

# The Urgency of Legal Preparation for Notaries Under the New Normal in Indonesia's Deed Registration

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**Abstract.** Entering the new era of an order or new normal is a challenge for notaries. Apart from the need for adaptation, regulatory support from the government is also urgently needed. In the Covid-19 pandemic, Notary work uses a lot of technologies. Therefore, law protections are needed and if there is no clear regulation, notaries could be caught in legal cases. However, as general officials, notaries should be protected by the law. The Importance of the revision of law number 2 of 2014 regarding the amendments to law number 30 of 2004 concerning the position of public notaries with points in affirming the notaries position as general officials, and well-registered deeds by being physically and electronically able to make authentic deeds electronically. There are formal constraints that limit notaries' actions online, related to the validity of Notary deeds in the concept of e-notary/cyber notary, notaries' authority through the cyber notary, and the relations with public health urgencies.

**Keywords:** Urgency, Notary, Electronic Deeds, Cyber Notary

## 1 Introduction

Entering the new era of an order or new normal is a challenge for notaries. Apart from the need for adaptation, regulatory support from the government is also urgently needed. In the Covid-19 pandemic, Notary work uses a lot of technologies. Therefore, law protections are needed and if there is no clear regulation, notaries could be caught in legal cases. One of the significant adjustments in the Notary service practice is the acknowledgment of online document management, as regulated in article 5 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions, which states that electronic information's or electronic documents or printouts are valid legal evidence. Another adjustment that needs to be made in the new normal era is the activity that doesn't have to involve physical presence.

Technological advancement allows document management without any formal appearance/meeting with the Notary in the process. Therefore, even if there is a difference in distance or a real or virtual situation, the authenticity of a person can be guaranteed. Cyber notary application utilizes technological advancements for Notaries in performing their daily tasks. The Cyber notary is created to facilitate the interaction of two parties that have distance differentiation so that distance is not being an issue anymore. The Importance of the revision of law number 2 of 2014 regarding the amendments to law number 30 of 2004 concerning the position of public notaries with points in affirming the notaries position as general officials,

and well-registered deeds by being physically and electronically able to make authentic deeds electronically.

Not only that, Notaries are a part of the government's administration. There are formal constraints that limit notaries' actions online, related to the validity of Notary deeds in the concept of e-notary/cyber notary, notaries' authority through the cyber notary, and the relations with public health urgencies. The Cyber notary is a concept that utilizes technology advancements for Notaries in performing their daily tasks, such as document digitalization, electronic deeds signing, General Meeting of Shareholders by teleconference, and other similar activities.

Some time ago, Notaries socialized about cyber notary, but it is still being just a concept until now even though the basic concept of cyber notary had been introduced in 1995. However, since no law regulates cyber notary, the concept of the cyber notary is still only being a concept, so it is still not connected to the 4.0 digital era. The formulation of problems that become problem limitations is 1. How is the urgency of legal preparation readiness for notaries under the new normal in online deeds registration? 2. How is the concept or implementation in other countries in electronic deeds? 3. How are the opportunities and constraints in implementing electronic deed registration in Indonesia under the new normal era in the Covid-19 pandemic?

## **2 Research Methods**

This type of research is a normative juridical which focuses directly on the current condition and the approach used in this research is based on the government's regulations. Data collection is obtained by reading, studied, and reviewed laws and regulations, literature as well as websites related to the problem under research.

## **3 Results and Discussion**

### **3.1 The urgency of legal preparation for Notaries in electronic deed registration in Indonesia**

The development of cyber notaries allows Notaries to fulfil their tasks and authorizations with the help of technology, such as registering deeds electronically. The concept of electronic deed is made to accelerate Notaries' tasks and authorizations in registering authentic deeds, regarding all regulations in the law and the requirements needed to state that the deed is an authentic deed. The cyber notary is a concept of Notary that generally carries out the function of a Notary by applying it to transactions or the other electronic relations through the internet as the main media in the process to make an electronic deed, and it leads to a form of deed that is valid whether on a paper or in a form of an electronic document.

Technically, "the physical presence/real existence" is not an impossible thing to be done electronically. Considering the current development of mobile communication (4G), everyone has the ability to do a video conference, and embed their signature in the SIM card chip or the connected headset, and get real-time data through the satellite or map provided in the mobile phone. The application of cyber notary is inevitable, and it has to be realized to face global competition. This role shift for Notaries regarding their tasks and authorizations towards the cyber notary era is not an easy thing to be executed. Notaries must be ready to face the

electronic era, where the concept of the cyber notary or some call it “Notary by digital”, will penetrate to Indonesia.

### **3.2 The concept or application of electronic deed in several countries**

Currently, in France, an electronic deed can be registered and signed through electronic media, with the regulation of internal and public provisions regarding the establishment and preservation of the deed being fulfilled, and a qualified electronic signature is required. In this situation, the quality of traditional deeds can be maintained (legal date, power of proof, and enforcement). In the US, electronic notary (e-notarization) covers all the elements and provides the same functions as the physical notary papers but the deeds are kept in a form of digital documents and the Notaries use E-Signatures. Depending on the state, Notary’s seal can be placed in an electronic note as a graphic image, or information of the seal added in the note. But other traditional elements, notary papers, and the requirement to be physically present with the Notary are the same.

In Japan, besides the authority to register a deed in the form of *relaas* and *apartij* like how Indonesian Notaries do, with the same methods and procedures as regulated for Indonesian Notaries, Japanese *kooshoonin* also has the authority to register a deed digitally. This electronic deed is made with the electronic notary system and the data are being kept and managed by the Japan National Notary Association (JNNA), an official Notary organization like Indonesian *Ikatan Notaris Indonesia* (INI).

### **3.3 The opportunities and constraints in the implementation of electronic deed registering in Indonesia**

The government has provided new regulations regarding information and electronic transactions so that electronic services can be realized because of legal protections. The era of the cyber notary is inevitable, and electronic deed is becoming a legal issue, but the concept of a cyber notary is not as easy as turning our palms, there are still a lot of issues such as authentication issues. According to Article 15 paragraph (1) UUJN that states “A Notary shall be authorized to draw up an authentic deed on all actions, agreements and decisions required by the laws and legislation, certify the legal date of the deed registration, save the deed, provide Grosse, copies, excerpt of the deed, as long as the process of the deed registration is not being assigned or excluded to other officials or other persons stipulated in the constitution.”. According to Emma Nurita, based on the article above associated with the concept of the cyber notary, it looks like there is no opportunity to create an electronic deed that has the same status as an authentic deed.

The concept of cyber notary has not only brought changes to the UUJN but also to the Civil Code, especially article 1867 up to article 1870. The development of the science of law against changes to the article above will create diversity in the history of electronic deed registration because the Civil Code that we currently know hasn’t been changed since the Dutch colonial until this day, and these changes show that Indonesian civil has the ability to be independent and cooperate to make some changes in the Indonesian legal order. There is an opportunity from the existence of information technologies, through internet which creates the legal phenomenon in the form of electronic contracts between parties which created electronically, and electronic legal contract which is conducted with a computer or computer connection or the other electronic media. The progress and development of information technology will ultimately change the organizational and social order. Along with facing the problem of the government’s new regulations that sometimes, its implementation does not meet the needs of the community.

## 4 Conclusion

The conclusions that could be drawn are: firstly, the urgency of legal preparation in the new normal era under covid-19 based on article 1 number 7 law number 2 of 2014 concerning amendments to law number 30 of 2004 regarding the position of a Notary which states that the Notary deed is an authentic deed if the deed is made by or in front of a Notary according to the form and procedure stipulated in the Law on the Position of Notary Public. Meanwhile, in article 1 number 7 UUJN, the usage of the word facing, appearing, or presence in the UUJN is a juridical means of a real presence.

Second, several countries have successfully combined cyberspace with the Notary world like France that has successfully implemented electronic deed registration that allows Notaries to do their activities without papers. The US currently allows the Notaries to use audio-video technology as long as the requirements are being fulfilled and Notaries in Japan have the authority to register/make deeds digitally.

Third, the opportunity of electronic deed registration being implemented in Indonesia in the new normal era under the covid-19 pandemic according to article 15 section 1 UUJN, looks like there is no opportunity to create an electronic deed with the same position as the authentic deed. From the perspective of article 5 section 2 and Article 3 of the "ITE Law", it can be determined that these two articles provide the opportunity for electronic deed registration being realized, but some adjustments are needed in the regulations of Notary position so Notaries' authorization could be increased, not only to serve the public with the conventional practice but also serve the public electronically especially in electronic deed registration with authentic value because this is an urgent issue along with the development of technologies that grows and increases rapidly driven by the covid-19 pandemic.

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