

## The Urgency of Making Notary Deeds Electronically during the Covid-19 Pandemic

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**Abstract.** *One of the professions that is given the authority to make an authentic deed is a notary. There are three forms of state emergency status, namely civil emergency, military emergency, disaster emergency, and public health emergency. During the Covid-19 pandemic as it is today, electronic transactions are mostly carried out to reduce physical contact between humans which can increase the possibility of the spread of the Covid-19 virus. Considering the Law on Notary Positions requires that the deed be made before a notary. The author in this study used a normative juridical approach. Normative legal research is legal research that puts the law as a building system of norms. Data analysis was carried out qualitatively, namely from the data obtained and then compiled systematically and analyzed to achieve clarity of the problems discussed, which were described qualitatively. The urgency of making a notary deed electronically during the Corona Virus Disease (Covid-19) pandemic is that the implementation of the deed must still be carried out with the help of an electronic system, considering the Covid-19 pandemic. Indonesia is a country that has recognized the validity of electronic information or documents to be used as legal evidence before the law and courts, known as electronic evidence in Act No. 11 of 2008 and its renewal in Act No. 19 of 2016 concerning Information and Electronic Transactions (hereinafter referred to as UU ITE). The legal position of a notarial deed made electronically. The legal position of a notary deed made electronically is the provisions of the laws and regulations governing the making of an authentic deed both in the Notary Position Act and Government Regulation Number 37 of 1998 concerning Land Deed Maker Officials and their amendments principally prioritize direct, face-to-face interaction and attendance parties who wish to be notary. This provision is as regulated in Article 1868 Burgelijk Wetboek (hereinafter referred to as BW) or the Civil Code which states that a deed is called an authentic deed if it meets the requirements, namely the form of the deed is determined in the laws.*

**Keywords:** *Deed; Electronic; Pandemic; Urgency.*

## 1. Introduction

In Indonesia, one of the professions that is given the authority to make an authentic deed is a notary. Problems began to emerge since January 30, 2020, the World Health Organization (hereinafter abbreviated as WHO) as a health institution. The world declared a global public health emergency due to a new virus and on 11 February 2020 WHO announced Corona Virus Disease or "Covid-19" as the name of the new virus.<sup>1</sup>

During the Covid-19 pandemic, as it is today, electronic transactions are mostly carried out to reduce physical contact between humans which can increase the possibility of spreading the Covid-19 virus. Regulations regarding electronic transactions in Indonesia have been regulated by Act No. 11 of 2008 concerning Electronic Information and Transactions which was updated by Act No. 19 of 2016. The rules in Act No. 19 of 2016 concerning Electronic Information and Transactions are government efforts in providing legal certainty for transactions conducted electronically.

This is as described in Article 1 Point 7 concerning the Law on Notary Positions that a notarial deed, hereinafter referred to as a deed, is an authentic deed made by or before a notary according to the form and procedure stipulated in this law. Based on these rules, it can be seen that the parties must appear directly to a notary so that the making of a notary deed by utilizing technological developments is very difficult to do, considering that the Law on Notary Position requires that the deed be made before a notary. In the factual conditions of the Covid 19 pandemic, this rule is irrelevant because making a deed directly before a notary is very risky if one of the parties facing each other is infected with the Covid 19 virus<sup>2</sup>.

On the other hand, the urgency of making a deed to support activities cannot be postponed because it relates to the rights and obligations of the parties who are engaged in the deed. Obstacles in making a notarial deed using electronic means also cannot be done because contrary to Article 5 Paragraph (4) of Act No. 11 of 2008 which was renewed by Act No. 19 of 2016 concerning Act No. 19 of 2016 concerning Electronic Information and Transactions which states that electronic information and/or electronic documents do not apply to letters which according to the law must be made in the form of a notarial deed or a

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<sup>1</sup> Alif Nabila Erani, Jihan Anjanika Aldi, 2021. Tanggung Jawab Negara Dalam Pemenuhan Hak Ekosob Pada Saat Darurat Kesehatan, *Jurnal Retrieval*, Volume 1 Nomor 1, Fakultas Hukum Universitas Sebelas Maret, Surakarta

<sup>2</sup> Deen, Taufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

deed made by the official making the deed<sup>3</sup>.

Thus, it can be seen that the making of a notary deed using electronic means cannot be carried out because it is contrary to the two rules, namely the Law on Notary Positions and the Law on Information and Electronic Transactions. Based on the phenomenon of the gap, the application of electronic deed-making cannot be carried out even during the Covid 19 pandemic because the parties are required to meet physically in front of a notary.

In the condition of the Covid-19 pandemic, the making of letters/deeds or agreements can be done electronically by prioritizing the level of urgency in terminating the spread of the Covid-19 virus, but if the regulations that are the legal umbrella for making the rules have not provided a solution to the phenomena that occur, especially in the making of deed which If the implementation cannot be postponed, then the spread of Covid-19 will have the potential to occur in notary offices which can have fatal consequences for both parties. Government regulations regarding restrictions on human physical activity will conflict with legal actions that require a statement and/or agreement required in an engagement. Statements and/or agreements can be divided into two groups, namely those that can be postponed and those that cannot be postponed<sup>4</sup>.

## 2. Research Methods

This study uses a normative juridical approach. The research specification in this study uses descriptive analytical. This research was conducted using a data collection tool, namely literature study. Data analysis was carried out qualitatively, namely from the data obtained and then compiled systematically and analyzed to achieve clarity of the problems discussed, which were described qualitatively.

## 3. Results and Discussion

### 3.1. The Urgency of Making Notary Deeds Electronically During the Corona Virus Disease (Covid-19) Pandemic

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<sup>3</sup> Sri Ahyani, Land Registration As A Legal Construction Of Law In Order To Facing Asean Economic Communities, *International Journal of Nusantara Islam* Vol. 06 No. 02 2017: (198-207), DOI: 10.15575/ijni.v6i2.6227

<sup>4</sup> Sri Hartati, The Sustainable Cropland Protection In The Perspective Of Policy Implementation In Karawang Regency, *Journal of New Government Paradigm* Volume 2, 2<sup>nd</sup> Edition, 2015, p. 73  
Wood, David. (1993). Forests to fields. Restoring tropical lands to agriculture. *Land use policy*. 10. 91-107. 10.1016/0264-8377(93)90001-Q,  
[https://www.researchgate.net/publication/11109790\\_Forests\\_to\\_fields\\_Restoring\\_tropical\\_land\\_s\\_to\\_agriculture/citation/download](https://www.researchgate.net/publication/11109790_Forests_to_fields_Restoring_tropical_land_s_to_agriculture/citation/download)

In the Covid-19 pandemic, to ensure that the deed can still be made side by side with PPKM obligations and health protocols, several special innovations have been carried out, one of which is the obligation in letter (m). This obligation requires the notary to read the deed before an appearance and a special witness/witness and to be signed at the same time by the witness and the notary. However, given the existence of social restrictions and physical contact between individuals, this obligation cannot be carried out face-to-face/directly as regulated by the Law on Notary Positions.

The theory used in this research is the theory of legal certainty. Gustav Radbruch, said that there are three objectives of law, namely expediency, certainty, and justice<sup>5</sup>. The notary as a public employee is also inseparable from the obligation to be professional in carrying out the making of an authentic deed which is considered a perfect means of proof (*volendig bewijskracht*). binding (*bindende bewijskracht*). The meaning of the perfect and binding force is that if the authentic deed evidence submitted meets the formal and material requirements before the law and court and the opposing evidence presented by the defendant does not reduce its existence, at the same time attached to him the power of perfect and binding proof (*volledig en bindende bewijskracht*). An authentic deed whose proof is perfect is not only seen from the completeness of the material contents of the will of the parties, but also deserves to be seen from how the formal implementation of its manufacture complies with the laws and regulations that govern it. One of the crucial formal elements in making a notarial deed is the process of reading and signing the minutes of the deed when the deed is completed.

The implementation of the deed must still be carried out with the help of an electronic system, given the Covid-19 pandemic. Indonesia is a country that has recognized the validity of electronic information or documents to be used as legal evidence before the law and court, known as electronic evidence in Act No. 11 of 2008 and its renewal in Act No. 19 of 2016 concerning Information and Transactions Electronic (hereinafter referred to as UU ITE).

In addition, all legal actions carried out using computers and computer networks and/or other electronic media are known to the state as electronic transactions, both in the public and private spheres. This arrangement is further strengthened by Article 18 of the ITE Law, which states that all electronic transactions contained in electronic contracts are legally binding on the parties. Therefore, it can be concluded that Indonesia has recognized the validity of the agreement deed made through the electronic system from the point of view of

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<sup>5</sup> Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. *Sultan Agung Notary Law Review* 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

information science and technology<sup>6</sup>.

In this case, the Law on Notary Positions is a law that is more specific in regulating the position of a notary and the ITE Law is a general law. Therefore, by using the *lex specialis* interpretation, the provisions in the explanation of Article 15 paragraph (3) of the UUJN can defeat the validity of Article 5 paragraph (4) of the ITE Law. With that, a cyber notary is legal to apply in the making of a notarial deed. In addition, that the regulation in Article 5 paragraph (4) of the ITE Law is not a prohibition for notaries to carry out their work electronically or prohibiting the use of electronic systems for notaries, therefore the article does not nullify the authority of a notary to provide his services electronically. The implementation of a cyber notary in accordance with Article 15 paragraph (3) of the UUJN gives the notary the right to certify transactions electronically. This can be supported by the introduction of the term electronic signature in the ITE Law, that electronic information is in the form of a signature that is attached, associated or related to other electronic information used as a means of verification and authentication.

The implementation of the binding of the notarial deed by electronic means is carried out specifically in the form of the Zoom application starting from 2020 when the Covid 19 pandemic entered Indonesia. The difference between making an online deed and a conventional deed lies only in the reading and signing system. In particular, Notaries use a circular signing system, where the Notary is assisted by a Notary office assistant he knows, to approach the residence or domicile of the appearers by bringing the minutes of the deed that have been completed. Furthermore, readings are carried out in an online room, with the application of zoom prepared by Notary R, accompanied by 2 witnesses from employees of the notary office, and inviting the attendees to turn on the camera and communicate through the zoom application. The reading of the deed as required in Article 16 paragraph (1) letter (m) of the Law on Notary Positions is carried out face-to-face through the application, and ends with the signature of the first party, then continued with the signing of the second party at a different place, until the minutes until later return to the notary's office where the notary resides. The minutes of the deed still use the original signatures of the parties and the thumbprints of each party, only with the help of an electronic system considering the obligation to limit the distance between parties due to the Covid 19 pandemic<sup>7</sup>.

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<sup>6</sup> Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. *Sultan Agung Notary Law Review*, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

<sup>7</sup> Hunter, Susan & Bulirwa, Elizabeth & Kisseka, Edward. (1993). AIDS and agricultural production. *Land use policy*. 10. 241-58. 10.1016/0264-8377(93)90018-6.

In addition, the report book also attaches a zoom screen capture that captures the clear faces of the appearers, notaries and witnesses, along with information regarding the day, date, and time of the reading and signing of the deed. All of this is intended to guarantee legal protection for the parties and especially to the implementation of the Notary precautionary principle for the possibility of disputes related to the deed or the accountability report for the making of the deed to the Notary Supervisory Council.

Currently, the making of a deed as carried out by a Notary still does not have permanent legal force. There are many gaps in the legal uncertainty of the deed because there are no written laws and regulations that accommodate the validity of the deed. There are many opportunities for imperfection of the deed, for example if one of the parties dies when the minutes of the deed have not been completed circularly signed, the validity of the deed cannot be continued and can be said to be null and void because of the loss of one of the parties. In addition, if in the future there is a default and the deed is brought as evidence before the court, it may be objected by an advocate from the opposing party that the deed does not have perfect evidentiary power because it is not made face-to-face and violates Article 16 paragraph (1) letter (m) of the Notary Position Act simply because there are no laws and regulations governing the making of the deed. by dealing online or virtually. This is ambiguous and allows for the risk of not being able to parate execution later if at any time the creditor wants to execute the object of the mortgage guarantee directly. These loopholes are the basis that the implementation of the deed carried out by the Notary has not been able to carried out continuously, because there is no element of legal certainty there. The Notary hopes that the Indonesian government and legislators will soon be sensitive to this polemic and take concrete action in providing a permanent and comprehensive law, be it a new law or providing a law to amend the Notary Position Act as the Netherlands has made changes to the law. the laws governing the position of notaries in their country.

### **3.2. Legal Position of Notary Deed Made Electronically**

There are some essential differences in practice related to the profession and authority of a notary in the two legal systems in the world that choose the role of a notary involved in public services, namely in the Civil Law legal system and countries that adhere to the Common Law System. Naming the role and duties of a Notary in the two legal systems have significant differences. In the Civil Law legal system, the definition of a Notary is as contained in the Regulation of Notary Position or Reglement Op Het Notaristambt van Indonesie, S.1860 Number 3 and Act No. 30 of 2004 concerning the Position of Notary and its amendments.

Based on *Burgelijk Wetboek* Article 1868, Article 165 HIR, Article 285 Rbg require an authentic deed (authentic) in proving a person's legal position over ownership, private interests or confirming the existence of a legal relationship that imposes the fulfillment of other parties' obligations on him. Therefore, the presence of an authentic deed is realized and desired by the parties concerned to serve as evidence regarding the circumstances, events or actions. The evidence is evidence that is able to protect and provide legal certainty to related parties. Based on the position of written evidence in civil cases according to the civil law system. Both the sources of civil procedural law (formal law) and civil material law place the position of an authentic letter or deed as one of the main evidences because the strength of the evidence must be viewed and judged by the judge as true until proven otherwise by the rebuttal. The characteristics of the civil law legal system are based on legal findings on laws that have been positive in their national laws, legal codification is very important. The historical development of this legal system tends to plan, systematize and regulate everyday problems as comprehensively as possible. The civil law system prioritizes the law as a source based on the position of written evidence in civil cases according to the civil law system.

The strength of the proof must be seen and judged by the judge to be true until proven otherwise by the rebuttal. The characteristics of the civil law legal system are based on legal findings on laws that have been positive in their national laws, legal codification is very important. The historical development of this legal system tends to plan, systematize and regulate everyday problems as comprehensively as possible. The civil law system prioritizes the law as a written source of law in the implementation of the law enforcement process. Legal institutions that tend to formalism, are systematic. So to place the law against changes in society it always seems slow in responding to the legal needs of the community. Due to the gradual legislative process. Of course this is different from the position of the source of law from the common law system. Where the due process of law will depend on cases (judicial precedents) running in court, the judiciary and jurist will determine the development and discovery of the law. Legislation is seen as a stage for consolidating or clarifying the rules and legal principles which are essentially the case law and the law made by judges. The term notarial institution in the civil law legal system and the common law system is very different. Another difference is that there are special educational requirements or procedures that must be taken by Latin notaries, both formal education such as law school, notary studies as well as short education and exams held for the profession and holding the position of a notary<sup>8</sup>.

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<sup>8</sup> Laura Notess (WRI) , Peter Veit (WRI), Iliana Monterroso (WRI), Andiko (WRI), Emmanuel Sulle (WRI), Anne M. Larson (WRI), Anne-Sophie Gindroz (WRI), Julia Quaedvlieg (WRI) and Andrew

The role of the internet network, the Internet of Things (IOT) and various artificial intelligences into digital transformation tools both in social interaction, document storage with electronic systems, banking services and public services including e-court services in the judicial system. After the Covid-19 pandemic has emphasized the continuity of the order of human life and the state almost as a whole will come into contact with information media, technology and internet networks

The position of the notary and PPAT as public officials who are authorized by attribution based on the laws and regulations related to the Notary Position and the PPAT position in particular. So all actions taken in relation to his position must have a clear basis of authority. Because without a legal basis, the actions of a notary can be categorized as abuse of authority as regulated in Article 17 of Act No. 30 of 2014 concerning Government Administration.

Transformation of the procedure for making authentic deeds by notaries and other public officials needs to be carried out with changes to the Notary Position Law and PPAT Position Regulations as well as changes to Article 4 paragraph 1 letter b of the ITE Law.

The government is expected to be able to immediately provide a legal umbrella and supporting facilities so that the transformation of the creation and storage of electronic data for notarial deeds and PPAT deeds can be carried out.

In this case, the credit agreement deed. The credit agreement is sourced from Article 1754 BW, namely a loan agreement is an agreement in which one party gives to the other a certain amount of goods that have run out due to use, on the condition that the latter party will return the same amount of the type and condition.

The form of credit agreements that frame the legal relationship between the bank and the debtor is sometimes in an authentic form. The notarial deed of credit agreement made by a notary provides legal certainty to the parties, because the notarial deed is perfect and binding evidence. In practice, the making of the deed by the notary is done face-to-face and signs in front of the notary and the notary is not obliged to read the contents of the deed to the parties if the appearer wants the deed not to be read because the appearer has read it himself, knows, and understands its contents, provided that that this is stated in the closing of the Deed and on each page of the Minutes of the Deed initialed by the appearers & witnesses.



Making a credit agreement deed online or online encounters problems where the making of the deed must be signed or a thumbprint and must be attended by the parties and the notary must keep the minutes of the credit deed he made. However, due to the COVID-19 pandemic conditions where the parties are prohibited from meeting, there is even a recommendation for Large-Scale Social Restrictions (hereinafter referred to as PSBB), the notary can refer to the provisions of Article 5 paragraph (1) of Act No. 11 of 2008 concerning Information and Electronic Transactions ( hereinafter referred to as UUITE) which states that electronic information and/or electronic documents and/or their printouts are legal evidence.

Making a deed online or online creates a conflict with the norms of Article 15 paragraph (3) and Article 16 paragraph (1) letter m of the UUJN, where the meaning of certification in Article 15 paragraph (3) of the UUJN does not explain what the certification is, while the provisions of Article 1 point 7 UUJN is in line with the provisions of Article 1868 BW which contains: "An authentic deed is a deed made in the form determined by law by or before a public official authorized for that at the place where the deed was made".

Making a credit agreement deed that is read out online has a legal loophole for a notary to make a credit deed as stated in the ITE Law and Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (hereinafter referred to as PP PSTE). with a notary obligation. One of them is the obligation of electronic signatures. As Irma Devita's opinion is, for the making of a partij deed, it has not been able to apply an electronic signature because<sup>9</sup>:

- There is no digital signature that is proven by a trusted digital certificate;
- The problem of certainty of the time and place of making the deed; and
- Location problem.

The credit agreement deed read online creates problems if the notary is negligent in not complying with the UUJN and related laws and regulations, the notary's negligence in authenticating the parties to the credit agreement read online will result in legal liability to the notary such as civil liability, criminal responsibility and administrative responsibility.

The Instruction of the Minister of Home Affairs Number 1 of 2021 concerning the Implementation of Activity Restrictions for Controlling the Spread of Corona Virus Disease 2019 certainly has an impact on the notary in carrying out his

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<sup>9</sup> Ibid.

profession. Therefore, INI as an organization that protects the notary profession has issued Circular Letter Number 67/35-III/PP-INI/2020 which contains clear guidelines for notaries in working at home during the COVID-19 pandemic, namely:

- Rearrange the schedule for signing the deed with the appearers, until conditions allow;
- Recommend other Notary partners whose conditions allow them to carry out their positions;
- For agreements, actions, or meetings which according to the laws and regulations, the documents can be made privately, so that the clause "will be made / restated in the Deed".

Based on Circular Letter Number 67/35-III/PP-INI/2020 which contains clear guidelines for notaries in working at home during the Covid-19 Pandemic conditions, it cannot always be applied sustainably because the Covid 19 condition does not know when it will be completed, especially related to Rearrange the schedule for signing the deed with the appearers, until conditions allow. The COVID-19 pandemic condition, which never knows when it will be completed, has forced some notaries to make legal breakthroughs by means of face-to-face or online reading of the notary deed with the client who made the credit agreement deed.

The making of the credit agreement deed by a notary read online creates a debate between legal experts who agree with online because of the covid pandemic condition who does not know when it will be finished and those who refuse to read the credit agreement deed online because UUJN requires a notary to read the deed he made in front of the parties who made the agreement.

As for the parties who do not agree with the online credit agreement deed because UUJN requires a notary to read the deed he made in front of the parties who made the agreement. Reading the notarial deed before is very important as Munir Faudy's opinion that the juridical consequence of the obligation to read the agreement is that in principle the parties cannot in the future avoid or avoid carrying out the agreement on the grounds that the parties actually did not read the clause of the agreement, or were stuck with the clause of the agreement. concerned<sup>10</sup>.

The validity of the Credit Agreement Deed that is read online remains valid and

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<sup>10</sup> Op.cit.

valid and has perfect legal force. The perfect legal power in the credit agreement deed is still subject to and in accordance with the provisions of the UUJN P where the parties can still meet face-to-face and be read by a notary through face-to-face video technology directly. Regarding the signature of the witness and the appearer, it can be anticipated with the opinion of Ghansam Anand. The appearer who cannot sign, must affix his fingerprints on a separate sheet of paper which will be attached to the Minutes of Deed (Article 16 number (1) letter c UUJN P), sheet the paper is special and only for the appearers who cannot sign or only for the appearers to affix their fingerprints because they cannot sign and the appearers who cannot sign for certain reasons (not the reason because they cannot read and write) then use surrogate and it is stated on Final Deed.<sup>7</sup> Making a credit agreement deed is an absolute necessity for every business activity in the banking world, therefore it is necessary to have a notary who has good integrity and knowledge.

Unlawful acts committed by a notary must be responsible for the actions he has done. In this case the notary must be responsible not only with accountability because accountability is more civil related to compensation while the responsibility is not only civil but also criminal and administrative.

Related legal responsibilities closely related to legal sanctions, as in the opinion of Peter Mahmud Marzuki, most legal theories state, either explicitly or implicitly, that legal norms and other norms are always attached to a sanction. Legal sanctions imposed on notaries, whether civil, criminal and/or administrative, are the best solution to make a notary better and responsible for each of his duties and obligations in carrying out his profession.

The notary's responsibility related to the authentication of the parties to the credit agreement deed which is read online will bring up a noble morality for the notary profession. This is in line with HLA Hart's opinion, namely the absolute relationship between law and morality in this minimum natural law according to him is not a logical absolute, but a natural absolute. . It is called absolutely natural because the absoluteness of the relationship is based on the natural conditions of human life itself

#### **4. Conclusion**

The urgency of making a notary deed electronically during the Corona Virus Disease (Covid-19) pandemic is that the implementation of the deed must still be carried out with the help of an electronic system, given the Covid-19 pandemic. Indonesia is a country that has recognized the validity of electronic information or documents to be used as legal evidence before the law and courts, known as electronic evidence in Act No. 11 of 2008 and its renewal in Act No. 19 of 2016 concerning Information and Electronic Transactions

(hereinafter referred to as UU ITE). In addition, all legal actions carried out using computers and computer networks and/or other electronic media are known to the state as electronic transactions, both in the public and private spheres. This arrangement is further strengthened by Article 18 of the ITE Law, which states that all electronic transactions contained in electronic contracts are legally binding on the parties. Therefore, it can be concluded that Indonesia has recognized the validity of the agreement deed made through the electronic system from the point of view of information science and technology. However, when viewed from the point of view of making an agreement using the services of a notary official, Article 5 paragraph (4) of the ITE Law stipulates that the validity of electronic information in the original 5 paragraph (1) of the ITE Law does not apply to letters and notary documents. The legal position of a notary deed made electronically is the provisions of the laws and regulations governing the making of an authentic deed both in the Notary Position Act and Government Regulation Number 37 of 1998 concerning Land Deed Maker Officials and their amendments principally prioritize direct, face-to-face interaction and attendance parties who wish to be notary.

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