JURNAL AKTA
Volume 12 No. 3 September 2025
SINTA 2,
Decree No. 164/E/KPT/2021

Legal Construction of E-Notary Based on Discretionary Authority of Notaries

Hatta Isnaini Wahyu Utomo[1)]
[1)] Faculty of Law, Universitas Yos Soedarso, Surabaya, Indonesia, E-mail: hatta.iwu@gmail.com

Abstract. *In the 5.0 era, which is supported by the birth of new habits after the Covid-19 pandemic, which has accustomed people to activities using cyber technology. makes demands on Notaries to be able to adapt their services in making authentic deeds using cyber technology or what is known as e-Notary. Currently, e-Notary is difficult to implement because it is considered that there is no legal basis. This research analyzes the legal construction of the application of e-Notary based on the discretionary authority of the Notary and the application of e-Notary in context Ius Constitutum. This research is normative legal research using a statutory approach and a conceptual approach. The research results show that Notaries are part of public services. A notary is an official who carries out government functions to meet the needs of the public who need authentic deeds. Notaries are Government Officials so Notaries can use their Discretionary authority to carry out e-Notary. e-Notary can be implemented at this time by reinterpreting the provisions of Article 1868 of the Civil Code and the procedures for making authentic deeds as regulated in the Notary Position Law. The implementation of e-notary represents an adaption of the notary role in the digital age. The advantageous aspect of e-notary implementation is the convenience it offers the public in engaging with a notary for the creation of authentic deeds.*

Keywords: *Legal Construction; Notary; E-Notary; Public Services.*

1. Introduction

Following the World Health Organization's (WHO) declaration of the Covid-19 Pandemic in 2020, nearly all nations implemented measures to restrict social activities in order to mitigate the transmission of the virus (Pratiwi, 2022). Almost all activities in the world are increasingly using electronic documents and to be able to interact with other humans, video conferencing media is widely used (Zavalniuk, 2022). The global pandemic and social distance policies have an important role in encouraging the use of technological developments (Mariyam2014; Sibarani, 2023). The Covid-19 pandemic has brought positive changes to the development of technology and information (Putri et al., 2023). Since the Covid-19 pandemic, the internet has been used as a too, technology and information more increasing. These existing conditions increasingly emphasize that the Internet is one of the most important innovations of the 21st century. Through the internet, humans can access various kinds of information, communicate instantly, and

transact with partners in various countries or continents (Adhiwisaksana & Allagan, 2023).

Indonesia ranks among the countries with the highest population of internet users globally (Tauda et al., 2023). Data from the Association of Indonesian Internet Service Providers (*Asosiasi Penyelenggara Jasa Internet Indonesia*/APJII) indicates that approximately 77 percent of the Indonesian population use the internet. The number has escalated significantly, as it was merely 175 million prior to the Covid-19 pandemic. Recent statistics from APJII indicates that the number of internet users in Indonesia has exceeded 220 million (Suryowati, 2022).

The Covid-19 epidemic has undeniably instigated profound alterations in individuals' lives (Gultom & Disyon, 2022). Changes in existing service patterns from those originally based on conventional services have changed a lot and have been adapted to technology-based services using internet media. The modifications encompass several facets of public services, including the legal system. In the realm of public services within the legal sector, the judiciary is the most agile institution in modifying services to accommodate pandemic conditions. Various regulations have been implemented in the form of Supreme Court Circulars or Supreme Court Regulations to facilitate electronic proceedings.

Varied circumstances in public services within the legal domain arise during the execution of the Notary Position. Notaries, as governmental officials providing services, have been relatively sluggish in their response to emergency situations during the Covid-19 outbreak. Notaries in Indonesia are still hesitant to transform themselves to be able to provide their services electronically even though the public really needs speed and flexibility in the roles and functions of Notaries in dealing with emergency situations during this period so they can provide services online.

Globalization and the aftermath of the Covid-19 epidemic have introduced a novel framework of ethics and norms in human interactions, which in certain instances have resulted in alterations to worldviews and social, economic, and political systems globally (Abdillah, 2022). As public services become increasingly digital, a Notary in Indonesia must adequately prepare by examining several factors, including work systems, technical procedures, infrastructure, and resources, to ensure legal protection that aligns with other elements (Agustin & Anand, 2021). In the digital era, nearly all daily tasks are conducted with the convenience of technology. Technology is utilised not only by the general population but has also begun to infiltrate professional domains, including the legal profession. The implementation of the notary office must evolve to use technology in its services to enhance convenience for individuals requiring its assistance (Isnaini & Utomo, 2019).

The existing legal framework, which aims to diminish the dominance of law and bureaucracy via digitization initiatives and technological disruption to facilitate corporate operations, is detrimental to notary roles (Lubis et al., 2023). The presence of a Notary is intricately linked to community services, particularly in relation to the business sector (Adjie, 2022). For the business world, apart from needing legal certainty, speed/flexibility is also needed. The speed of development of the business world often does not go hand in hand with rigid legal norms which place greater emphasis on aspects of legal certainty (Adjie & Prasetyo, 2021; Mariyam & Satria, 2021). Notaries must be able to respond to

developments in the business world and how to adapt to the demands of the times which require time efficiency in the process of making deeds. A method to expedite the creation of a deed in Indonesia is to employ the e-Notary concept to perform the functions of a notary. E-notary is a concept that involves the use of information and communication technology by notaries to perform their responsibilities electronically. This includes the creation of deeds, the signature of documents, and the certification of transactions that occur online. This concept enables notaries to operate digitally, thereby simplifying the process and broadening the scope of services (Utomo, 2021; Sulistiani, 2021; Kadir et al., 2025).

The e-Notary concept originates from the evolution of people's mindsets which follow every development in the world of technology and information at the international level, including in Indonesia. Developments in the fields of technology and information have brought many changes to people's daily lives (Alincia & Sitabuana, 2021; Wiwoho et al., 2023; Hufron & Fikri, 2024). Currently, it is challenging to perform the tasks of a notary using digital technology, or what is known as an e-notary, since it is believed that there is no legal foundation for doing so. This condition has resulted in the public's need for authentic evidence whose technology-based manufacturing process is currently hampered due to the absence of regulations governing this matter.

In the realm of government administration, if a stalled situation arises necessitating an urgent resolution to prevent service disruption, discretionary authority may be employed. Discretion refers to the actions undertaken by a Government Official to address specific challenges encountered in governmental administration, particularly in relation to laws and regulations that offer options, lack regulation, are ambiguous or incomplete, or are hindered by governmental inertia. Regarding discretionary authority, the question arises as to whether Notaries can exercise discretion in the implementation of e-Notary. In light of the world's ongoing digital transformation, Notaries must adopt innovative approaches while adhering to legal statutes and regulations in a judicious manner. The objective of this research is to identify a solution for the implementation of e-notary services in the absence of comprehensive legislation and regulations governing the practice.

2. Research Methods

This research is known as normative legal research, or abbreviated as doctrinal legal research. By conducting specific investigations to gather specific facts, doctrinal legal research aims to determine the appropriate response to a legal problem or topic. This research uses a library research method in processing legal materials. Library sources are used to analyze the legal construction of the application of e-Notary based on the discretionary authority of Notaries and the application of e-Notary in the context of Ius Constitutum. This research also uses a statutory approach and a conceptual approach. The analysis is conducted using legal reasoning, legal interpretation, and legal argumentation. The legal sources examined in this research are public service law as regulated in Law Number 25 of 2009 on Public Services, government administration law as regulated in Law Number 30 of 2014 on Government Administration, and notary law as regulated in Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Position of Notary (UUJN). Furthermore, these problems are analyzed using the perspectives of legal professionals who are experts in their respective fields.

3. Results and Discussion

3.1. Legal Construction of the Application of e-Notary Based on the Discretionary Authority of the Notary

One of the institutions that Indonesian people use in their daily life is notarial institutions, which also help to meet needs in the life of fellow humans who demand proof which is used as a means of legitimacy and connected to the occurrence of civil relations performed by those who are in civil relations (Syukri, 2021). Notary holds an authority which is created and granted by Law Number 30 of 2004 concerning the Position of Notaries as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (*Undang-Undang Jabatan Notaris*/UUJN). Notaries are a development of the state whereby parts of the responsibilities of the state in the realm of civil law are carried out to assist the public in producing written proof in the form of real actions (Adjie, 2023). The state has assigned some of its power to a notary to make sincere actions in order to give citizens legal protection in the realm of private law.

Legal definition of The Position of Notaries is a statement of the responsibilities and powers performed by a Notary. This implies that a Notary has public official responsibilities as well as other powers under control by UUJN and can do sincere actions. Hartini (2021) stated that "a Notary is a public official who exercises his authority in accordance with the laws and regulations outlined in the Law on the Office of Notaries," as regulated by the Law on the Position of Notaries. With this power, a notarial deed can be a flawless piece of evidence so that it can ensure certainty, order and legal protection for the purpose of justice for the parties concerned (Stef, 2018).

Article 15 Section (1) UUJN determine that: "As long as the deed is not assigned or excluded as determined by law, the Notary has the authority to make authentic deeds regarding all deeds, agreements, and stipulations that are required by statutory regulations and/or which are desired by interested parties to be stated in authentic deeds. Additionally, the Notary is responsible for storing the deed, providing grosses, copies, and quotations of the deed.". These clauses allow a Notary, at the request of interested parties, to make all authentic deeds including contracts and conditions required by statutory regulations either in or under the presence of another official, except for some deeds which are under the authority of another official as regulated by law (Keumala, 2023).

In the civil law system, notaries are a key element in the preservation of rights, as they perform a variety of public functions (Monkkonen, 2016). A notary is a person who creates written evidence that possesses complete evidentiary power in the legal procedure. In Indonesia, notaries are perceived as impartial and autonomous individuals. A Notary is regarded as official in society since he is a public official; so, one can consult him for trustworthy legal advice. Writings of the notary are totally accurate and trustworthy (Tan, 2020). In civil law, the necessity for an authentic deed as written evidence of every act, agreement, determination, and legal event made before or by an authorized public official is driven by the necessity for order and legal certainty, as David Tan stated (Tan & Sudirman, 2020). Additionally, "a civil agreement made before a notary by the parties is a description of what is explained or desired by the parties before the notary", which is a partij deed (Tan, 2019).

A notary must uphold the confidentiality of the deed's contents and all information acquired throughout the deed execution process, in line with the Notary's oath of office, referred to as the Obligation to Defeat (Verschoningsplicht). This obligation is not for the Notary's own benefit, but rather for the benefit of the parties who have celebrated the Notary. The Notary is required to maintain the confidentiality of all information related to the deed he executes, as previously stated. It is also possible to interpret the authentic act as confidential. The Notary is required to maintain the confidentiality of the contents of the deed in accordance with the oath or promise he or she made before performing their duties in the presence of the appointed Minister or Official. This obligation is a component of the secret of office.

Forming a Notary Supervisory Council, the Minister of Law and Human Rights oversee, examines, and imposes sanctions on Notaries following the implementation of UUJN (Abdillah & Sundari, 2024). This is not the case at the time before the UUJN was passed, when the Supreme Court oversaw Notaries (Utomo et al., 2019). This is not the case at the time before the UUJN was passed, when the Supreme Court oversaw Notaries. The presence of Constitution Court Decision Number 67/PUU-II/2004 influences Supreme Court authority in Notary supervision. Under Article 24 paragraph (1) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia, supervision of Notaries under the Judicial Institution is regarded as against the independence of the court as prescribed (Wicaksono & Rahman, 2022).

The conception of the implementation of the Unitary State of the Republic of Indonesia as stated in the preamble to the 1945 Constitution is strongly influenced by the idea of a welfare state (Borman et al., 2024). This idea was then explained in various articles of the 1945 Constitution, which made these values an integral part of the constitution. Furthermore, this concept is implemented through sectoral legislation, the National Long Term Development Plan, and public service law. This results in the conclusion that the state has the responsibility to provide public services with the main aim of realizing prosperity for the entire population of Indonesia. The Constitution emphasizes that public service is an effort to provide the best to society (Nuriyanto, 2015).

The essence of public services is always related with an action performed by a person or group of people or a specific agency to support and convenience the society to reach certain goals (Zuliah & Pulungan, 2020). Development of public services results from obligations as means of executing government operations. Public services directly link to the government since one of its obligations is to serve the society. The quality of public services is a topic of great interest to a wide range of individuals, and as a result, individuals from all walks of life are directly affected (Muhaimin, 2018). The quality of public services that the public receives can be used to promptly assess the quality of governance (Muhaimin, 2018).

Article 1 number 1 of Law Number 25 of 2009 concerning Public Services (Law Number 25 of 2009) provides a definition of Public Services as or "a series of activities to fulfill service needs in accordance with statutory regulations for every citizen and resident for goods, services, and/or administrative services provided by public service providers". Regarding whom is meant as a Public Service Provider, it is regulated in Article 1 point 2 of Law Number. 25 Yr. which includes every state administration institution, corporation, independent institution formed based on law for public service activities, and other legal entities formed just for public service activities.

Additionally, Article 5 of Law Number 25 of 2009 stipulates that public services may encompass both public products and public services: 1) Government agencies funded by the state and regional revenue and expenditure budgets; 2) Enterprises whose initial capital is derived from state or regional assets; and 3) Public service providers whose funding is not sourced from state or regional budgets or from enterprises with capital from separate state or regional assets, yet whose primary objective is to deliver services as mandated by law. The state's function is to deliver public services to its citizens, namely by enabling all individuals to acquire evidence or legal papers in civil law through a notarial deed. To this end, the State delegates a portion of its jurisdiction to Public Officials, specifically Notaries. The legal output of a Notary is an authentic document in the form of a Notarial Deed, and not all public authorities possess the ability to execute such deeds (Adjie, 2022). As one of the public service providers established based on UUJN, the Notary's duties include performing parts of the State's public functions and working to serve the public interest, particularly in the area of civil law. Regarding Number 25 Yr. 2009, notaries may be considered to be offering public services that are not supported by the state or regional revenue and spending budgets.

The increasingly rapid developments in society in a modern country require the readiness of the state, especially public service providers, to anticipate these developments. In this condition the principle of legality (*wetmatigeheid van bestuur*) can no longer be maintained rigidly because State administration is not just the trumpet of a Legislative Regulation, but in carrying out its duties, they are obliged to be active to carry out public service tasks, all of which cannot be accommodated in written law alone (Utomo, 2022). Though there is no foundation or laws guiding it, the idea of a welfare state suggests that the government is obliged to intervene to fix all elements and issues pertaining the life of its people. This allows the government to act on its own initiative in the public good to address all issues or problems, therefore resolving all rights or liberties (Kurniawaty, 2016).

Friedmann claims that four purposes-the state as supplier, regulator, entrepreneur and referee-define the government's tight relationship with increasing community welfare. The existence of state-owned businesses helps to concretize the state's entrepreneurial role. This shows that this business functions as a means for the government to realize community welfare. Therefore, the implementation of equality becomes an integral part in achieving goals such as justice and a welfare state (Ilyas, 2022).

Government basically wants to further society's interests. The objective is not for self-interest; rather, it is to serve society and create conditions allowing every member to realize their potential and creativity to reach shared objectives (Sukriono, 2014). The public really hopes for a legal policy that gives authority to an institution to research and identify changes that need to be made to the law which is currently in effect (*ius constitutum*) to meet the demands of development and new needs in society (Nuriyanto, 2015). The dynamics of society which move extremely quickly so that to anticipate this government organs are given the freedom to act freely in the form of discretion. The government's attempts to promote the welfare of the people always encounter this. Black's Law Dictionary defines discretion as the freedom to make decisions in every situation faced according to one's own opinion.

Atmosudirdjo (1988) defines discretion (English), discretionair (French), and freies ermessen (German) as the autonomy to act or make decisions by authorized and

competent state administration authorities based on their judgment. He emphasized that, in conjunction with the legal principle of legality which mandates that all actions or conduct of state administration must be based on established laws discretion is necessary. Nonetheless, the law cannot govern every aspect of daily life activities. Consequently, state administration must offer autonomy or discretion, which includes both constrained and unconstrained discretion. In cases of bound discretion, the law prescribes various alternative decisions, allowing the state administration to select from these options. Conversely, in instances of free discretion, the law merely establishes boundaries, permitting the state administration to make any decisions as long as they remain within these limits.

Discretion is defined as "a decision and/or action determined and/or carried out by government officials to overcome concrete problems faced in government administration. in the case of laws and regulations that provide choices, do not regulate, are incomplete or unclear, and/or there is government stagnation" in Article 1 Number 9 of Law Number 30 of 2014 concerning Government Administration (Law Number 30 of 2014). The purpose of exercising discretion is to resolve the public interest and benefit by streamlining government administration, filling legal voids, providing legal certainty, and overcoming government stagnation in specific circumstances (Zavalniuk, 2022). To exercise discretionary authority, government officials must comply with the following criteria: adhering to the purpose of the discretion, not violating the provisions of laws and regulations, adhering to the general principles of good governance, relying on objective reasons, and not resulting in a conflict of interest, and executed in good faith (Adnyani, 2021).

Muchsan posits that the exercise of discretion by government officials (executives) is restricted by four factors: 1) the presence of a legal vacuum; 2) the freedom of interpretation/interpretation; 3) the existence of a legislative delegation (delegatie van wetgeving); and 4) the pursuit of the public interest (Utomo, 2020). HR Ridwan stated that there are two fundamental things related to the principle of responsibility and accountability of officials in relation to the use of discretion, namely: first, the principle of the rule of law which states that every action of a government organ must be based on authority (Suhartono et al., 2020). This is closely related to principles "*geen bevoegdheid zonder verantwoordelijkheid*" (there is no authority without accountability) or "*zonder bevogdheid geen verantwoorddelijkheid*" (without authority there is no accountability) (Pribadi et al., 2019). Second, two entities, namely positions and office holders or officials. Regarding these two entities, it is known that there are two types of norms, namely government norms (*bestuurnorm*) and behavior norms for officers (*gedragsnorm*) (Endang, 2018).

The community is entitled to public amenities, which are provided by the government. The "public service" function is not the exclusive responsibility of the government for the implementation of laws and regulations. Consequently, the government is authorized to establish specific legal regulations that are designed to achieve the objectives of statutory regulations (Lugito & Octarina, 2021). All legal actions (*rechts handelingen*) and/or factual actions (*feitelijke handelingen*) of government officials/administration, whether concerning authority, substance, or procedures, must be based on the provisions of applicable laws and regulations and in accordance with the general principles of good government, in accordance with the principles of the rule of law (*rechtstaat*).

Article 1 point 3 of Law Number 30 of 2014 stipulates that government bodies and/or officials are entities responsible for performing governmental functions, whether within the executive branch or other state institutions. Moreover, in Paragraph 4 of the General Explanation of Law Number 30 Years. 2014 discussed various state authorities including those of institutions outside the executive, court, and legislature which carry out governmental duties. It was established in the preceding section that notaries belong to the public service meant to serve the state as decided upon by law. Notaries can be qualified as Government Officials performing Government tasks, especially to satisfy the needs of the society needing written documentation in the form of real actions. Complying with the demand of the society for this real act serves as evidence that Indonesia is a nation governed under the rule of law, so providing legal certainty and defense for the people. Linked with the terms of Article 1 number 3 of Law Number 30 Years, a Notary is a Government Official included in "other state administrators," so enabling a Notary to use their Discretionary authority like other Government Bodies/Officials.

By means of Article 22, Article 23, and Article 24 of Law Number 30 Years, 2014, a Notary uses discretion to implement e-Notary considering their provisions. Several things have bearing on these topics. It is clear from Article 22 of Law Number 30 Years. 2014 that a Notary is a Government Official endowed with discretionary authority. Discretion in the application of e-Notary by Notaries intends to: a) simplify government administration since the implementation of e-Notary will enable the fulfillment of public needs for sincere deeds to be simpler; b) Since the UUJN has not yet controlled e-Notary and fill the legal void; c) give the public legal certainty by means of a mechanism e-Notary, therefore enabling the Notary to create deeds; and d) Mitigating governmental inertia under certain circumstances for the advantage of public welfare, particularly during situations such as the recent pandemic.

Regarding Article 23 of Law Number 30 Years. 2014, one might attribute the discretion exercised by Notaries in adopting e-Notary to the lack of statutory rules controlling the execution of e-Notary in Indonesia. Furthermore, regarding the provisions of Article 24 of Law Number 30 Years. 2014 it can be said that the use of Discretion by Notaries in implementing e-Notary is carried out in accordance with the objectives of Discretion as regulated in Law Number 30 Years. 2014, does not conflict with the provisions of statutory regulations because in this case there is a legal vacuum so that the application of Discretion by the Notary is carried out by constructing the applicable law, implemented in accordance with the General Principles of Good Government, carried out based on objective reasons to provide services to the community, do not cause conflicts of interest and are carried out in good faith.

3.2. Reinterpreting Legal Provisions for E-Notary Implementation

The idea of implementing e-Notary in Indonesia often causes debate and even rejection. This is due to the opinion that e-Notary is contrary to the principle that has long been held, namely "the principle of Tabellionis officium fideliter exercebo", which means that a notary must work traditionally (Octarina et al., 2024). The existence of this idea is always faced with the lack of strict regulation regarding the authority of Notaries to carry out their positions through cyber technology. To this day, the UUJN is often interpreted as still requiring the position of Notary to be carried out conventionally and traditionally. Notaries' doubts about using cyber technology are because notarial law does not have a

legal basis for its use. Even when cyber technology has the same function as conventional mechanisms. This causes notaries to be unable to respond well to the needs of people who have used cyber technology.

Numerous nations employing civil legal systems have established e-Notary services. Estonia is among the pioneering nations to comprehensively incorporate digital technologies into its legal and administrative frameworks, encompassing notary services. The e-notary system in Estonia facilitates the creation and electronic signing of notarial deeds without the physical presence of the parties before a notary, utilizing: 1) the e-Notar platform (developed by the Estonian Notary Chamber); 2) video identification with a notary; 3) e-Identity (ID card, mobile ID card, or e-Residency card); and 4) a digital signature based on asymmetric cryptography (X.509 digital certificate). The security of the Estonian e-notary system is guaranteed by the principles of the digital trust framework and a cybersecurity by design methodology.

In contrast to Estonia, the Netherlands is progressively deploying e-Notary. The implementation of e-notary is proceeding gradually and cautiously, taking into account the notion of significant legal formality associated with the creation of notarial deeds. Not all transactions can be completed entirely via e-notary; many sorts of deeds still necessitate personal attendance, especially under exceptional circumstances, such as during the recent COVID-19 pandemic. Presently, e-notary practices in the Netherlands encompass: 1) Utilization of digital signatures in document formulation; 2) Digital notary platforms (such as Notarisdossier or Digisign) for virtual collaboration with clients; 3) Electronic identification through DigiD or eID, although it has not entirely supplanted in-person identity verification for notaries; and 4) Video communication to ascertain the intentions of the parties (in restricted trials and under specific conditions). The Netherlands emphasizes privacy by design and legal certainty in the digitalization of notarial activities through the implementation of e-Notary. The e-Notary security system is overseen by Agentschap Telecom and Autoriteit Persoonsgegevens to guarantee data protection and digital security.

Roscoe Pound posits that the law transcends mere written statutes; it encompasses the actions and interpretations of law enforcement authorities and others tasked with its enforcement. In this instance, the law operates as a mechanism for societal transformation by altering the fabric of society. Pound endeavored to shift the understanding of law from a purely theoretical framework (law in books) to a more pragmatic approach (law in action) (Ariefulloh et al., 2023). In the context of the fourth industrial revolution, it is imperative for notaries, as public officials, to cultivate a critical and idealistic mindset, alongside the necessary skills to address challenges, engage in effective communication, and foster creativity. The justification for the implementation of e-Notary in Indonesia is compelling and requires consideration (Syamsir & Yetniwati, 2019).

The apprehensions surrounding the concept of e-Notary pertain to the security and confidentiality of the documents generated by Notaries. Issues identified in e-notary encompass, among other considerations, the safeguarding of parties involved, the confidentiality of data, and the integrity of the processes and outcomes therein (Lubis, 2022). Apart from that, it is often stated that the implementation of the Notary position which is carried out conventionally still brings many Notaries into legal problems, both civil and criminal, so that the idea of e-Notary is considered to increase the risk for the

Notary himself to fall further into legal problems (Setiawan & Octarina, 2022). As the general doctrine states that "there is not a single job that is not at risk" then of course for Notary whose authority is to make evidence vulnerable to being drawn into conflicts that occur between the parties.

If there is a potential problem that arises, a preventative solution should be sought which is then legalized through norms in a statutory regulation (Supeno & Krismiyarsi, 2023; Hufron et al., 2025). Likewise, in the idea of implementing e-Notary in Indonesia, concerns about potential problems do not necessarily have to hinder the progress of the world of Notaries in Indonesia, but solutions should be found so that they can be accommodated in future UUJN changes.

The authenticity of documents or products generated by Notaries via e-Notary is another challenge that impedes the implementation of e-Notary in Indonesia. The apprehension is that the adoption of e-Notary may diminish the evidentiary integrity of Notarial deeds, which are traditionally regarded as authentic documents, particularly as notarial functions are inherently linked to the conventional ink and paper technique. This perspective should be evaluated by examining the historical factors associated with the establishment of the Notary office.

During the initial establishment of the Notary position, authentic deeds were executed by handwriting the Notary on parchment. As time progressed, new technology emerged in the form of typewriters, so that in this era, notarial deeds were made in typewriter. Then, after the typewriter era, computer and printer technology was born. In this era, Notarial deeds are made via computer and printed with a printer, this technology is used to this day and is considered a conventional method that applies universally.

The changes that occur due to technological adjustments as mentioned previously show that the meaning of "conventional" also experiences adjustments from time to time. If we want to apply the meaning of "conventional" consistently and rigidly, of course making a Notarial deed using a tool in the form of a computer and printing it out via a printer is contrary to the initial meaning of "conventional" because at the time the position of Notary was born, there was no use of computer and printer technology, so if the word "conventional" ” understood rigidly, it will actually result in the existing products of the Notary in the form of Deeds having degraded their evidentiary strength.

The authenticity of a Notary's deed is determined not by its "form" but primarily by the official's authority and the procedure employed in its creation (Saputra, 2023; Utomo, 2024). The foundation for the validity of an authentic deed continues to reference Article 1868 of the Civil Code, which defines an authentic deed as "a deed executed in a form prescribed by law by or before a public official authorized for that purpose, at the location where the deed is executed." According to the stipulations outlined in Article 1868 of the Civil Code, a document is deemed to be an authentic deed based on the following standards: 1) Executed in a legally prescribed format; 2) Created by and in the presence of a duly authorized official; and 3) Executed within a jurisdiction that remains under the authority of the official who issued the deed (Darmawan, 2024; Lestari et al., 2024).

Article 1868 of the Civil Code serves as a criterion for evaluating the legality of Notary goods generated by e-Notary. Regarding the stipulations for the criteria of an authentic deed, namely "Made in a form determined by law", this is further elucidated in Article 38

of the UUJN, which governs the form of a Notarial deed as an authentic deed (Kusuma, 2022; Iswari et al., 2024). Since the generation of deeds in electronic form, whether in minutes or copies, is not expressly forbidden by Article 38 of the UUJN, the notarial product produced using the e-Notary concept in the form of electronic deeds still complies with the requirements of Article 1868 UUJN (Isnaini & Utomo, 2019).

Regarding the stipulation that a genuine deed must be "Executed by and in the presence of an authorized official," UUJN has established that a Notary possesses the authority to create an authentic deed. The authority of a Notary is delineated in Article 15 of the UUJN (Abdullah et al., 2024). Article 15 does not specify the Notary's ability to create electronic deeds, nor does the UUJN impose a prohibition against Notaries executing deeds electronically. UUJN is a legal instrument governed by public law that emphasizes the notion of legality. According to the Principle of Legality, an action is deemed forbidden if prior restrictions exist that ensure compliance with the stipulations in Article 1868 of the Civil Code about actions "made by and in the presence of an authorized official".

The subsequent criterion for a valid deed, as delineated in Article 1868 of the Civil Code, is that it must be "Executed in a location that remains under the jurisdiction of the official who executed the deed." (Indarta & Damayanti, 2024). Concerning the jurisdiction of a Notary, it is delineated in Article 18 paragraph (2) UUJN: "A Notary's office encompasses the entirety of the province in which he/she resides." Consequently, as long as the Notary continues to perform his duties within his jurisdiction, his output remains legitimate, whether as a traditional deed or an electronic document.

The deployment of e-Notary in Indonesia is conducted with careful consideration of the authenticity of the deed as a product of the Notary, guaranteeing that the integrity of the deed remains intact (Utomo, 2021). The method used to create a notarial deed will have an impact on its validity. During the execution of a deed by a Notary, the phrase "Verlijden" refers to a sequence of procedures for deed inauguration, encompassing drafting, reading, and signing (Isnaini & Wanda, 2017; Krismiyarsi et al., 2024). Concerning the procedural series for creating valid deeds as governed by the UUJN, the following conclusions can be drawn: 1) Parties present themselves before the notary; 2) Drafting the deed in compliance with the stipulations of Article 38 UUJN; 3) Interpreting the deed pursuant to Article 16 of the UUJN; and 4) Executing the deed in compliance with the stipulations of Article 44 UUJN.

The requirements for the presence of a facer often obstruct the execution of e-Notary, as stated in the Elucidation section of Article 16 paragraph (1) letter m of the UUJN: "The notary must be physically present and sign the deed in the presence of the audience and witnesses." The phrase "physically present" is sometimes interpreted to mean that the presenter must be in attendance; however, a thorough interpretation clarifies that it is the Notary who must be physically present. The Notary signs the deed in the presence of the presenter and witnesses, which should be construed to mean that the Notary's signature, serving as ratification of an authentic deed, must be observed by the presenter and witnesses. This witnessing can occur either directly in front of the Notary or through electronic media that facilitates real-time visibility.

According to Arliman (2018) the normative provisions in the UUJN are theoretically justified. He asserts that the existence of a notary is both a legal requirement and a

testament to the legislators' trust in the notary's capacity to ensure legal certainty and safeguard the rights and obligations of the parties outlined in the notarial deed. The notary's responsibilities and functions as a state organ suggest that his actions are predicated on the authority of the law.

The provisions in the Explanation section of Article 16 paragraph (1) letter m of the UUJN must not obstruct or establish new norms. This is predicated on the stipulations of Law Number 12 of 2011 regarding the Formation of Legislative Regulations, which delineates the principal functions of the Explanation as follows: a) as the authoritative interpretation of the legislators; b) to elucidate norms within the statutory framework; c) it cannot serve as a legal foundation for the creation of subsequent regulations and must not encompass formulations containing norms; and d) it must not employ covert formulations that implicitly alter the provisions of norms.

Moreover, concerning the compilation of deeds pursuant to Article 38 of the UUJN, this article solely specifies the format of the deed and does not preclude the creation of deeds in electronic form. Electronically executed deeds comply with the "form determined by law" as stipulated in Article 1868 of the Civil Code, provided that the format aligns with the requirements of Article 38 UUJN. Concerning the reading of the deed, which comprises a series of 'verlijden', UUJN requires that the Notary present the deed in the presence of an audience and witnesses (Utomo, 2021). The Notary is obligated to ensure that the contents of the Notarial Deed are fully comprehended and align with the intentions of the parties involved. This includes reading the document aloud for clarity and providing access to pertinent information, including relevant laws and regulations, to the signatories of the deed. The duty to read the deed may be fulfilled by the Notary in person before the presenters and witnesses or through electronic media that enables real-time viewing of the deed by the presenters and witnesses.

The important aspect of e-Notary implementation concerning "verlijden" is the execution of the deed. The execution of the deed is governed by Article 44 of the UUJN. This article does not address a limitation on the use of electronic signatures. Legal improvements yield dependable techniques for the storage and retrieval of information (Graux, 2014). Electronic signatures are categorized into certified and uncertified types. Uncertified signatures provide diminished evidentiary strength compared to certified signatures. If an Electronic Certificate is utilized to validate an Electronic Signature, the Signer must guarantee the accuracy and integrity of all information pertaining to the Electronic Certificate. An electronic signature certification is granted by an electronic certification provider service. In Indonesia's e-Notary framework, the signature on a Notarial deed is executed as a certified electronic signature.

The final part of the e-Notary concept is the electronic storage of Notary protocols. Electronic deeds can be stored in a digital storage system that is protected by a strict security system and regular backups to avoid data loss. In this way, it can be ensured that it is always available or restored when a disaster or system failure occurs. This difference must be handled with appropriate legal rules, especially to determine the concept of minutes or original deed. The procedures for storing minutes or original deeds and documents are the responsibility of the notary to maintain and maintain state archives properly and seriously. The connection in the world of notary practice is that it can minimize the use of paper (paperless) and the possibility of losing reporting files.

4. Conclusion

Notary is a position created by the State through law to be able to provide services to the community in fulfilling the need for evidence in the form of authentic deeds so that Notaries are part of public service providers whose budget does not come from the State/Regional Revenue and Expenditure Budget. As a provider of public services, notaries are the same as government officials, so that in carrying out their function in providing services to the public, notaries have the authority to use discretion. The discretionary authority of a Notary can be used to fill legal gaps in the implementation of e-Notary in Indonesia and e-Notary can be implemented based on the Notary's Discretionary authority. e-Notary can be implemented at this time by reinterpreting the provisions of Article 1868 of the Civil Code, reinterpreting the meaning of verlijden in making deeds and reinterpreting the procedures for making authentic deeds as regulated in the Notary Position Law. To enhance public convenience, it is imperative to amend the UUJN to incorporate measures for the deployment of e-Notary in Indonesia. Notaries must currently equip themselves by mastering digital technology to swiftly adapt to any future amendments to the UUJN.

5. References

Journals:

Abdillah, M. (2022). Shariah and Politics in the Context of Globalization and Society 5.0. *Ahkam: Jurnal Imu Syariah*, *22*(2), 263-275.

Abdillah, S., & Sundari, E. (2024). The Urgency of Notary Deed in Supporting Sustainable Economic Growth in Riau. *Jurnal Akta*, *11*(4), 1131-1142.

Abdullah, F. Y., Izza, N. L., & Witasari, A. (2024). The Effectiveness of Cyber Notary Development Using Barcodes on Notarial Deeds in Indonesia. *Jurnal Akta*, *11*(3), 651.

Adhiwisaksana, M. F., & Allagan, T. M. P. (2023). Competent Forum and Applicable Law in Personal Data Protection with a Foreign Element. *Indonesian Journal of International Law*, *20*(3), 442-470.

Adjie, H. (2022). Understanding The Marriage Agreement Post Decision of The Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015. *Journal of Positive Psychology and Wellbeing*, *6*(1), 2476–2481.

Adjie, H. (2023). Legal Study Regarding the Responsibilities of Notaries in Providing Social Services in Accordance with the Implementation of their Position. *Journal of Law and Sustainable Development*, *11*(8), 1-16.

Adjie, H., & Agustini, S. (2022). Kode etik notaris menjaga isi kerahasian akta yang berkaitan hak ingkar notaris (UUJN Pasal 4 ayat 2). *Jurnal Hukum dan Kenotariatan*, *6*(1), 1-21.

Adjie, H., & Prasetyo, B. A. (2021). Cancellation of The Marriage Agreement Dedicated After the Marriage is Conducted. *Yurisdiksi: Jurnal Wacana Hukum Dan Sains*, *17*(3), 285–295.

Adnyani, N. K. S. (2021). Kewenangan diskresi kepolisian Republik Indonesia dalam penegakan hukum pidana. *Jurnal Ilmiah Ilmu Sosial*, *7*(2), 135-144.

Agustin, I. Y., & Anand, G. (2021). Proposing Notaries' Deed Digitalization in Indonesia: A Legal Perspective. *Lentera Hukum*, *8*(1), 49-53.

Alincia, D., & Sitabuana, T. H. (2021). Urgency of Law Amendment as Foundation of The Implementation of Cyber Notary. *Law Reform*, *17*(2), 214–231.

Ariefulloh, A., Nugroho, H., Angkasa, A., & Ardhanariswari, R. (2023). Restorative justice-based criminal case resolution in Salatiga, Indonesia: Islamic law perspective and legal objectives. *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, *23*(1), 19–36.

Arliman S, L. (2018). Politik Hukum Kenotariatan Pasca Perubahan Undang-Undang Jabatan Notaris Bagi Notaris Dalam Menjalankan Jabatannya. *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi*, *9*(2), 34-46.

Borman, M. S., Marwiyah, S., Cornelis, V. I., Lazuardi, I., & Kaewhanam, P. (2024). Model For Resolving Election Violations Through Indonesian Election Body and Constitutional Court. *legality: Jurnal Ilmiah Hukum*, *32*(2), 238–262.

Darmawan, Y. (2024). Validity of an Authentic Deed Signed Without Being Read and Outside Notary Office Hours. *Jurnal Konstatering*, *3*(1), 23-37.

Endang, M. I. A. (2018). Diskresi Dan Tanggung Jawab Pejabat Pemerintahan Menurut Undang-Undang Administrasi Pemerintahan/Discretion and Responsbility of Government Officials Based on Law of State Administration. *Jurnal Hukum Peratun*, *1*(2), 223-244.

Graux, H. (2014). Rethinking the e-signatures Directive: on laws, trust services, and the digital single market. *Digital Evidence and Electronic Signature Law Review*, *8*(9), 43-24.

Gultom, E., & Disyon, H. (2022). The Implementation of the Going Concern Principle in Bankruptcy and The Suspension of Payment to Protect the Economic Rights of the Parties. *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*, *9*(3), 343–364.

Hartini, R. (2021). The ambiguity of dismissal of notary over bankruptcy in Indonesia. *Legality: Jurnal Ilmiah Hukum*, *29*(2), 269–285.

Hufron, H., & Fikri, S. (2024). The Urgency of Regulating Forfeiture of Assets Gained from Corruption in Indonesia. *Legality: Jurnal Ilmiah Hukum*, *32*(2), 292–310.

Hufron, H., Fikri, S., Hadi, S., & Riqiey, B. (2025). Regional Head Election Post-MK Decision Number 60/PUU-XXII/2024 In the Constitutional Law Landscape. *Legality: Jurnal Ilmiah Hukum*, *33*(1), 224–243.

Ilyas, A. H. (2022). Administrative Land Conflicts and Reforming State-Owned Enterprises in Indonesia. *Hasanuddin Law Review*, *8*(2), 35-48.

Indarta, D. W., & Damayanti, M. (2024). The Regional Supervisory Assembly's Role in the Submission Delaying of the Notary Protocol by Heirs to Notary Recipient Protocol. *Jurnal Akta*, *11*(3), 685-697.

Isnaini, H., & Utomo, W. (2019). The Existence of the Notary and Notarial Deeds Within Private Procedural Law in the Industrial Revolution Era 4.0. *International Journal of Innovation, Creativity and Change*, *10*(3), 128–139.

Isnaini, H., & Wanda, H. D. (2017). Prinsip Kehati-Hatian Pejabat Pembuat Akta Tanah Dalam Peralihan Tanah Yang Belum Bersertifikat. *Jurnal Hukum Ius Quia Iustum*, *24*(3), 467–487.

Iswari, K. Y., Adzania, P., Novilawati, R., & Samosir, T. (2024). Legal Certainty of the Proof Power of Notary Deeds in the Concept of Cyber Notary according to Indonesian Positive Law. *Jurnal Akta*, *11*(3), 662.

Kadir, A., Gunarto, G., Suwarno, S., & Kabir, M. A. (2025). Judicial Power and Judges' Status in Indonesia's Constitutional Framework. *Jurnal Hukum*, *41*(1), 195-215.

Keumala, D. (2023). The Dialectic of Notary Inheritance Deed Arrangement. *Yuridika*, *38*(1), 143–158.

Krismiyarsi, K., Soleh, A. N., Karyono, H., & Pancawisma, M. (2024). The Urgency of Fingerprints as Evidence in Criminal Justice Proceedings. *Journal Philosophy of Law*, *5*(2), 59-68.

Kurniawaty, Y. (2016). Penggunaan Diskresi Dalam Pembentukan Produk Hukum. *Legislasi Indonesia*, *13*(1), 54-67.

Kusuma, K. A. (2022). The Position and Responsibilities of Instrumental Witnesses in Deeds Made by Notaries according to UUJN. *Jurnal Konstatering*, *3*(1), 67-79.

Lestari, S. E., Thoif, M., Widodo, T. E., & Minan, M. (2023). Navigating Legal Transformation: Challenges and Prospects of Cybernotary in Enhancing Public Service Efficiency in Indonesia. *Jurnal Akta*, *11*(4), 1222-1245.

Lubis, I. (2022). Normative Character of E-RUPS Implementation Share Open Company. *DE LEGA LATA: Jurnal Ilmu Hukum*, *7*(1), 130–143.

Lubis, I., Murwadji, T., Sunarmi, S., & Sukarja, D. (2023). Cyber Notary as A Mean of Indonesian Economic Law Development. *Sriwijaya Law Review*, *7*(1), 62.

Lugito, H. H., & Octarina, N. F. (2021). Independence of Notary PPAT As Bank Partner. *YURISDIKSI: Jurnal Wacana Hukum dan Sains*, *16*(4), 253-265.

Mariyam, S., & Satria, A. P. (2021). Questioning the Formation and Enforcement of Law in Indonesia to Create Gender-Based Justice. *Annals of the Romanian Society for Cell Biology*, *25*(6).

Maryam, S. (2014). Implementasi Model Parate Executie Atas Jaminan Fidusia:(Uji Model Eksekusi Jaminan Fidusia). *Masalah-Masalah Hukum*, *43*(4), 497-504.

Monkkonen, P. (2016). Are civil-law notaries rent-seeking monopolists or essential market intermediaries? Endogenous development of a property rights institution in Mexico. *The Journal of Peasant Studies*, *43*(6), 1224–1248.

Muhaimin, M. (2018). Penguatan Penyelenggaraan Pelayanan Publik melalui Penyelesaian Sengketa Informasi Publik. *Jurnal Ilmiah Kebijakan Hukum*, *12*(2), 213-226.

Nuriyanto, N. (2015). Membangun budaya hukum pelayanan publik untuk mewujudkan kesejahteraan rakyat. *Integritas: Jurnal Antikorupsi*, *1*(1), 15-36.

Octarina, N. F., Fernanda, F., Dewi, F. T. A., & Adjie, H. (2024). The Urgency of Regulation of Data Protection for the Parties in Cyber Notary. *Jurnal Akta*, *11*(3), 630-650.

Pratiwi, C. S. (2022). Indonesia's Legal Policies Amid Covid-19. *Journal of Southeast Asian Human Rights*, *6*(2), 182-196.

Pribadi, A. S., Warka, M., & Suhartono, S. (2019). Laws of Authority and Uncertain Law on the Beach Reclamation Activities in The Gulf Coast of Jakarta. *International Journal of Scientific and Research Publications*, *9*(12), 472.

Putri, R. W., Putri, Y. M., Sabatira, F., Davey, O. M., & Arya, H. C. (2023). The Paradox of the International Law Development: A Lesson from Covid-19 Pandemic Management. *Lex Scientia Law Review*, *7*(1), 290-301.

Saputra, A. The Legal Protection for Instrumental Witnesses in Notarial Deeds. *TABELLIUS: Journal of Law*, *1*(3), 566-576.

Setiawan, N., & Octarina, N. F. (2022). Legal Uncertainty Over Notary Protocols in Law Number 43 of 2009. *Journal of Law and Legal Reform*, *3*(4), 543–566.

Sibarani, W. (2023). Modern Justice: Indonesia's Supreme Court's Challenges to Uphold Fair Trial Principles Through Digitalization. *Brawijaya Law Journal*, *10*(1), 106–121.

Stef, N. (2018). Bankruptcy and the difficulty of firing. *International Review of Law and Economics*, *54*(13), 85–94.

Sukriono, D. (2014). Penguatan Budaya Hukum dalam Penyelenggaraan Pelayanan Publik Sebagai Upaya Penegakan Hak Asasi Manusia (HAM) di Indonesia. *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, *1*(2), 228–247.

Sulistiani, S. L. (2021). The Legal Position of Waqf for Non-Muslims in Efforts to Increase Waqf Assets in Indonesia. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, *5*(1), 357-369.

Supeno, B. J., & Krismiyarsi, K. (2023, April). Criminal Politics Criminal Actions of Information and Electronic Transactions (Within the Framework of Criminal Law Reform). In *International Conference on Law, Economics, and Health (ICLEH 2022)* (pp. 321-340). Atlantis Press.

Syamsir, S., & Yetniwati, Y. (2019). Prospek Cyber Notary Sebagai Media Penyimpanan Pendukung Menuju Profesionalisme Notaris. *Recital Review*, *1*(2), 132-146.

Syukri, W. (2021). Diskresi Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia Dalam Menunjang Tugas dan Fungsi Majelis Pengawas Notaris dan Majelis Kehormatan Notaris. *Journal Law of Deli Sumatera*, *1*(1), 128-132.

Tan, D. (2019). Controversial Issues on the Making of Notarial Deed Containing Chained Promise (Beding Berantai) on the Freedom of Contract Principle. *Journal of Indonesian Legal Studies*, *4*(2), 315–338.

Tan, D. (2020). Cyber notaries from a contemporary legal perspective: A paradox in Indonesian laws and the marginal compromises to find equilibrium. *Indonesia Law Review*, *10*(2), 113-125.

Tan, D., & Sudirman, L. (2020). Final Income Tax: A Classic Contemporary Concept to Increase Voluntary Tax Compliance among Legal Professions in Indonesia. *Journal of Indonesian Legal Studies*, *5*(1), 125–170.

Tauda, G. A., Omara, A., & Arnone, G. (2023). Cryptocurrency: Highlighting the approach, regulations, and protection in Indonesia and European Union. *Bestuur*, *11*(1), 1-25.

Utomo, H. I. W. (2022). Legal Counseling by a Notary as a Means to Produce a Balanced Agreement. *NOTARIIL Jurnal Kenotariatan*, *7*(1), 1–8.

Utomo, H. I. W. (2024). Legal Position of the Surrogate as a Substitute for a Signature in a Notarial Deed. *Jurnal Hukum Dan Kenotariatan*, *8*(2), 94–104.

Utomo, W., Isnaini, H., Suhartono, S., & Isnaeni, M. (2019). The Position of Honorary Council of Notary in Coaching Indonesian Notaries. *JL Pol'y & Globalization*, *92*(12), 126-138.

Wicaksono, D. A., & Rahman, F. (2022). Influencing or Intervention? Impact of Constitutional Court Decisions on the Supreme Court in Indonesia. *Constitutional Review*, *8*(2), 260.

Wiwoho, J., Pratama, A. M., Pati, U. K., & Pranoto. (2023). Examining Cryptocurrency Use among Muslim Affiliated Terrorists: Case Typology and Regulatory Challenges in Southeast Asian Countries. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, *18*(1), 102–124.

Zavalniuk, I. (2022). Realization Of the Constitutional Right to a Fair Trial in the Context of the Pandemic-Economic Crisis. *Baltic Journal of Economic Studies*, *8*(3), 72–77.

Zuliah, A., & Pulungan, M. A. (2020). Pelayanan Publik Dalam Kajian Hukum Administrasi Negara Dan Hak Asasi Manusia. *Law Jurnal*, *1*(1), 32–42.

Books:

Atmosudirdjo, P. (1988). *Hukum Administrasi Negara*. Jakarta: Ghalia Indonesia.

Suhartono, S., Mahyani, A., Afifah, W., Sartika, D. P., & Tatamara, R. (2020, March). Implementation of Law Number 6 of 2014 Concerning Village for Budgeting Plan in Sidoarjo Regency. In *International Conference on Law Reform (INCLAR 2019)*. Springer: Atlantis Press.

Utomo, H. I. W., & SH, M. K. (2020). *Memahami Peraturan Jabatan Pejabat Pembuat Akta Tanah*. Jakarta: Prenada Media.

Internet:

Suryowati, E. (2022). Jumlah Pengguna Internet di Indonesia Naik 45 Juta setelah Pandemi. *Jawa Pos*. Retrieved in July 23, 2025. https://www.jawapos.com/teknologi/01391154/jumlah-pengguna-internet-di-indonesia-naik-45-juta-setelah-pandemi

Proceedings:

Utomo, H. (2021). *The Validity of a Notarial Deed Created Virtually as a Supporting Facility for Economic Activities During the Covid-19 Pandemic.* Proceedings of the 1st Tidar International Conference on Advancing Local Wisdom Towards Global Megatrends, TIC 2020, 21-22 October 2020, Magelang, Jawa Tengah, Indonesia.