human life. The era of globalization has led us towards an increasingly integrated global society supported by advances in science and technology, especially in communication and information technology. Therefore, the utilization of technology in the storage of notary protocols is a relevant and essential step in facing the changing times that are increasingly digital. The rapid development of the digital era has brought about changes in human lifestyles that are inseparable from the influence of electronic devices, making technology an inevitable flow of life. In this context, mastering and controlling technology is a must to maximize its benefits. Technology has a significant positive and negative role, and this digital era offers challenges and new opportunities, including in the notary field [5]. The discussion on electronic storage of notarial protocols reflects the positive impact of technology on notarization. The electronic storage approach aims to reduce risks related to storage time, natural disasters, or other force majeure, resulting in a more practical, efficient, economical, and secure way of storing notarial protocols through electronic documents.

Transferring notarial protocols into electronic form is an innovation that has never happened before. The current regulations governing notarial minutes and protocols in UUJN are limited to making, storing, submitting, and retrieving notarial minutes and summoning notaries per Articles 58 to 66. However, Article 15 paragraph (3) of UUJN opens the opportunity to introduce new authorities that can be regulated in laws and regulations, including the authority of cyber notaries, which includes certification of electronic transactions, making a deed of pledge of waqf, and aircraft mortgages. This provides a legal basis for implementing cyber notary practices in the notary office.

The concept of cyber notary, described by [6], changes the notary paradigm by allowing the notary to remain in his/her office area. At the same time, the parties involved in a transaction do not have to meet physically or face-to-face [7].

They can be located far apart and conduct transactions through teleconferencing and information technology. Utilizing technology opens up opportunities for greater efficiency and

access to notarial services, demonstrating a significant change in notarial practices to be more current and technology-based.

Although UUJN does not require notaries to store their documents in electronic form, notaries can perform electronic storage to prevent the possibility of the worst situation occurring. For example, in the case of natural disasters such as the earthquake and tsunami that hit Palu City in 2018, many notaries lost their protocols, which also harmed the public. Electronic storage is a solution that can avoid losses due to natural disasters or other damages, such as fire, paper damage, and others.

The storage of notarial protocols should be considered from two aspects: the economic aspect, which aims for efficiency, practicality, cheapness, and security, and the legal aspect, which facilitates the legal process, especially regarding evidence involving electronic evidence. Although UUJN does not yet accommodate electronic storage of notarial protocols, research has been conducted to find a legal basis to serve as a foundation for implementing electronic storage of notarial protocols. UUJN does not regulate the development of information technology-based notary protocol storage. The provisions of Article 16 paragraph (1) letter b of UUJN, along with its explanation, only explain the obligation of notaries to make deeds in deed minutes and keep them in their original form as part of the notary protocol to maintain the authenticity of the deed. This provision suggests that changes to the original form of the deed, such as in the electronic storage of notarial protocols, raise questions about the authenticity of the deed, especially in the context of using authentic deeds as valid evidence in court.

This is related to the requirements for the authenticity of the deed as stipulated in Article 1868 BW, which includes the requirement that the deed must be made by or before a public official who has the authority to make such deeds and must be made in the form prescribed by law. In the context of electronic storage of notarial protocols, the indicator that will be used to analyze their authenticity is compliance with the requirements of existing laws and provisions. Therefore, the change in the form of notarial protocol storage needs to be carefully considered in maintaining the authenticity of notarial deeds.

II. FRAMEWORK THEORY AND METHODS

This research aims to analyze the legal status of electronic documents as authentic deeds, focusing on the elements of authentic deeds, procedures for making authentic deeds, and comparisons between written documents and electronic documents. In addition, the research also explores legal certainty related to the authenticity of electronically stored notary protocols, using indicators of evidence in civil law, criminal law, and electronic evidence. The results of this analysis are expected to provide solutions to problems that arise in the context of electronic storage of notarial protocols to create more apparent legal certainty in the office of notary, especially in terms of regulations regarding notarial protocols stored in electronic form, which currently do not have a clear enough legal basis and a solid theoretical basis.

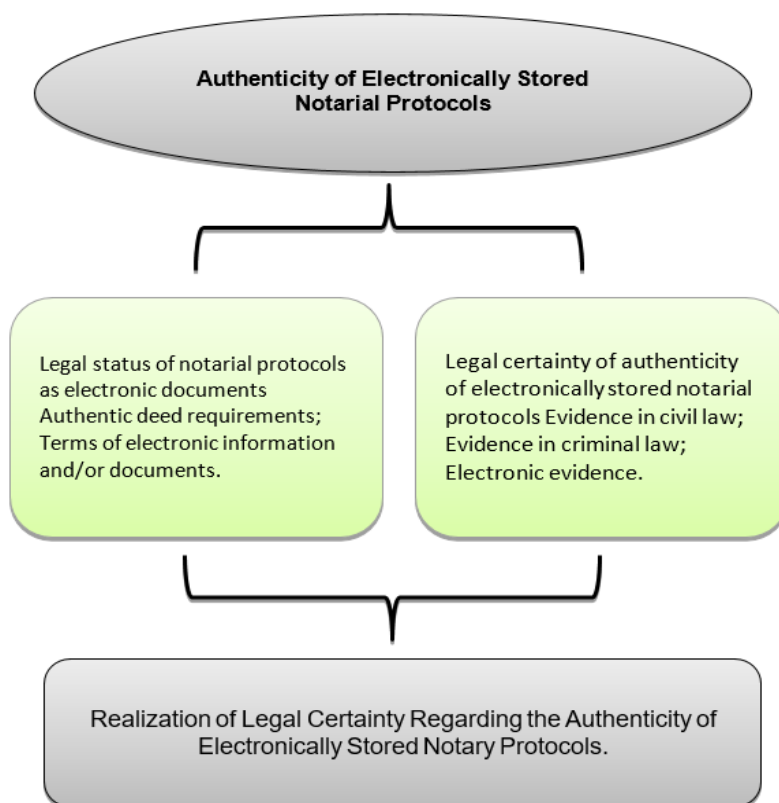


Figure 1: Conceptual Framework

This research provides operational definitions to clarify the meaning of the terms used. Authentic deed refers to a deed made by a notary with the authority following UUJN. The evidence covers civil law, criminal law, and electronic evidence. Electronic Authentication involves validating the data of the confrontants through video teleconferencing. Electronic documents refer to notarial deeds in electronic form or electronically stored notarial protocols. The notary position is a public official position with the authority regulated in the UUJN. Authenticity includes the validity of electronically stored notarial protocols as valid, authentic deeds. Legal certainty relates to the position of deeds made through teleconferencing. Notarial protocols are state archives in the form of electronically stored documents. Teleconferencing includes video calls or other conferencing methods that show the faces and situations of the notary and the notary. Electronic information includes electronic data that has meaning. Legal status refers to the conditions under which an electronically stored notarial protocol qualifies as an authentic deed.

This research is characterized as normative or doctrinal legal research [8] because its main focus is the analysis of applicable legal norms. Systematically, this research also discusses the enactment and implementation of normative legal provisions in real situations in legal events, particularly in the electronic storage of notarial protocols. This research aims to answer questions regarding the legal basis for electronic storage of notarial protocols and their position

as authentic deeds. The approach method used is a statute approach by examining several laws relevant to the legal issues discussed, as well as a conceptual approach to analyze views and doctrines related to the application of electronic authentication in the notary position during the pandemic, as well as the legal force of the resulting deed.

III. RESULT AND DISCUSSION

As public officials, notaries have the authority to make authentic deeds with perfect legal force and evidentiary power for all parties involved. Authentic deeds produced by notaries are considered to have occurred, and judges do not require additional proof. Every deed a notary makes must be kept in a notary protocol following Article 16 paragraph (1) letter b of the UUJN. The notary protocol is a collection of state archives documents and must be maintained following statutory regulations. The notary's obligation in administration involves storing and maintaining documents, including the notary protocol. The notary protocol is a state archive that must be carefully stored and maintained, even when the notary is on leave or dies.

UUJN regulates the requirements and procedures related to creating, storing, and submitting notarial protocols. In special situations, such as the death of a notary, UUJN sets out rules that must be followed. Article 35 of UUJN requires the family of a deceased notary to notify the MPD Notary within seven working days. If the notary dies during leave, the duties of the notary office will be carried out by a substitute notary as a temporary notary official for a maximum of thirty days. The temporary notary officer must also hand over the notarial protocol that has been kept within sixty days of the notary's death. This is a necessary provision that regulates the handling of notarial protocols in the case of a notary's death.

The creation and storage of notarial protocols in electronic form have yet to be explicitly regulated in Indonesian legislation. This lack of norms raises doubts about the legality of these activities and affects their legal certainty. This is due to the incompatibility with the function and purpose of an authentic deed and impacts the authenticity of the notarial protocol, which becomes equivalent to a deed under hand and reduces the evidentiary power that an authentic deed ideally has. Although no provision explicitly regulates it, Article 15 paragraph (3) of UUJN Perubahan implicitly opens up opportunities for applying electronically stored notarial protocols, especially in the context of cyber notary and electronic transaction certification. This is possible because notaries have implemented electronic applications following the provisions in several laws and regulations, such as the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 14 of 2020. This shows the potential for the development of information technology-based notarial protocol storage in the future.

On a practical level, in criminal and civil cases, the use of electronically stored evidence has been accepted and recognized as valid in court proceedings. This is regulated in Articles 5 and 6 of the ITE Law, which confirm that electronic documents have the legal power to be used as valid evidence before the court. Furthermore, Article 5 of the ITE Law explains that electronic information and electronic documents and their printouts are considered valid evidence. This recognition expands valid evidence by the applicable procedural law in Indonesia. However, it should be noted that this provision does not apply to letters written under the law or letters and

documents organized in the form of notarial deeds or deeds made by deed-making officials under the law. Thus, in such cases, electronic documents and information have different strengths of evidence.

In Article 5, it is clear that electronic information, electronic documents and their printouts are considered valid legal evidence. However, it is important to note the provision in Article 4 that excludes notarial deeds from this recognition. Article 4 refers to the form of notarial deeds regulated by law, such as UUJN and BW. Therefore, electronically stored notarial protocols cannot be considered as valid evidence in court. Thus, the status of this electronically stored notarial protocol is not equivalent to an authentic deed and loses its power as absolute evidence, so it should be considered as a deed under hand. However, the provisions of Article 6 of the ITE Law stipulate that:

“If there are provisions other than those stipulated in Article 5 paragraph (4), which require that information must be in written or original form, Electronic Information and Electronic Documents are considered valid as long as the information contained therein can be accessed, displayed, guaranteed its integrity, and can be accounted for so that it explains a situation.”

The above provisions show that the provisions of Article 5 paragraph (4) of the ITE Law are not absolute provisions. Because the provisions of Article 6 of the ITE Law open up opportunities for a breakthrough on the condition that the electronic information included can be accessed, displayed, guaranteed integrity, and can be accounted for so that it explains a situation. According to the author, the term "guaranteed integrity" can be interpreted as "in accordance with its form" as stipulated in Article 1868 BW.

According to [3], an expert in Intellectual Property Rights and Telematics and a lecturer at the Faculty of Law, University of Indonesia, it is essential to understand that the exceptions contained in Article 5 paragraph (4) letters (a) and (b) of the ITE Law are not absolute. This is because changes to the law, especially in the UUJN, accompanied by reliable technological advances, can open up opportunities to overcome these provisions. With this approach, notaries can utilize electronic technology in carrying out their duties to improve work efficiency and reduce risks in the future. In addition to the ITE Law, there are Law No. 8/1997 on Company Documents and Law No. 43/2009 on Archives, which provide the legal basis for implementing the cyber notary concept.

The term "electronic document" was known before the ITE Law was enacted. The transition from paper documents to electronic form was initiated by Law Number 8 of 1997 concerning Company Documents. In the Company Documents Law, the preamble letter f states that technological developments allow the transfer of records and documents from paper to electronic media, which is then recognized as a valid form of law. This is confirmed by Article 12 paragraph (1) of the Company Documents Law, which recognizes the validity of company documents, even if they are stored in microfilm or electronic media. The concept of authenticity of electronic documents as valid evidence is also found in the ITE Law. Electronic documents are considered valid if they are produced and regulated by the provisions of the ITE Law, which includes specifications on systems, certification, and electronic transactions. Therefore,

electronic documents can be guaranteed their integrity and used as valid evidence in court.

Electronic documents have also been recognized through Supreme Court Circular Letter (SEMA) No. 14/2010, which regulates the use of electronic documents as completeness in cassation and judicial review applications. Later, this regulation was amended to SEMA 1 Year 2014. Although this circular does not explicitly regulate the status of electronic documents/information as evidence, it focuses on using electronic media such as flash disks, compact disks, or email delivery in presenting decisions or indictments to supplement cassation and judicial review applications. Regulations regarding the electronic storage of notarial protocols have yet to be regulated explicitly in Indonesian legislation. However, regulations related to the storage of electronic documents have been regulated in the Archives Law. In this context, "storage" is more commonly known as "archiving," which distinguishes archives into two categories: authentic and trusted. However, the term "authentic" in legal and technical contexts does not always have the same meaning, as an *authentic document* is defined as a document that can be trusted because it has gone through a process of checking and verifying the integrity of the data, as opposed to a copy of the original document from which it originated.

The reference guideline in the electronic archiving process is the ANRI Head Regulation Number 20 of 2011 concerning the Guidelines for Authentication of Electronic Records. Authentication here refers to providing a mark written statement or other mark that shows that the archive that has been authenticated is the original data or a copy of the original data. In the case of a copy of an archive, its authenticity can be recognized if there is evidence that the copy is derived from the original archive. The archive's creator has an essential role in identifying legitimate copies of the archive through pre-established procedures. These procedures involve checking the integrity of the data and information in the document to ensure its authenticity is maintained. Success in maintaining the authenticity of these documents is critical in using them as evidence under the provisions of the Archives Law. Negligence in checking and examining archival documents can damage the legal force attached to the documents.

In addition to the above regulations, several other laws, such as Law Number 30 of 2014 on Government Administration, Law Number 25 of 2009 on Public Services, and Law Number 14 of 2008 on Public Information Disclosure, also legalize the storage of electronic documents. This affects the legalization and authentication processes that are carried out electronically. Along with the times, the implementation of electronic storage of notarial protocols can be applied in the notarial world, after many similar implementations in the government framework. However, to make this happen, the government must build a storage infrastructure supported by reliable services supporting digitization to achieve a paperless era. In the early stages, the primary focus should be on developing procedures to prove that notarial protocols or copies of deeds can be stored securely with preserved authenticity so that they have legal force and can be used as evidence in trials.

To achieve effective implementation of electronic storage of notarial protocols, the following steps need to be taken:

1. Legal Regulations: Appropriate legal regulations are needed, such as the actualization of the UUJN Amendment, ITE Law, and Article 1868 BW, as well as additional regulations from the Law and Human Rights Regulation. These regulations should support the regulation of authenticity by integrating the trustworthiness function.

2. Harmonization of Regulations: Harmonization between the administration of electronic documents and its regulations guides the government and notaries on the potential use of electronic notarization protocols. This should be based on the principle of authenticity stipulated in the ITE Law and other legal regulations.

3. Notary Responsibilities: The notarial protocol's storage and archives is the notary's responsibility in accordance with the UUJN. To reduce the risk of damage or loss of notarial protocols and their copies in paper format, notaries may transfer them to electronic format by scanning and storing them on electronic storage devices. The storage of electronically created notarial protocols can use e-identification and e-authentication systems on websites or electronic media. In all these stages, the notary must prioritize security and prudence.

Implementing an electronic notarization protocol is a possible solution and can simplify and minimize risks in storing and administrating notarial documents. This involves close cooperation between government bodies, notaries, and law enforcement to ensure that current regulations and practices reflect technological developments and the needs of society.

Saving notarized protocols from paper to electronic format involves several key steps: Scanning: Existing notarial protocol documents in paper format are scanned into a digital format using a scanner. Organizing and Locking: The scans are organized systematically and neatly and then saved in Portable Document Format (PDF). The notary can lock the PDF file to prevent unauthorized changes or access and maintain its security. Storage on Electronic Media: Notarized protocol files created in PDF format are stored on a computer, laptop, or other secure and reliable electronic storage media. Function as Backup (Back Up): The storage of the notarial protocol in electronic format serves as a backup and can be used if the notarial protocol in paper format is damaged or lost. In addition, these electronic files can serve as supporting evidence in judicial proceedings. However, it should be noted that legally, electronically stored notarial protocols do not yet have the same evidentiary power as conventionally made notarial deeds. This is due to the non-fulfillment of the authenticity requirements stipulated in Article 1 paragraph (1) of UUJN and Article 1868 BW. To overcome this, updating the substance of UUJN and Article 1868 BW is necessary to provide a solid legal basis for electronic storage of notarial protocols. As a legal state based on written rules, Indonesia must have a solid legal foundation to enable the application of electronic storage of notarial protocols with valid evidentiary power in court.

According to [9], law is a method that contains a judgment about specific actions. This is evident in the form of commands and prohibitions. The method is realized in the form of instructions for behavior. From [9]'s view, it is clear that a law is needed that is implemented

in the form of laws and regulations to create an orderly, safe, and peaceful life, including in the world of notaries. Moreover, the world of notaries currently has a strategic role in society because it is related to the rights and interests of the community regarding property, especially land and property.

In the functional equivalent approach, which seeks functional equivalence between electronic notarization protocols and paper documents, three main principles must be met from the start of creation [10]: Ease of Storage and Search: A notarial protocol is considered equivalent to a written document if it is easy to store and can be searched or found smoothly. Certainty of Originality: A notarial protocol is considered original if, during storage, searching, and reading, its contents remain intact and unchanged. This ensures that its authenticity and credibility are maintained. Electronic Signature: A notarial protocol is considered signed if there is information describing the identity and authorization of the legal subject responsible for the document or if there is a reliable authentication system that verifies the identity of the relevant party.

In the context of Article 6 of the ITE Law, notarial protocols in the form of electronic documents are considered valid if they meet the following criteria: affordability, which means that the notarial protocol must be accessible and discoverable through electronic systems; presentability, which requires that electronic systems can display the notarial protocol; integrity preservation, which emphasizes the need to keep the contents of the notarial protocol intact and unchanged through a process of checking, examination, and analysis; and accountability, which requires that the process of creating, storing, and, if necessary, reporting to the MPD, can be guaranteed for authenticity. Thus, to ensure the technical authenticity of electronic notarization protocols, it is necessary to support infrastructure related to government or National root CAs and use national encryption algorithms. In addition, e-identification systems and trust services that regulate the validity of electronic documents also need to be considered.

Overall, Article 6 of the ITE Law emphasizes the requirements that must be met for a notarial protocol in the form of an electronic document to be considered valid. Affordability, presentability, integrity, and accountability are vital aspects that must be considered in maintaining the technical authenticity of the electronic notarization protocol. To achieve this standard, an infrastructure associated with a government or National root CA is required, as well as the use of national encryption algorithms. In addition, the importance of e-identification systems and trust services that regulate the validity of electronic documents should be considered. Electronic notarial protocols have the potential to become a legitimate alternative in modern legal processes, in line with technological developments.

A possible drawback of electronic documents is that they are vulnerable to virus attacks and unwanted changes. To overcome the vulnerability to viruses, using antivirus tools is an effective preventive measure to prevent damage or loss of documents. Meanwhile, to prevent unauthorized changes, the e-identification and e-authentication system process, including implementing trust services providers, can ensure the integrity and validity of electronic documents. Based on these considerations, implementing electronic storage of notarial protocols is worth considering, provided that some laws and regulations regulate the intricacies

of the creation, storage, and mechanism for ensuring authenticity. This is important in applying the law relating to the office of notary. In addition to laws and regulations, adequate technological support is needed so that the implementation of electronic storage of notarial protocols runs effectively and efficiently and maintains the required level of authenticity.

The application of law in the Republic of Indonesia refers to legal subjects, namely individuals and legal entities, who have rights and obligations that must be respected following their legal status. This status reflects the legal position of the subject in the legal system and determines the rights and obligations that must be obeyed. This legal status is intended to provide legal subjects justice, certainty, and benefits. This concept reflects the idea [11] that describes society as an organism that has diverse positions and functions, and the law serves as a tool to maintain harmony and balance in the relationship between the elements of society. [11] Also emphasize the importance of compatibility between the position (status) and the role of individuals in society. Law is considered adequate only if it can achieve this harmonization, ensure that the law reflects the status and role of individuals, and contribute to the purpose of law in all aspects of the nation's life.

The incompatibility of existing legal regulations with technological developments in the storage of notarial protocols. The current legislation needs to regulate the electronic storage of notarial protocols, resulting in a vacuum of norms and legal uncertainty. This legal uncertainty can threaten the certainty of the rights and interests of the parties involved in the authentic deed, given the importance of legal certainty in a state of law. Efforts to change the law are needed so that the storage of notarial protocols in electronic form has a clear and firm legal basis. In addition, the issue of authentic proof of notarial protocols in court is also a problem because the existing rules still need to accommodate the use of electronic documents as evidence equivalent to the original version.

IV. CONCLUSION AND SUGGESTION

From a civil law perspective, notarial protocols as electronic documents must meet the requirements to be considered authentic deeds following UUJN and Article 1868 BW provisions. However, they are limited to being recognized as electronic documents parallel to deeds underhand. In criminal law, electronically stored notarial protocols are equivalent to clue evidence but must be supported by other evidence in the trial. The lack of legal regulations governing the legality of storing notarial protocols in electronic form creates legal confusion, especially for notaries who wish to apply them. Electronically stored notarial protocols only have the equivalent status of a deed under hand, which has limited evidentiary power in the context of a trial. To ensure that electronically stored notarial protocols are recognized as authentic deeds with evidentiary solid power, the government must establish regulations that legalize this storage through the revision of the UUJN or its implementing regulations. In addition, to create solid legal certainty, there is a need for a reliable and integrated storage system involving notaries and the Ministry of Law and Human Rights. With this approach, electronic storage can maintain its credibility by applying electronic authentication and verification to stored documents.

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