



Legal Certainty for Notaries in the Making of Electronic Deeds in the Digital Era

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Abstract

Law 2 of 2014, which regulates the position of notary, and Law 1 of 2024, which amends Law 11 of 2008, which governs electronic information and transactions, have different standards for the regulation of authentic deeds. This suggests that the incorporation of new IT developments into the electronic creation of genuine deeds is still in its infancy, as notaries face ongoing challenges in complying with the legal requirements for the authenticity of electronic deeds. The cultural norms of a society might also be an obstacle for notaries when trying to use electronic notarial deeds. The goal of this study is to examine the challenges of implementing electronic deeds and to talk about the legal foundation for notaries to do so. A combination of statutory and conceptual methods characterizes this work as normative legal research.

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Introduction

The advancement of information and communication technology has facilitated and accelerated the process of communication and access to information. One of the many benefits of advancements in telecommunications is the elimination of geographical and temporal barriers to human connection ^[1]. Being able to adjust to new circumstances is a necessary skill for a notary public, who serves the public in this capacity. Virtual deed execution by video conferencing is one example of how advancements in information technology have affected notaries' work practices, which mirrors the evolution of the notarial profession in the age of Society 5.0. The use of digital technology offers notaries substantial advantages, as the process of drafting deeds becomes faster, more practical, and more efficient, according to Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (the EIT Law) ^[2].

An ever-expanding range of services and more advanced IT solutions that can integrate any kind of media have been direct outcomes of the transformations ushered in by advances in information and communication technology (ICT). Public networks naturally offer advantages over private networks in terms of cost and time efficiency. This has made electronic commerce (e-commerce) a preferred option for business actors to facilitate their trade transactions, as business transaction networks are easily accessible to individuals and companies through electronic systems. An electronic system is a system used to describe the existence of an information system based on networked information and electronic media, functioning to design, process, analyze, display, transmit, or distribute electronic information.

Electronic transactions are characterized as non-face-to-face (without physical presence), non-sign (without the use of an original signature), and cross-border (allowing parties to conduct transactions even when they are in different countries) through the use of information technology ^[3]. A notary is a legal officer or professional who, in performing their duties, is sworn to act in accordance with the prevailing laws. Therefore, a notary is essential to ensure the legality of legal acts and to prevent any acts that may be contrary to the law ^[4]. The notarial profession represents an intersection between theory and practice, which may align or at times diverge — meaning that theoretical principles do not always support practical application. Therefore, the notarial field must be developed not only by adopting and applying existing legal theories but also by encouraging notaries to formulate and develop their own legal theories based on their knowledge, professional duties, and practical experiences gained in the exercise of their office ^[5].

¹ Zainatun Rossalina. "Keabsahan Akta Notaris Yang Menggunakan *Cyber Notary* Sebagai Akta Otentik". Jurnal Mahasiswa Fakultas Hukum Universitas Brawijaya, Malang, 2016, h. 2.

² Denny Fernaldi Chastra, "Kepastian Hukum *Cyber Notary* Dalam Kaidah Pembuatan Akta Autentik Oleh Notaris Berdasarkan Undang-Undang Jabatan Notaris", Notary Indonesia, Vol.3, No.2, 2021, h. 251.

³ Mariam Darus Badruzaman, "E-Commerce Tinjauan dari Hukum Kontrak Indonesia", Jakarta, 2016, h. 20.

⁴ Rudyanti Dorotea Tobing, "Aspek Hukum Bisnis, Pengertian, Asas, Teori dan Praktek", Laksbang Justitia, Yogyakarta, 2012, h. 216.

⁵ Ibid, h. 6.

Upon examining Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Position of Notary (hereinafter referred to as the Notary Office Law or *UUJN*), It is clear that notaries play an essential role in Indonesian society by guaranteeing the legitimacy of financial transactions. Furthermore, notaries are also considered reliable neutral parties. Electronic execution of notarial deeds is not specifically governed by Law Number 30 of 2004, which deals with the Position of Notary. Likewise, while looking at the EIT Law, which is Law Number 1 of 2024 on the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions, this law clearly limits the power of notaries to electronically generate deeds. The EIT Law makes this clear in its provision of Article 5 paragraph (4), which states:

“Electronic information or electronic documents as referred to in paragraph (1) shall not apply to letters or documents that, under the law, must be made in written form, as well as letters and their accompanying documents that, by law, are required to be made in the form of a notarial deed or a deed drawn up by an authorized public official”.

According to the *UUJN* and the Electronic Information and Transactions Law (EIT Law), which regulate genuine deeds, it is still difficult to apply IT advancements to the electronic fabrication of authentic deeds. This is because notarial officers still face challenges when trying to use electronic means to draft deeds owing to the current legislative rules controlling the validity of original deeds. Edmon Makarim contends that the Notary Office Law does not expressly prohibit the fabrication of electronic copies with respect to the *UUJN*'s electronic execution of deeds. On the other hand, complications might emerge as a result of the need to read the deed out loud in accordance with legal requirements and the need to time stamp, which specifies the exact date and/or time when an event took place. As a result, before doing business electronically with a notary, the parties involved must agree on a common time reference. Since notaries are required to physically be present when signing a deed, the Notary Office Law (*UUJN*) does not elaborate on how electronic signatures can be validated or authorized in relation to the notary's role and responsibilities.

Problem Formulation

1. What is the legal basis for a Notary to execute an authentic deed electronically?
2. What are the obstacles faced by Notaries in executing authentic deeds electronically?

Purpose

The purpose of this article is to analyze the legal basis for notaries in executing authentic deeds electronically and to examine the obstacles faced by notaries in the implementation of electronic authentic deeds.

Discussion

A. The Legal Basis for a Notary to Execute an Authentic Deed Electronically

The term *akta* originates from the Dutch word *akte*. A deed (*akta*) is a written document created to serve as written evidence of an event and is to be signed by the relevant parties

^[6]. In understanding the meaning of a deed (*akta*), there are two prevailing views. The first interprets a deed as a document, while the second views it as a legal act. Several legal scholars support the first view — one of them, PITLO, defines a deed as “a signed document created to serve as evidence and intended for the interested parties in accordance with the purpose of its creation.” Similarly, Sudikno Mertokusumo defines a deed as a signed document that contains an event forming the basis for the emergence of a right or declaration, which from the outset was made for that specific purpose. At the same time, ALGRA stresses that the term “akte” may be used broadly to include either an act or a written record that is produced to serve as proof of a legal act. “Akte” (document) in Dutch is equivalent to “akta,” “akte,” or “surat” in Indonesian.

A notarial deed is considered legitimate by the courts if it satisfies the requirements set forth by the relevant laws and regulations and is in accordance with its form, substance, and the authority of the official who performs it. Any deed that fails to meet these standards cannot be considered valid and will have less weight in court ^[7].

In line with technological advancements and the dynamics of modern society, notaries are required to play an active role in the creation of electronic deeds. Therefore, the government needs to encourage a revision of the Notary Office Law (*UUJN*) to align with contemporary needs and to expand the notary's role. On the other hand, notaries must also prepare themselves by enhancing their competence and understanding of reliable, secure, and user-friendly electronic data management, even though they may receive technical assistance from IT experts. The Notary Supervisory Council and Notary Organizations are likewise required to develop the capability to provide oversight through the establishment of an electronic-based supervisory system supported by information and communication governance standards as mandated by law. Accordingly, improving the quality of human resources among notaries and notary candidates—particularly in the field of information technology—is of paramount importance. Therefore, legal education and training on the execution of electronic deeds for notaries need to be conducted, which in practice may be implemented by the Notary Supervisory Councils (MPD, MPW, MPP) as well as the Indonesian Notary Association (*Ikatan Notaris Indonesia* or *INI*).

Notaries are public officials whose primary responsibility is to prepare genuine deeds documenting any and all agreements, actions, or conclusions that are either mandated by law or requested by the parties involved. Furthermore, a notary has the power to ensure the certainty of the deed's date and to retain it in custody, unless another official or party has been permitted or expected to do so ^[8].

The role of a notary is comparable to that of a Certification Authority when it comes to digital certificates, however a notary's authority is that of a public official, not a trusted third party. A notary is authorized to authenticate signatures, draw up authentic deeds, and provide legal certainty, while a Certification Authority is specifically responsible for issuing digital certificates and verifying identities in the digital realm. Nevertheless, a notary may also issue electronic certificates for parties who require them, meaning that a notary can

⁶ Oemar Moechtar, “Teknik Pembuatan Akta Badan Hukum dan Badan Usaha di Indonesia”, Airlangga University Press, 2017.

⁷ Sjaifurrachman and Habib Adjie, “Aspek Pertanggungjawaban Notaris Dalam Pembuatan Akta”, Mandar Maju, Bandung, 2001.

⁸ G.H.S Lumban Tobing, “Peraturan Jabatan Notaris”, Erlangga, Jakarta, 2001, h. 31.

provide electronic certification with guaranteed legal certainty for the parties involved. However, this provision conflicts with Article 16 paragraph (1) letter m of Law Number 2 of 2014, which stipulates that the reading and signing of a deed must be carried out in the presence of the appearers and witnesses. This rule ultimately restricts the notary's ability to work more efficiently, even though notaries should be able to utilize technology to support their duties and improve the quality of public services.

According to Article 1867 of the Indonesian Civil Code (*KUH Perdata*), whether public or private, may serve as written evidence. We might therefore divide deeds into two categories, genuine and private, according to their use as proof. According to Article 1874 of the Civil Code, a private deed is a document that is signed by the parties involved without the participation of a public authority. This encompasses a wide variety of written documents, such as letters, registrations, and house papers. A private deed, even when made with the aim to serve as proof of a lawful act, lacks real evidentiary power due to the absence of a signature by an authorized public authority. Therefore, it is only relevant to the people who made it as proof. According to Article 1338 of the Civil Code, if an agreement is officially concluded, it shall be considered a law for all parties concerned. Given the aforementioned definition of the notary's duty and authority, electronic execution of deeds does not have a solid legal foundation and cannot provide legal certainty. Legal certainty exists when applicable legislation and regulations are consistent with one another. The incongruity between the UUJN and the EIT Law hinders the full implementation of Law Number 40 of 2007, which deals with Limited Liability Companies (UUPT) and allows notaries to electronically execute deeds. Regulatory inconsistency arises from the fact that notarial deeds are specifically excluded from the category of electronic information or documents in Article 5 paragraph (4) of the EIT Law, despite the fact that Article 16 paragraph (1) letter m of the UUJN mandates that a notary must read the deed in front of the appearers with the presence of two witnesses.

The harmonization of laws and regulations governing the authority of notaries in the execution of electronic deeds—specifically between the Notary Office Law (*UUJN*) and the Electronic Information and Transactions Law (*EIT Law*)—is necessary to achieve legal certainty and ensure the usefulness of law for society. With such alignment, notaries will no longer face legal issues concerning their authority to execute deeds electronically. On the other hand, the public will gain assurance of legal certainty in legal acts conducted electronically, which can only be realized if the notary's authority in the creation of electronic deeds is clearly regulated by law. Once all legal issues related to such authority are resolved, the public will no longer harbor doubts regarding the validity of various electronic transactions carried out under the supervision of notaries.

B. The Obstacles Faced by Notaries in Executing Authentic Deeds Electronically

The obstacle faced by notaries in executing authentic deeds electronically lies in the fact that the existing laws have not

yet explicitly regulated the procedure for the creation of authentic deeds in electronic form^[9]. This causes the validity of authentic deeds executed electronically to be subject to question. As public officials, notaries are expected to act in accordance with the prevailing laws, which must be supported by clear and comprehensive regulations.

Within the field of notarial practice, the phrase "Cyber Notary" is widely recognized and used. The name "Cyber Notary" was first supported by legal scholars who adhered to the common law system, particularly by the American Bar Association Information Security Committee. The term "certification authority" (CA) or "certification service provider" (CSP) is used to describe an organization that functions in a manner that is analogous to that of a notary public when it is implemented in the setting of the internet^[10]. According to Theodore Sedwick, the manager of the Cyber Notary Project at the U.S.

Council for International Business, the term *Cyber Notary* describes a combination of the traditional functions of a notary with their application in electronic transactions. A *Cyber Notary* functions as a security system that ensures the safety of electronic transaction traffic conducted over the internet^[11]. Article 15 paragraph (3) stipulates that a notary also possesses other authorities as regulated by other laws. This phrase is often interpreted as a reference to the concept of the *Cyber Notary*. Thus, the provision of Article 15 paragraph (3) of the Notary Office Law (*UUJN*) serves as the legal basis for the existence of the *Cyber Notary*. However, a normative conflict arises between Article 15 paragraph (3), which forms the legal foundation for the *Cyber Notary*, and Article 16 paragraph (1) letter m and paragraph (7) of the Notary Office Law as amended (*UUJNP*). These provisions stipulate that the reading of a deed by the notary before the parties and witnesses is a mandatory requirement aimed at ensuring that the contents of the deed reflect the true intentions of the parties concerned. After the deed has been read, the appearers, witnesses, and the notary are required to sign it immediately, and this fact must be stated in the closing section of the deed. If the notary does not read the deed because the parties choose to read it themselves, a statement to that effect must also be included at the end of the deed. Therefore, whether the deed is read by the notary or by the parties themselves, such a statement must be expressly recorded in the deed. Failure to comply with these formal requirements may render the deed formally defective in terms of its form. The implementation of the *Cyber Notary* concept indeed offers various advantages; however, on the other hand, it also has the potential to give rise to several issues, introducing a new dimension known as the virtual world (*cyberspace*)^[12].

In addition, Article 1868 of the Indonesian Civil Code (*KUH Perdata*) provides that a notarial deed may be regarded as an authentic deed if it fulfills the following requirements, among others:

1. The deed must be drawn up in the form and manner prescribed by law;
2. The deed must be made by and/or executed before a public official;
3. The public official must have the authority to execute the

⁹ I.M.D. Sanjaya, I.A.P. Widiati, & N. K. S. Asfity, "Tanggung Jawab Notaris terhadap Pembuatan Akta Otentik yang Didasari Surat Palsu", *Jurnal Konstruksi Hukum*, Vol.1, No.2, 2020, h. 300-304.

¹⁰ Andi Nur Annisa Meilany, "Cyber Notary: Protokol Notaris yang Disimpan dalam Bentuk Elektronik", *Pena Persada*, Banyumas, 2020.

¹¹ Ahmad B. Setiawan, "Infrastruktur Kunci Publik dalam Penyelenggaraan Sertifikat Elektronik", CV. Mitra Cendekia Media, Padang, 2022.

¹² J. Sitompul, "Cyberspace, Cybercrime, Cyberlaw", Tatanusa, Jakarta, 2012.

deed.

If a notary violates the provisions of Article 1868 of the Indonesian Civil Code (*KUH Perdata*), the notary may be subject to civil sanctions, which can affect the evidentiary strength of the notarial deed concerned. The application of the *Cyber Notary* concept in authentic deeds has never been, or has rarely been, used as evidence in court proceedings. This is due to the absence of a specific legal basis regulating the implementation of *Cyber Notary* in authentic deeds as admissible evidence in court^[13].

Considering the circumstances faced by notaries when attempting to execute notarial deeds electronically, several obstacles can be identified. These obstacles encompass regulatory, technical, and legal-cultural aspects. Regulatory and legal obstacles arise due to inconsistencies and overlaps between the Notary Office Law (*UUJN*), the Electronic Information and Transactions Law (*EIT Law*), and other related regulations concerning the notary's authority to create electronic deeds. The existing legal framework has not yet explicitly or progressively accommodated the execution of electronic deeds, thereby creating legal uncertainty regarding their authenticity status in court.

Requirement of Physical Presence: The *UUJN* requires that the reading and signing of a deed be conducted in the presence of the notary, which is literally interpreted as the physical presence of the parties. If this requirement is not met, the deed may be downgraded to a private deed (*akte di bawah tangan*).

Technical and Operational Obstacles: These relate to issues of data privacy, confidentiality, and information security in electronic transactions, which present significant challenges. The execution of electronic deeds requires robust security systems, valid digital signatures, and adequate encryption to ensure data integrity and authenticity.

Cultural and Trust-Related Obstacles: Indonesian legal culture tends to place greater trust in conventional methods, where face-to-face meetings with a notary are perceived to provide stronger assurances of security and authenticity than technological alternatives. Consequently, notaries often express concern over potential legal liabilities in cases where errors or violations occur during the electronic deed-making process—particularly when such issues arise from the parties involved or from the technological systems used.

Conclusion

From the foregoing discussion, the following conclusions can be drawn:

1. The execution of authentic deeds electronically by Notaries is essentially a response to technological advancements and the demands of modern society; however, it still lacks a strong and explicit legal foundation. Although the Limited Liability Company Law (*UUPT*) has opened the possibility for the implementation of electronic deeds, its application remains constrained by the lack of synchronization between the Notary Office Law (*UUJN*) and the Electronic Information and Transactions Law (*UU ITE*).

The provision of Article 16 paragraph (1) letter m of the *UUJNP*, which requires that deeds be read and signed directly before the appearers and witnesses, constitutes the primary obstacle to the implementation of the *Cyber Notary* concept.

2. The obstacles faced by notaries in executing authentic deeds electronically include inconsistencies within existing legislation that have not yet fully accommodated such practices, the absence of clear implementing regulations regarding “electronic deeds” and digital signatures, as well as technical and security challenges related to verifying the identities of the parties involved. As a result, electronic deeds currently do not possess the same legal force as conventional deeds. In addition, societal attitudes that continue to place greater trust in conventional methods also serve as a hindering factor.

Suggestion

The development of information technology is inevitable, and notaries must adapt themselves to these technological advancements. To ensure that notarial deeds provide legal certainty, it is necessary to harmonize the existing laws and regulations—particularly between the Notary Law (*UUJN*), the Electronic Information and Transactions Law (*UU ITE*), and the Company Law (*UUPT*)—so that notaries have a clear legal basis for creating electronic deeds. With clear regulations in place, notaries are expected to adapt to technological developments by enhancing their digital competencies, while the public gains legal certainty and protection regarding electronically executed deeds. Such legal harmonization will serve as an essential step toward establishing a modern, efficient notarial service system that upholds the principle of legal certainty.

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¹³ A. A. A. Zein, “Penerapan Cyber Notaris Dalam Pembuatan Akta Autentik Menurut Undang-Undang Jabatan Notaris”, *Jurnal Akta Notaris*, Vol.1, No.1, 2022, h. 1-11.

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