



The Role of Cyber Notaries in Supporting the Tourism Investment Climate in Bali

Ridwan Sidharta^(✉)

Doctoral Program in Law, Warmadewa University Denpasar, Denpasar, Bali, Indonesia
ridwansidharta@gmail.com

Abstract. Bali has abundant natural beauty, culture, and customs, attracting investors to invest in Bali. The investment in Bali that investors most target is property. The increasing number of transactions on property in Bali also requires a form of legal binding (agreement) based on the urge of the buyer or investor with the seller or property owner. Some officials are given the authority to enact documentary evidence for legal events named the Notary. The concept of a cyber Notary in Indonesia is still under debate. Although technology allows the role of Notaries online and remotely, legally, it seems that it cannot be carried out quickly. A statutory method was used in this normative legal research. It is examined using the description, systematization, and explanation phases. In Indonesia, the legislation relating to cyber Notaries is established in Article 15, paragraph 3 of the Notary Profession Law, which mentions a glimpse of the cyber Notary in terms of the competence to certify transactions undertaken online. However, in light of the present rapid growth of technology, this authority remains modest and clear. The role of cyber notaries in supporting investment in the tourism sector in Bali through the implementation of making engagements and/or making authentic deeds carried out through technological assistance will certainly help and facilitate investors in conducting transactions, especially in the tourism sector.

Keywords: Cyber Notary · Investment · Tourism in Bali

1 Introduction

Bali has abundant natural beauty, culture, and customs, which have become the main reason investors invest in Bali. Tourism is the most important economic sector in Indonesia, especially in Bali [1]. This sector continues to grow every year.

Internationally, tourism in Bali has been known as one of the leading destinations in the tourism industry. It plays an important role as a source of foreign exchange for the country. This sector can create job and business opportunities and increase and equalize community and regional income [2].

Investment is the expenditure of investors or businesses on capital goods and production equipment to boost the economy's ability to generate products and services [3]. All development initiatives to promote the tourist sector are currently carried out by investors, both locally (also known as PMDN) and internationally (also known as PMA) [4].

© The Author(s) 2023

I. N. P. Budiarta et al. (Eds.): ICBLT 2022, ASSEHR 721, pp. 907–912, 2023.

https://doi.org/10.2991/978-2-494069-93-0_105

According to the Central Statistics Agency (BPS) data, foreign investment in Bali has always experienced growth. However, the condition has decreased drastically due to Corona Virus Disease 2019 (Covid-19). This condition impacts the sluggishness of the tourism industry and creates many social and economic problems, especially for entrepreneurs in the tourism sector in Bali.

According to the data of BPS, in 2019, the value of foreign investment in Bali amounted to IDR 6,390,345,000,000.00 (six trillion three hundred ninety billion three hundred forty-five million rupiahs), however in 2020, that number decreased to IDR 4,222,832,000,000.00 (four trillion two hundred twenty-two billion eight hundred and thirty-two million rupiahs). After passing the peak of the Covid-19 pandemic in 2021, the total value of foreign investment in Bali increased to IDR 6,598,711,000,000.00 (six trillion five hundred ninety-eight billion seven hundred and eleven million rupiahs) [5].

Based on the abovementioned data, the amount of investment in Bali is more focused on the return of the Bali tourism sector. Badung regency has several advantages that make the investment value the highest. For instance, Kuta Beach is known as the main destination for tourists to visit. As many tourists come to Bali, potential investors are vying for land around Kuta Beach to build tourist accommodations. Apart from Kuta Beach, Badung has various tourist destinations, namely Legian Beach, Pandawa Beach, Seminyak Beach, and Batu Bolong Beach. There is also a natural and cultural wealth listed within Bali's top 10 most visited tourist destinations, namely Uluwatu Temple.

The most targeted sector by investors is property. Property investment in Bali is a very promising bear in mind that recently there has been an increase in the number of domestic and foreign tourists. Moreover, the beauty of Bali attracts investors to invest in several restaurants, cafes, and beach clubs with a unique concepts.

The increasing number of transactions on property in Bali also requires a form of legal binding (agreement) based on the urges of the buyer or investor with the seller or property owner. The binding is based on the prevailing law's provisions in Indonesia. In addition, some officials are given the authority to make documentary evidence for legal events, namely notaries.

A notary, as an official with the capacity to create documented evidence, agrees to be bound by Law No. 2 of 2014 amending Law No. 30 of 2004 governing the Notary Profession (from now on Notary Profession Law). It is established in Article 1 point (1) of the Notary Profession Law that:

“Notary is a public official authorized to make authentic deed and has other authority as referred to in this law or under any other law”.

Furthermore, the power of the Notary, as defined in Article 1 point 1 of the Notary Profession Law, is reiterated in Article 15, which states:

“Notary public is authorized to make an authentic deed of all the deeds of the treaty, and the provisions required by legislation and/or desired by the interested parties to be stated in authentic deed, date of making of deed, saving deed, giving grosse, copy and quotation of deed, all of which during the making of the deeds are not also assigned or exempted to other official or other person as stipulated by law”.

According to the Notary Profession Law, the basic authority of a Notary is to perform an authentic deed. An authentic deed is one that is purposely made in front of a Notary, and it is the best and strongest form of documented evidence in court [6]. It is aimed to get a legal certainty, guarantee an agreement that is agreed upon by both parties and avoid conflicts that lead to disputes in the future [7].

The significance of a Notary's job, particularly in supporting the investment climate in Bali, has led to the emergence of a debate on the existence of a cyber notary. It is established in the Elucidation of Article 15, paragraph 3 of the Notary Profession Law that:

“What is meant by ‘other authorities regulated in laws and regulations’, among others, are the authority to certify transactions conducted electronically (cyber notary), to make waqf pledge deeds, and aircraft mortgages.”

Ironically, the concept of a cyber Notary in Indonesia is still under debate. Although technology allows the role of Notaries online and remotely, legally, this cannot be done.

The role of the Notary as a public official who provides public services is allowed to advance his thoughts and abilities in the field of using and utilizing information and communication technology as optimally as possible and responsibly and utilizing information and communication technology as well as electronic transactions to increase the effectiveness and efficiency of public services. Thus, adopting the concept of a cyber notary can increase effectiveness and efficiency in investment in the Bali tourism sector.

2 Methods

This research was normative legal research. According to Peter Mahmud Marzuki, normative legal research is a process of finding laws and regulations, principles of law, or doctrines to analyze legal issues [13]. This research used statutory and conceptual approaches. The statutory approach examines the provisions in Notary Profession Law concerning cyber notaries. In contrast, the conceptual approach is used to analyze the concept of investment and tourism law. The legal materials were analyzed through description, systematization, and explanation.

3 Result and Discussion

3.1 The Regulation Concerning Cyber Notary in the Prevailing Law in Indonesia

A borderless world is frequently stated to describe how fast and rapidly technology is developing and playing a crucial role, especially in communication technology. It can be used to connect people with people as individuals, communities as well as corporate in a speedy and spectacular time without having to bring the communicating parties present face-to-face [8].

The transaction method has shifted from using paper conventionally to using electronic systems. As a result, the Notary has a problem as a party with the ability to make valid deeds; hence, the Notary must pay attention to the use of technology in carrying out their tasks as provided by the Notary Profession Law.

To encourage the use of technology, the government has added additional authority for the Notary to certify electronic transactions through the clarification of Article 15 paragraph (3) of the Notary Profession Law, which specifies that:

“What is meant by ‘other authorities regulated in laws and regulations’, among others, are the authority to certify transactions conducted electronically (cyber notary), to make waqf pledge deeds, and aircraft mortgages.”

Because of the clarification of Article 15 paragraph (3), a glimpse of a cyber Notary is shown by confirming electronic transactions. However, the implementation is still unable to be carried out optimally [9].

About the development of technology, the Notary has two fundamental tasks: First, provide services and legal certainty for his deeds; Second, notaries are given the authority to maintain the consistency of legal strengthening in the civil law to ensure the security and peace of the community. The prevailing law is upheld and obeyed to achieve the law’s purposes, namely legal certainty and justice [10].

In general, if the idea of a cyber Notary can be implemented in Indonesia, then the power of proving information and electronic transactions which have often been perceived as having weak evidentiary value, will become stronger because it can be understood as an authentic deed. This will increase public trust and security in electronic transactions.

The regulation for a Notary to carry out the authority electronically in Notary Profession Law seems vague; however, with the development of technology, it is hoped that there will be a specific regulation concerning cyber Notary, which utilizes the development of information technology in carrying out the duties of a Notary [11]. Based on the theory of legal certainty, law and regulation serve as guidelines for individuals in society in relation to each individual and its society. The existence of rules and their implementation create legal certainty.

3.2 The Role of Cyber Notary in Supporting the Tourism Investment Climate in Bali

According to Article 15 paragraph (3) of the Notary Profession Law, it is stipulated that the other authority regulated in the legislation shall include the authority to certify transactions conducted electronically (cyber Notary).

Cyber Notary can be interpreted as an authentic deed created electronically, or the Notary only legalized an agreement whose reading and signing of the agreement are not done before a notary [12]. It is a new concept that maximizes the use of technology in supporting the authority of Notary in creating authentic deeds electronically and carrying out their daily duties, for instance: electronic deed signing and General Meeting of Shareholders by teleconference. Hence, it will put the parties feel comfortable since the distance is no longer a problem.

Cyber Notary intends to facilitate and speed the fulfillment of a Notary’s duties and power as a public servant in performing genuine deeds pertaining to all activities or agreements, or requirements needed by legislation, or the parties’ interests to be declared in an authentic deed. The function of a cyber notary, which enables the execution of

engagements and/or the performance of legitimate deeds through electronic aid, would undoubtedly benefit and facilitate investors in executing transactions, particularly in the tourist sector.

Furthermore, transactions in the property sector in tourism areas have been carried out conventionally. Therefore investors are present at the Notary's office and carry out the agreement as usual; however, with the existence of a cyber notary, it does not require parties to meet each other directly, but simply by being present virtually, and the Notary will sign it electronically (digital signature).

The validity of legitimate deeds made using the cyber notary method may be investigated using the theories of authority and validity. Notaries have attribution authority, which means that the Notary is granted direct legal authority to make a deed, including reading the deed, and as long as the object of the agreement is still in the Notary's work area, the Notary still has the authority to do a deed even if it is read and signed. As a consequence, the deed is valid as long as it complies with the requirements of Article 38 of the Notary Profession Law and Article 1868 of the Civil Code.

The certification carried out using a cyber notary does bring benefits to the Notary. Remember that implementing an authentic deed using a cyber Notary provides convenience for interested parties and notaries. For the parties who cannot present before the Notary due to the condition of work or stay out of town, then the parties can agree to use electronic media to express their will to the Notary. Hence it can be stated in the deed.

The convenience obtained with the role of the cyber Notary will make the transaction process faster and more efficient, especially in the tourism sector. The faster and more efficient transactions, of course, will also impact increasing investment invested by investors in the tourism sector in Bali. Hence it can impact the welfare of the Balinese people and increase regional income.

4 Conclusion

The legislation governing cyber notaries is outlined in Article 15 paragraph (3) of the Notary Profession Law, which defines the ability of cyber Notaries to certify transactions done online. However, in comparison to the fast growth of technology today, this authority is still relatively restricted and basic.

The role of cyber notaries in supporting investment in the tourism sector in Bali through the implementation of making agreements and/or doing authentic deeds through technological assistance will certainly help and facilitate investors in conducting transactions, especially in the tourism sector. The faster and more efficient transactions, of course, will also impact increasing investment invested by investors in the tourism sector in Bali; hence it can impact the welfare of the Balinese people and increase regional income.

Acknowledgement. The author would like to thank everyone who assisted and contributed to the writing of this piece, both financially and with critical suggestions. Hopefully, this work will be theoretically and practically valuable for the addition and growth of knowledge, particularly in the field of law.

References

1. N. P. A. D. Novianti, I. N. P. Budiarta, and N. M. P. Ujianti, “Peran Badan Usaha Milik Desa (BUMDES) Dalam Pengelolaan Keuntungan Objek Wisata Di Desa Ekasari Kabupaten Jembrana,” *J. Konstr. Huk.*, vol. 3, no. 2, pp. 281–286, 2022.
2. N. Suartha and I. G. G. P. Sudartha, *Industri Pariwisata Bali*. Depok: Rajawali Pers, 2017.
3. S. Sukirno, *Pengantar Teori Makro Ekonomi*. Jakarta: Raja Grafindo Persada, 2006.
4. I. G. M. N. B. Andre, I. N. P. Budiarta, and P. A. S. Wesna, “Pelaksanaan Investasi dalam Pengembangan Kawasan Budidaya Pertanian di Kabupaten Buleleng,” *J. Prefer. Huk.*, vol. 1, no. 1, pp. 8–13, 2020.
5. B. P. S. P. Bali, “Penanaman Modal Asing di Bali,” 2021. .
6. B. Samuel, “Analysis of Legal Protection and Responsibilities of Notary Officials for Authentic Deeds Made,” in *3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)*, 2022, pp. 733–739.
7. I. A. C. Cintiadewi, I. N. P. Budiarta, and N. G. K. S. Astiti, “Perlindungan Hukum bagi Notaris dalam Melegalisasi Akta Dibawah Tangan yang menjadi Objek Sengketa,” *J. Prefer. Huk.*, vol. 1, no. 1, pp. 189–194, 2020.
8. N. K. S. Dharmawan, “Keberadaan Pemegang Saham Dalam Rups Dengan Sistem Teleconference Terkait Jaringan Bermasalah Dalam Perspektif Cyber Law,” *J. Magister Huk. Udayana*, vol. 4, no. 1, p. 44188, 2015.
9. N. K. S. Arianti, I. N. P. Budiarta, and D. G. D. Arini, “Tanda Tangan Elektronik dalam Akta Pernyataan Keputusan Rapat Umum Pemegang Saham Perseroan Terbatas,” *J. Interpret. Huk.*, vol. 1, no. 1, pp. 148–153, 2020.
10. J. Beqiraj and L. Moxham, “Reconciling the Theory and the Practice of the Rule of Law in the European Union Measuring the Rule of Law,” *Hague J. Rule Law*, pp. 1–26, 2022.
11. I. M. N. Wibawa, I. N. A. Puspadma, and I. A. P. Widiati, “Kedudukan Notaris dalam Pembuatan Akta terhadap Rapat Umum Pemegang Saham yang Diadakan melalui Media Telekonferensi,” *J. Prefer. Huk.*, vol. 2, no. 1, pp. 125–129, 2021.
12. A. Pinto and J. Silva, “Revisiting blockchain use in notary services: An european perspective,” in *International Congress on Blockchain and Applications*, 2020, pp. 101–110.
13. P. M. Marzuki, “Penelitian Hukum Normatif,” *Jakarta Kencana Prenada Media Gr.*, 2010.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter’s Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter’s Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

