

The Legal Protection for Parties in Making E-Notary-Based Authentic Deeds during the Covid-19 Pandemic

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Abstract. *This study aims to analyze the need for authentic e-notary-based deeds during the COVID-19 pandemic and to find out legal protection for parties in making e-notary authentic deeds during the COVID-19 pandemic. The method used in this study is a sociological juridical analysis method, namely a review based on applicable laws and regulations with phenomena that develop in society. The results of the study show that E-Notary during the COVID-19 pandemic is very necessary to protect the notary and the public from the threat of the virus and aims to protect against document falsification. The application of the cyber notary concept in Indonesia is very necessary to anticipate other emergencies that cannot be predicted in the future. The protection of the parties in making an authentic deed based on e-notary has not been specifically regulated in positive law in Indonesia, so that the deed made is not in accordance with the provisions of the authentic deed as regulated in Article 1868 of the Civil Code and the Law on Notary Positions No. 2 of 2014 specifically in Article 38 UUJN and Article 16 paragraph (1) letter m UUJN then the strength of the notary deed does not have perfect proof like an authentic deed, it does not meet the requirements for the authenticity of a deed. Until now, electronic deeds are only considered as private deeds which are equivalent with documents, letters, and electronic certificates.*

Keywords: Authentic; Cyber ; Deed; Pandemic.

1. Introduction

The State of Indonesia is a State of Law. This is stated in the 1945 Constitution article 1 paragraph 3, which means a state of law is a state that upholds the rule of law to uphold truth and justice, and there is no power that cannot be accounted for.¹ The purpose of the law in the 1945 Constitution is to protect the

¹Elucidation of Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia

entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life, and participate in carrying out world order based on eternal peace and social justice. In realizing the objectives of the law, the state needs a profession called a Notary to be able to assist in realizing the ideals of the nation².

Every country in the world is currently experiencing a fairly serious polemic and needs full attention to overcome it. The polemic is Corona Virus Disease 2019 or what we know as Covid-19. An epidemic that occurs worldwide is known as a pandemic. A pandemic is a disease outbreak that occurs simultaneously everywhere, covering a wide geographical area (all countries/continents). In other words, this disease has become a common problem for all citizens of the world.³ Since the COVID-19 pandemic emerged, almost everyone has experienced obstacles to lead a normal life due to restrictions that need to be taken to prevent transmission of the Corona virus because the process of spreading the virus is transmitted through direct contact with splashes of liquid from an infected person (through coughing and sneezing), and if touching Surfaces contaminated with this virus can be directly transmitted and can cause fatalities. This situation forces all aspects to utilize digital information technology systems in carrying out activities, including the notary profession. Reflecting on this situation, the existence of an e-notary is something that cannot be avoided. Information and communication technology introduces cyberspace (Cyberspace, Virtual world) through the internet network, communication with electronic media without paper.⁴

This brings the impact of complexity on a virtual reality that breaks the deadlock that real life has regarding the concepts of space and time. Virtual reality allows people who are in it to be in different places. The various developments in the electronic system in question are electronic certificates, electronic certificates, electronic signatures, and the process of signing a deed that does not require a physical (virtual) presence. Article 16 paragraph (1) letter m of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary (UUJN) stipulates the obligation to 'face' between the party making the

² 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>

³ <https://www.kompas.com/tren/read/2021/03/02/191600765/infografik--beda-pandemi-endemi-dan-epidemi> accessed on November 4, 2021

⁴ Mariam Darus Badruzaman, 2001, "Mendambakan Kelahiran Hukum Cyber (Cyber Law) di Indonesia", Medan, Pidato purna Bhakti, p.3

deed and the notary⁵. The 'appearing' is carried out in the context of reading the deed in front of the appearer in the presence of at least 2 (two) witnesses.⁶

Article 16 paragraph (1) letter m above states that a notary must be physically present and sign the deed before an appearer. The text of the article has fulfilled legal certainty, is clear, firm and does not have multiple interpretations. However, the implementation of Article 16 paragraph (1) letter m has been hampered since Covid-19 was detected in Indonesia. The government issued a policy related to PSBB (Large-Scale Social Restrictions), which was followed by PPKM (Enforcement of Restrictions on Community Activities) where community mobility was limited, physical distancing and social distancing were enforced, accompanied by health protocols that all parties had to obey.

This encourages notaries to make legal breakthroughs towards a notary electronic system (e-notary) due to the urgent need in the Covid-19 pandemic, where every meeting must be held virtual due to the government's Work from Home policy. All of this is done to prevent the spread of public health emergencies that are happening between people in a certain area. The PSBB is carried out on the basis of epidemiological considerations, the magnitude of the threat, effectiveness, resource support, operational technical, economic, social, cultural and security considerations.⁷ However, there is one doubt in implementing E-Notary, namely the norm of having a physical presence in making a deed and not being able to do it electronically because you have to do it on paper as stated in Act No. 30 of 2004 concerning the Position of a Notary. With this condition (audio visual) referring to Article 16 paragraph (1) letter m of Act No. 2 of 2014 concerning the Law on Notary Positions and Article 1868 of the Civil Code, this deed will become a deed that is not in accordance with the authentic deed.

2. Research Methods

This research method used a sociological juridical approach. The sociological juridical approach was used to obtain legal knowledge empirically by knowing firsthand the phenomena that occur in the community regarding the need for authentic deeds based on e-notary. The specification of this research was descriptive analysis by presenting information on the legal basis relating to cyber notary in the applicable law in Indonesia. Sources of data and data collection methods using primary data obtained by means of interviews with informants in

⁵ 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>

⁶Article 16 paragraph (1) of the Law on Notary Positions

⁷What is PSBB to be an Effort to Prevent Covid-19? <https://www.kompas.com/tren/read/2020/04/13/153415265/apa-itu-psbb-till-so-effort-prevention-covid-19?page=all>. Retrieved April 15, 2021.

this case a Notary who was considered to understand the research topic and secondary data obtained by reviewing the literature related to the research topic.

3. Results and Discussion

3.1. Why is an authentic deed based on e-notary needed during the covid-19 pandemic?

The implementation of the notary position since the COVID-19 has been hampered because the government requires restrictions on physical contact in order to reduce and stop the spread of COVID-19 in the community. It is undeniable that the number of closed notary offices will have an impact on the national economy, as it is known that the notary in carrying out his duties as an extension of the government in the civil/private sector. COVID-19 is considered a health hazard and has the potential to spread across regions and across countries, the worst impact being death. As currently, various kinds of policy orders regarding health emergencies have been implemented so that the COVID-19 virus is immediately completed.

The government decided to adapt to a new habit which is better known as the new normal. All regions in Indonesia are currently implementing the new normal with the obligation to use masks when outside the home and/or use a face shield, wash hands with soap and clean water or use hand sanitizers, and maintain a safe distance/social distancing. The existence of new habits still does not guarantee that a person will not be exposed to COVID-19 considering that the spread of COVID-19 is very easy, namely through the air, droplets, or facilities and infrastructure that are often used in daily life without being known to have been exposed to the virus.

Responding to the spread of the corona virus which is increasingly developing in Indonesia, an electronic notary/cyber notary can be a solution for a notary in carrying out his duties and positions because the parties or appearers no longer have to meet physically (face to face) in a certain place but are present in internet media. According to Emma Nurita, the concept of a cyber notary can temporarily be interpreted as a notary who carries out his duties or authority

based on information technology, which is related to the duties and functions of a notary, especially in making deeds.⁸

The presence of the internet as a development of information technology and communication technology can speed up the sending and receiving of documents or information needed in electronic transactions, so as to shorten the distance and time taken. Notaries as one of the pillars of national law enforcement through Act No. 2 of 2014 concerning the position of a Notary, the function of which is to carry out the principles of the rule of law, namely to ensure certainty, order and legal protection, which is based on truth and justice. As a trusted public official, the deeds he makes must be strong evidence in the event of a legal dispute in court.

Cyber notaries are not only needed in the era of the spread of COVID 19, but notary law in Indonesia should develop because it is far behind with technological developments today so that it is not optimal in providing effective and efficient services to notary service users⁹.

Electronic notary will not only protect notaries and clients from the threat of being exposed to the COVID-19 virus, but also aims to protect against document falsification. Forgery of a notarial deed using paper can be done, but if using an electronic deed, the possibility of forgery is very small. Electronic documents actually have a recording and recording system that is more sophisticated so that if they are falsified, they will be easier to prove. Apart from that, problems that arise due to conventional methods of notarizing can actually be prevented by implementing an e-notary. The application of the cyber notary concept in Indonesia is very necessary to anticipate other emergencies that cannot be predicted in the future.

3.2. How is legal protection for parties in making authentic e-notary deeds during the covid-19 pandemic?

Notaries as one of the pillars of national law enforcement through Act No. 2 of 2014 concerning the position of a Notary, which functions to carry out the principles of the rule of law, namely to ensure certainty, order and legal protection, which are based on truth and justice.¹⁰The government often faces disputes caused by the making of a notarial deed which is considered imperfect

⁸Emma Nurita, 2012, *Cyber Notary Pemahaman Awal dalam Konsep Pemikiran*, Bandung, Reflika Aditama, p.12

⁹ Deen, Thaufiq., 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>

¹⁰Sunarto, Siswanto, *Peranan Kode Etik Profesi Dalam Pemuliaan Jabatan Notaris*, Tesis pada Sekolah Pasca Sarjana, Magister Kenotariatan, Yogyakarta, Universitas Gadjah Mada, 2007.

so that it becomes an underhand deed. This is behind the need for a legal umbrella or a review of legislation to provide legal protection for authentic deeds made electronically during the pandemic.

The application of an authentic notary based electronic deed (e-notary) in Indonesia must of course have a basic rule as a source of legal protection for parties who use the cyber notary system. The application of cyber notaries in Indonesia has basically been stated in Article 15 paragraph (3) of the UUJN which stipulates that: "In addition to the authority as referred to in paragraph (1) and paragraph (2), Notaries have other powers as regulated in laws and regulations." The meaning of the intended authority is as explained in the explanation of Article 15 paragraph (3) of the UUJN, namely: "Other authorities regulated in laws and regulations include, among others, the authority to certify transactions conducted electronically (cyber notary), make waqf pledge deeds, and airplane mortgages."

Based on the explanation of the article, there is the authority of a Notary to certify transactions by means of a cyber notary. The term certification comes from the English "certification" which means information, validation. The definition of certification itself is a procedure where a third party provides a written guarantee that a product, process or service has met certain standards, based on an audit carried out with an agreed procedure.

The possibility of the application of a cyber notary in the UUJN is also supported in Article 1 number (2) of Act No. 11 of 2008 concerning the Electronic Information and Transaction Law (UU ITE) which stipulates that: "Electronic transactions are legal acts carried out using computers, computer network, and/or other electronic media." Act No. 11 of 2008 concerning Information and Electronic Transactions (ITE), which is meant by electronic documents based on Article 1 paragraph 4 UUIE; "Every electronic information created, forwarded, sent, received, stored in analog, digital, electromagnetic, optical or similar forms, which can be seen, displayed and/or heard through a computer or electronic system, including but not limited to writing, sound, drawings, maps, designs, photographs.

Thus, it means that the development of electronic deeds actually brings new opportunities for notaries to be more efficient in serving the interests of the community, it's just a matter of how the presence of a notary in making an

"electronic authentic deed" can be technologically possible and the legal consequences formulated.¹¹

The various legal protections provided by UUIE for activities that use the internet as a medium, both transactions and the use of information, accommodate the needs of business people on the internet and society in general in order to obtain legal certainty, with the recognition of electronic evidence and digital signatures as legal evidence in court.¹² However, Notaries are still not brave enough to make legal breakthroughs towards the use of an electronic system (E-Notary) even though there is an urgent need, for example, during the Covid-19 pandemic which forces every meeting to be held virtual because of the government's Work from Home policy. One of the reasons for doubting implementing E-Notary is that there is a norm of having a physical presence in making a deed and being unable to do it electronically because you have to do it on paper as stated in UUIE No. 2 of 2014.

However, based on Article 1 point 7 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 which states that a notarial deed is an authentic deed made by or before a notary according to the form and procedure stipulated in the Notary Position Act. . So that there is a conflict when applying the concept of cyber notary as one of the notary services. In Article 1868 of the Civil Code it can be seen that there are several elements of an authentic deed, including: a) That the deed was made and formalized (verleden) in a legal form, b) That the deed was made by or before a public official: c) That the deed was made by or before an official authorized to make it at the place where the deed was made.¹³

This is because the cyber notary concept in the process of making the deed is carried out electronically, starting from the presence of the parties, the exchange of information through electronic transactions, and the use of digital signatures, while what is meant in Article 1 number 7 UUIE, the use of the words facing, appearing, facing, and before in UUIE the translation of the word *verschijnen* which means to come before what is meant in a juridical sense is a real presence.

Thus, if it is associated with a notarial deed for the implementation of a cyber notary where the notary deed is in electronic form (electronic deed), then the power of the notary deed does not have perfect proof like an authentic deed,

¹¹Grace Wahyuni, *Keabsahan Tanda Tangan Elektronik RUPS Telekonferensi Berdasarkan UU No.40 Tahun 2007 Tentang PT Dan UU No.30 Tahun 2004 Tentang Jabatan Notaris*, Jakarta, Tesis, FH Universitas Indonesia, 2010. p.48.

¹²Amelia Sari Kusuma Dewi, *Penyelenggaraan Rups Melalui Media Elektronik Terkait Kewajiban Notaris Melekatkan Sidik Jari Penghadap*, Arena Hukum Volume 8, No. 1, April 2015

¹³R. Soegondo Notodisoerjo, 1993, *Hukum Notariat di Indonesia, Suatu Penjelasan, Print.2*, Jakarta, Raja Grafindo Persada, p.42.

this is because the notary deed is against the implementation of a cyber notary where the notary deed is in electronic form. This does not meet the requirements for the authenticity of a deed, besides that the UUJN and UU ITE also have not specifically accommodated this.

4. Conclusion

An authentic deed based on E-Notary is needed during the Covid 19 pandemic to protect notaries and appearers from the threat of viruses and aims to protect against document falsification. The application of the cyber notary concept in Indonesia is very necessary to anticipate other emergencies that cannot be predicted in the future. Legal protection for parties in making authentic e-notary-based deeds during the Covid-19 pandemic can basically depend on Law 15 paragraph 3 of the UUJN and various UUITEs that have been mentioned, but in the explanation of article 15 paragraph 3 it means: "Other authorities regulated in the laws and regulations, among others, the authority to certify transactions conducted electronically (cyber notary), make waqf pledge deeds, and aircraft mortgages."

5. References

Journals:

- [1] Amelia Sari Kusuma Dewi, *Penyelenggaraan Rups Melalui Media Elektronik Terkait Kewajiban Notaris Melekatkan Sidik Jari Penghadap*, Arena Hukum Volume 8, No. 1, April 2015
- [2] Deen, Thaufiq., 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>
- [3] Grace Wahyuni, *Keabsahan Tanda Tangan Elektronik RUPS Telekonferensi Berdasarkan UU No.40 Tahun 2007 Tentang PT Dan UU No.30 Tahun 2004 Tentang Jabatan Notaris*, Jakarta, Tesis, FH Universitas Indonesia, 2010.
- [4] 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>
- [5] Sunarto, Siswanto, *Peranan Kode Etik Profesi Dalam Pemuliaan Jabatan Notaris, Tesis pada Sekolah Pasca Sarjana, Magister Kenotariatan*, Yogyakarta, Universitas Gadjah Mada, 2007.
- [6] 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>

Books:

- [1] Emma Nurita, 2012, *Cyber Notary Pemahaman Awal dalam Konsep Pemikiran*, Bandung, Reflika Aditama
- [2] Mariam Darus Badruzaman, 2001, "*Mendambakan Kelahiran Hukum Cyber (Cyber Law) di Indonesia*", Medan, Pidato purna Bhakti
- [3] R. Soegondo Notodisoerjo, 1993, *Hukum Notariat di Indonesia, Suatu Penjelasan, Print.2*, Jakarta, Raja Grafindo Persada

Regulation:

- [1] Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia
- [2] Article 16 paragraph (1) of the Law on Notary Positions

Internet:

- [1] <https://www.kompas.com/tren/read/2021/03/02/191600765/infografik--beda-pandemi-endemi-dan-epidemi> accessed on November 4, 2021
- [2] What is PSBB to be an Effort to Prevent Covid-19? <https://www.kompas.com/tren/read/2020/04/13/153415265/apa-itu-psbb-till-so-effort-prevention-covid-19?page=all>. Retrieved April 15, 2021.