

Legal Implications of Notarial Digitalization on the Validity of Notarial Deeds

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Abstract. *This study aims to analyze: 1) The legal implications of notarial digitization on the validity of notarial deeds. 2) Obstacles and solutions in the notarial digitization process related to the validity of notarial deeds. This type of research falls within the scope of normative legal research. The approach method in this study is a statute approach. The type and source of data in this study are secondary data obtained from literature studies. The analysis in this study is prescriptive. The results of the study conclude: 1) The digitalization of notarial deeds has a significant impact on the validity of notarial deeds, especially because the formal requirements for authentic deeds as stipulated in Indonesian positive law have not yet been met. Although Article 5 paragraph (4) of the ITE Law recognizes electronic documents as legal evidence, the absence of explicit provisions in the Notary Law (UUJN) means that digital notarial deeds cannot yet be equated with conventional authentic deeds. As a result, electronic deeds risk losing their full evidentiary power before the law, creating legal uncertainty, and threatening the protection of the parties' rights. Therefore, regulatory reform containing specific provisions regarding electronic notarial deeds is an urgent need to guarantee validity, evidentiary power, and balanced legal protection in the digital era. 2) In its implementation, the digitalization of notarial deeds faces various obstacles such as legal vacuums, procedural uncertainty, threats to electronic data security, limited understanding of technology among notaries, and the absence of uniform operational standards. These obstacles can hinder the implementation of valid and effective digital deeds. To address this, concrete solutions are needed in the form of comprehensive regulatory updates, the development of digital-based standard operating procedures, strengthening information technology security systems, improving notary digital literacy through ongoing training, and strengthening cross-institutional collaboration.*

Keywords: *Deeds; Digitalization; Notary.*

1. Introduction

The rapid development of information systems and technology has also impacted legal aspects in Indonesia, including the legal world of notaries. Notary legalization is essential to prove the existence of certain acts, rights, and obligations.¹ The urgent position of a Notary in human life makes the process of someone becoming an expert Notary important. A notary is an official responsible for creating authentic deeds. The purpose of having written agreements drawn up before or by a notary is to ensure that the deed becomes authentic and can be used as strong evidence in the event of a dispute between the parties or a lawsuit from another party.² A notary is a public official authorized to make authentic deeds and other authorities as referred to in Law Number 2 of 2014 concerning the amendment to Law Number 30 of 2004 concerning the Position of Notary. In its explanation, it is stated that a notary is a public official authorized to make authentic deeds as long as the making of certain authentic deeds is not specifically for other public officials. The need for written agreements to be made before a notary is to ensure legal certainty and to fulfill the law of strong evidence for the parties entering into the agreement.³

An authentic deed made by a Notary or before a Notary, is not only required by statutory regulations, but is also desired by interested parties to ensure the rights and obligations of the parties for the sake of certainty, order and legal protection for the interested parties as well as for society as a whole.⁴ The role of law in relation to public demands regarding the importance of the legal consequences of a deed, requires that a Notary as a public official must always be able to follow legal developments in providing information to the public who need it and safeguarding the deeds he has made so that he can always provide clear legal certainty.⁵

The development of information and communication technology has made communication and obtaining information easier and faster. With these various

¹Fitri Pepiani, (2022), Analisis Yuridis Atas Status Notaris Yang Tidak Menjalankan Jabatannya (Studi Notaris Di Kota Medan), *Jurnal Law of Deli Sumatera Jurnal Ilmiah Hukum*, Volume I, Nomor 2, p.2

²Kunni Afifah, (2017), Tanggung Jawab dan Perlindungan Hukum bagi Notaris secara Perdata Terhadap Akta yang Dibuatnya, *Jurnal Lex Renaissance*, Nomor 1 Volume 2, p.150

³Abdul Jalal, Suwitno & Sri Endah Wahyuningsih, (2018), Keterlibatan Pejabat Notaris Terhadap Perbuatan Melawan Hukum Dan Turut Serta Melakukan Tindak Kejahatan Dalam Pemalsuan Dokumen, *Jurnal Akta*, Volume 5 Nomor 1, p.228

⁴*Ibid.*, p. 2

⁵Dimas Agung, & Ahmad Khisni, (2017), Akibat Hukum Akta Di Bawah Tangan yang dilegalisasi oleh Notaris, *Jurnal Akta*, Vol. 4 No. 4, p.728

advances, the government was encouraged to issue Law Number 11 of 2008 concerning Electronic Information and Transactions, which was then amended by Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law). Article 5 of Law Number 1 of 2024, the second amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions, in paragraph 1 states that Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence.

The concept of cyber notary in Indonesia seems to still be under debate. The latest development is the inclusion of cyber notary in UUJN as stipulated in Article 15 paragraph (3), which states: "Other authorities regulated in statutory regulations include, among others, the authority to certify transactions conducted electronically (cyber notary), make deeds of waqf pledges, and mortgage aircraft." Although still seemingly narrow, the inclusion of cyber notary in these statutory regulations is a breath of fresh air for the future development of cyber notary.⁶The implementation of cyber notary has become a critical issue in the performance of notary duties. While technology offers significant potential to accelerate and simplify the notarization process, several challenges hinder the effective implementation of cyber notary services. The unclear regulations in the UUJN and UUTE raise concerns about whether digitally created deeds have the same legal force as conventionally created deeds.

2. Research Methods

This type of research falls within the scope of normative legal research. The approach used is a statute approach. The data used is secondary data, obtained from literature studies. The analysis is prescriptive in nature.

3. Results and Discussion

3.1. Legal Implications of Notarial Digitalization on the Validity of Notarial Deeds

Cyber notary It is a concept that utilizes technological advances for notaries to create authentic deeds in cyberspace and carry out their daily duties, for example signing deeds electronically and holding General Meetings of Shareholders via teleconference.⁷Thus, it can be said that the concept of cyber notary relates to the

⁶Edmon Makarim, (2020), *Notaris dan Transaksi Elektronik, Kajian Hukum Tentang Cyber notary atau Electronic Notary*, Cetakan ke-3, Depok : Rajawali Pers, p. 14.

⁷Emma Nurita, (2012), *Cyber notary: Pemahaman Awal dalam Konsep Pemikiran*, Bandung : cet. 1 Refika Aditama, p. 53

implementation of notary authority based on information technology. Cyber notary emphasizes two aspects: authority and technology.⁸

The idea of Cyber notary has actually emerged since 1995. However, there are obstacles in the implementation of Cyber notary, namely in the concept of Cyber notary, the creation of the Deed is done electronically, starting from the face of the parties, the exchange of information through electronic transactions, and the use of digital signatures, while according to Article 1 Number 7 of the UUJN of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, a Notarial Deed is an authentic Deed made by or before a Notary according to the form and procedures stipulated in the Notary Position Law. This means that legally the use of the words facing, facing, facing, and facing in Article 1 Number 7 of the new UUJN is a real presence. Real presence is physically, the person in question comes to face the Notary of his own volition.⁹

The validity of a notarial deed still requires a physical meeting between the parties and the notary, so the application of technology such as electronic signatures or video conferencing cannot yet be used as a basis for validating a deed, unless there is a regulatory change that accommodates it. However, in practice, several administrative stages such as scheduling, data collection, and deed reporting are now starting to be carried out digitally, particularly through an OSS (Online Single Submission)-based system for business entity licensing purposes. This shows that although the substance of the deed is still physical, the supporting processes of notarial law have begun to be digitized.

One important aspect in this discussion is electronic documents as legal evidence, which is regulated in Article 5 of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law). This provision has undergone significant changes through Law Number 1 of 2024. Previously, Article 5 paragraph (4) expressly excluded notarial deeds from being recognized as valid electronic documents, by stating that electronic information does not apply to: "Documents which according to law must be made in written form; and notarial deeds or deeds of the official who made the deed"

⁸Luthvi Febryka Nola, (2011), Peluang Penerapan *Cyber notary* dalam Peraturan Perundang-Undangan di Indonesia, *Jurnal Negara Hukum* 1, p. 76

⁹Deny Fernaldy, Kepastian Hukum Cyber notary Dalam Kaidah Pembuatan Akta Autentik Oleh Notaris Berdasarkan Undang-Undang Jabatan Notaris, *Indonesian Notary*, Volume 3 Article 17, p.252

However, after the amendment to Law No. 1 of 2024, the text of the article was changed to:

"The provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) do not apply in cases regulated otherwise in the Law."

This change opens up more flexible legal interpretation, as it no longer explicitly states that notarial deeds are excluded from electronic evidence. This means that electronic notarial deeds have the potential to be recognized as valid legal evidence, as long as no other statutory regulations state otherwise. In this context, the digitization of notarial deeds can be seen as a progressive step towards aligning with the needs of an increasingly digitalized society and business world. However, its legal implications are highly dependent on synchronization with the Notary Law (UUJN). To date, the UUJN has not explicitly regulated the form and procedures for creating notarial deeds digitally or electronically, although the term Cyber Notary has been mentioned in the Explanation of Article 15 paragraph (3) as one of the authorities of notaries in the future. The absence of these technical regulations creates legal uncertainty, particularly regarding the form, verification process, authentication of electronic signatures, and digital storage of deeds.

Conceptually, a notarial deed is an authentic deed that has perfect evidentiary power as regulated in Article 1868 of the Civil Code, namely:

"An authentic deed is a deed made in the form determined by law by or before a public official authorized to do so, at the place where the deed is made."

If a deed is created digitally, it must be ensured that its form and procedures still meet the formal requirements of authenticity, including the identity of the parties, a valid physical or virtual presence, and a digital signature and stamp recognized by the state. Without these requirements, the deed will lose its authenticity and be considered merely a private deed, which of course reduces its evidentiary value.

This situation demonstrates that while digitalization brings convenience and efficiency to the notarial process, it still requires assurance of compliance with applicable legal principles. Without adequate regulations and standards, digitally created deeds risk losing their authentic force and harming the interests of the parties. Therefore, further analysis is needed to determine the legal implications of digitalization on the validity of notarial deeds.

So the legal implications of digitalizing notaries on the validity of notarial deeds are:

1. Legal Uncertainty over the Validity of Digital Deeds

Electronic notarial deeds cannot be categorized as authentic deeds in the current positive legal system. Legal uncertainty regarding the validity of digital deeds arises because there are no explicit regulations in the Notary Law (UUJN) regarding deeds prepared in digital form. Although Article 5 paragraph (4) of the Electronic Information and Transactions Law (UU ITE) allows electronic documents to be accepted as legal evidence, this does not necessarily include notarial deeds, which are official documents with higher evidentiary power. Notarial deeds prepared electronically, without a clear legal basis in the UUJN, cause uncertainty both for the notary who prepared them and for parties who depend on the validity of the deed.

2. Conflicts Between Legislations

The digitalization of notaries, although supported by Article 5 paragraph (4) of the ITE Law which recognizes electronic documents as legal evidence, faces potential conflict with the Notary Law (UUJN) which does not clearly regulate electronic deeds. This creates a legal gap between two different regulations, where positive law theoretically provides room for the acceptance of electronic documents in legal practice, but at the same time, there are no clear provisions in the UUJN regarding the procedures for creating valid digital deeds. This inconsistency can lead to confusion regarding the use of norms that must be followed, creating uncertainty in the process of applying the law, both in notarial practice and in judicial procedures. In this case, the court may face a dilemma about whether to prioritize the ITE Law or the UUJN, ultimately exacerbating existing legal inconsistencies.

3. Potential Weakness of Proof of Power

Notarial deeds play a crucial role in court proceedings due to their status as authentic evidence. However, if the deed is created digitally without following the procedures stipulated in the UUJN, such as reading the deed in the presence of the parties and physically signing it, its validity can be questioned. Deeds that do not meet these formal requirements can be considered underhand deeds, which do not have the same evidentiary force as authentic deeds. In this context, although digital documents are admissible as evidence under the ITE Law, in court, such digital deeds may face challenges regarding their validity. This can reduce the effectiveness of digital notarial deeds in the legal system, as disputing parties may

question their authenticity, especially when the document is not recognized as an authentic deed valid in the eyes of the law.

4. Risk of Violation of Notary Ethics and Discipline

Notaries, as public officials regulated by the UUJN (National Civil Service Law), are obligated to adhere to specific procedures for creating valid deeds. Without a clear legal basis for digital deeds, notaries who decide to create electronic deeds risk being deemed to have violated their ethical and professional standards. For example, if a notary prepares an electronic deed without proper procedures or exceeds their authority, they could be subject to disciplinary sanctions, ranging from a warning to revocation of their position. This creates uncertainty for notaries who want to adapt to technological advances but are hampered by the regulatory gap. Furthermore, this risk of ethical violations can also damage the notary's reputation in the public eye and undermine public trust in the validity of legal actions performed by notaries electronically.

5. Disruption of the Principles of Legal Certainty and Legal Protection

The principle of legal certainty is a key pillar of the Indonesian legal system, particularly in civil transactions. The uncertainty surrounding the validity of electronic deeds, particularly notarial deeds, obscures legal protection for parties relying on these documents in agreements or legal disputes. Without clear provisions governing electronic deeds, the public risks not receiving adequate protection.

6. Urgent Need for Regulatory Updates

Along with the development of information technology, the UUJN (National Notarial Law) needs to be immediately revised or updated to accommodate the need for valid electronic notarial deeds. This update is crucial to establish clear regulations regarding the procedures for creating and validating digital notarial deeds, as well as to establish technical standards related to digital signatures, authentication, electronic document storage, and oversight procedures by notarial professional organizations. Without appropriate regulations, notaries will struggle to adopt new technologies in their practice. Legal updates that support the digitalization of notarial services are essential to ensure the Indonesian legal system remains relevant and meets the needs of a society that is increasingly relying on digital technology for legal transactions. Furthermore, these updates will also increase transparency and efficiency in notarial practices and minimize the potential for misuse or manipulation of legal documents.

The principle of a state based on the rule of law guarantees certainty, order, and legal protection, based on truth and justice. To protect human interests, the law must be enforced. However, this implementation must proceed normally, orderly, and effectively. If a violation of the law occurs, enforcement efforts must be taken by the authorized apparatus.¹⁰ The role of a notary is strictly preventive, monitoring legal issues that arise in the community. Therefore, by creating authentic deeds that provide legal certainty, they hope to provide the best legal services to the community. This will also encourage the community to return for other legal certainty needs.¹¹

Ismail Saleh stated that there are four main things that notaries must pay attention to when carrying out their professional duties, namely:

1. In carrying out his professional duties, a notary must have strong moral integrity.
2. A notary must be honest
3. A notary must be aware of the limits of his authority.
4. Even though a person's skills can be used as a straightforward way to earn money, in carrying out his professional duties he should not be driven solely by monetary considerations.¹²

Legal certainty is a very important aspect in the creation of authentic deeds by a notary. This is because it will be a problem for the parties if losses are experienced due to the lack of legal protection for the parties. Notaries can even be caught in a legal case due to the lack of clear legal regulations related to their deeds made electronically. Notaries require legal certainty in making their deeds electronically, meaning that notaries need a standard to be used as a guideline in making their deeds electronically. This standard is called a rule made by the party with the authority to do so, because in legal certainty, there are clear norms that can be used as guidelines for notaries who are subject to these regulations.¹³

In carrying out their duties, notaries must act as legal guides and provide useful guidance to those who have an interest in them. Notaries are not subject to any provisions from the authorities regarding civil servants, however, in carrying out

¹⁰Tiara Sanitra, Pertanggungjawaban Notaris dan Akibat Hukum Pengesahan Pendirian Perseroan Terbatas Melalui Sistem Administrasi Badan Hukum, *Jurnal Lex Renaissance*, No. 1 Vol. 4 January 2019, p.146

¹¹Anak Agung Istri Intan Argyanti Nariswari & Putu Tuni Cakabawa Landra, Peran Notaris Dalam P Perolehan Pengakuan Badan Hukum Perseroan Terbatas Melalui Sistem Administrasi Badan Hukum (SABH), *Jurnal Hukum Kenotariatan*, Vol. 5 No. 3 December 2020, p.604

¹²Sri Yuniati & Sri Endah Wahyuningsih, Mekanisme Pemberian Sanksi Terhadap Notaris yang Melakukan Pelanggaran Kode Etik Jabatan Notaris, *Jurnal Akta*, Vol. 4 No. 4 December 2017, p. 588

¹³*Ibid.*, p. 249

their duties, notaries must always be guided by a high level of moral integrity and honesty, because deeds made by notaries are state documents that must be maintained and are very important in the application of evidence law, namely as authentic evidence concerning the interests of justice seekers. A notary is usually considered an official where someone can get reliable advice. Everything written and determined is true. Notaries are strong document makers in a legal process.¹⁴

3.2. Obstacles and Solutions in the Notary Digitalization Process Related to the Validity of Notarial Deeds

A notary is a legal professional who has the authority and important task of validating and recording agreements and other legal documents so that they have valid and binding legal force.¹⁵ The Notary himself must provide the best service to the parties or the public, however the Notary can refuse to provide services to the parties or the public for certain reasons. This is regulated in Article 16 paragraph (1) letter e of Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notary. The reasons referred to in this article are reasons that cause the Notary to take sides, such as a blood relationship or marriage with the Notary himself or with his/her husband/wife, one of the parties does not have the ability to do something, or other things that are not permitted by law. With such a legal relationship, it is necessary to determine the status of the legal relationship which is the beginning of the Notary's liability.¹⁶

The goal of notarial digitization is to facilitate public access to legal services, improve bureaucratic efficiency, and support government policies in digital-based administrative systems. However, within the context of Indonesian positive law, notarial digitization has not been fully accommodated by legislation, particularly the Notary Law (UUJN). Currently, the UUJN still requires that authentic deeds be physically prepared, read aloud, and signed before a notary.

Consequently, despite the support of provisions in the Electronic Information and Transactions Law (UU ITE), the implementation of electronic deeds by notaries still raises questions regarding their legal validity and evidentiary weight. Based on the description above, the implementation process of digital notary services faces a number of obstacles, including:

1. Absence of Explicit Legal Regulations

¹⁴Tan Thong Kie, (2001), *Serba Serbi Praktek Notaris*, Jakarta : Ichtiar Baru, p.30

¹⁵Soebekti & Gunawan, (2012), *Kamus Istilah Hukum: Notariat dan Peradilan*, Jakarta : Prenada Media, p.80

¹⁶Martpena Pohan, (1985), *Tanggung Gugat Advocat, Dokter dan Notaris*, Surabaya : Bina Ilmu, p. 11

The digitalization of notarial deeds has not been explicitly accommodated in the Notary Law (UUJN). The lack of a legal basis for electronic deeds raises doubts about the validity of digital notarial deeds, both in terms of evidentiary power and formal validity.

A feasible solution is for the government and the House of Representatives (DPR) to comprehensively revise the UUJN to include provisions on electronic deeds. This revision must regulate the definition of an electronic deed, the procedures for its creation, the online presence of parties, electronic signatures, and data security standards to ensure that electronic deeds continue to qualify as authentic deeds.

2. Weak Technology Infrastructure in Notary Offices

Most notary offices, particularly in the regions, lack adequate information technology infrastructure to support digitalization processes, such as data security software and digital document management systems. Possible solutions include support from the government and notary associations in the form of training, subsidies for digital equipment procurement, and the provision of a national standard platform for electronic notarial services. Furthermore, information security certification should be implemented for notary offices to maintain the integrity of electronic documents.

3. Low Digital Literacy Among Notaries

Not all notaries possess adequate skills in using information technology, hampering the full adoption of digitalization in notarial services. Possible solutions include educational programs, technical training, and digital literacy workshops for notaries, which are crucial. Professional organizations such as the Indonesian Notaries Association (INI) need to actively conduct outreach and training on the use of technology in the creation and management of electronic notarial deeds.

4. Lack of a Standardized Data Security System

In the digitalization of notaries, the risk of personal data and legal document leaks is very high. Unfortunately, there are no national standards governing electronic notary data security systems. A possible solution is to issue technical regulations regarding digital notary deed data security standards, such as the use of data encryption, regular backups, firewalls, and dual authentication in the management of notary information systems. These standards must be mandatory and regularly monitored by legal authorities.

5. The Unclear Status of Electronic Signatures in Authentic Deeds

Although certified electronic signatures are recognized under the ITE Law, there is no certainty whether a notary's digital signature can replace a handwritten signature in an authentic deed, as required by the UUJN. A possible solution is to harmonize the ITE Law and the UUJN by adopting certified electronic signatures as a valid means of authentication for digital notarial deeds. This adjustment must

establish the technical requirements for electronic signatures to maintain the validity of the deed.

There are two types of electronic signatures which can be classified based on type:

- a. A regular electronic signature is equivalent to the definition of an electronic signature, which is a signature intended for the signatory and made via electronic media;
- b. Secure or Reliable electronic signature, an electronic signature which can be equated with conventional signature if it meets certain requirements.

The first step in creating an electronic signature is to register through an Electronic Certification Provider (PSrE) service certified by the Ministry of Communication and Informatics (Kominfo). Once the Electronic Certificate is obtained, the owner can immediately sign electronic documents wherever they wish.¹⁷

6. Concerns over the Validity of Remote Notarization

Current notarial practice requires the reading and signing of deeds to be conducted in the presence of a notary. Remote notarization via video conference still raises doubts regarding the formal validity of the meetings between the parties. A possible solution is to establish detailed regulations regarding remote notarization procedures, including requirements for real-time identity verification of the parties, video recordings as evidence of the meeting, and methods for securing online communications. Thus, the principle of presence before a notary remains substantially fulfilled even when conducted digitally.

These obstacles are not only technical but also have implications for protecting the rights of those who use notary services. Therefore, a more in-depth analysis is needed on how the law can provide both preventative and repressive protection against potential losses arising from uncertainty regarding the validity of digital deeds.

4. Conclusion

The digitalization of notaries faces legal challenges because electronic deeds are not explicitly regulated in the Notary Law, and therefore are not considered authentic deeds with full evidentiary force. This creates legal uncertainty and the risk of doubting the validity of digital deeds. Regulatory revisions are needed to provide legal validity and evidentiary force equivalent to conventional deeds. Obstacles to digitalization include legal vacuums, procedural uncertainty, data security, limited notary technological capacity, and the absence of digital operational standards. The solution is regulatory updates, strict operational

¹⁷Jenny Divia Fitcanisa & Busyra Azheri, (2023), Keabsahan Tanda Tangan Elektronik Pada Akta Notaris, *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan*, Volume 2, Nomor 5, p. 1453

standards, improved system security, digital literacy for notaries, and system integration with relevant institutions to ensure the validity of deeds and maximum legal protection.

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