

The Legal Validity Of Reading A Notary Deed In Front Of The Confronter Via Video Conference

Anggini Husnul Amirah¹

¹Master of Notarial Universitas Islam Malang,

Email : angginihusnul15@gmail.com

Abstract : Notaries are required to read the contents of the deed to ensure that the parties know all relevant information and clear its contents. Article 16 of the UUJN-Amended regulates how notaries should carry out their duties in making authentic deeds. Indonesia is currently in the era of information and communication technology (ICT) which introduces cyberspace (cyberspace, or virtual world) through the internet and allows communication through electronic media that does not require paper. Through this electronic medium, a person will enter a virtual world that is abstract, universal, and does not depend on location and time. Problem Formulation in research How to use electronic systems in making authentic deeds and How is the legal validity of reading deeds by notaries in front of the face through video conference. The research method used is normative juridical with an approach to concepts and laws and regulations. The results of research and discussion show that: First, there is still a lack of laws and regulations governing the use of electronic systems in making deeds, so that in making notarial electronic deeds unreliable, the use of cyber notaries is also not clear enough because the authentic deed itself still conflicts with the requirements of the mechanism in making deeds. Second, the legal validity of reading the deed before the confronter via video conference is considered invalid, because basically it does not have strong legal force and not all technological actions with video conference capabilities can be carried out. If the notary and the parties do not meet the conditions to face off under Article 40 of Law Number 2 of 2014 concerning the Notary Position when reading an authentic deed, then the status of the deed can change which was originally considered authentic and has the strongest evidentiary power to become a deed under hand.

Keywords: Reading, Deed, Video Conference.

1. Introduction

A. Background

Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position states that the Unitary State of the Republic of Indonesia as a state of law based on Pancasila and the Constitution of the Republic of Indonesia Year 1945 guarantees certainty, order and legal protection for every citizen. In society, the role of notaries is very important to equip the community with authentic deeds and meet its needs in addition to being responsible for oneself. Society needs someone in a respectable position who can meet their requirements to create an authentic deed to provide legal certainty, and inspire confidence in written evidence. In his capacity as a public official, the Notary makes an authentic deed to serve the community (at the request of the

community), and the deed is a state document, so the notary acts as a representative of the state in the end to promote general welfare.¹

Article 1868 of the Civil Code explains that "an authentic deed is a deed made in the form of an Act by or in the presence of an authorized officer for it at the place where it was made". The formation of authentic deeds carried out in a notary is not only based on the law, but is the will of the parties concerned so that there is a certainty of their rights and obligations. So that from this creates a form of legal certainty and legal protection for the parties concerned and other parties related to it. The truth contained in the deed is a formal truth known to the notary from the notification of the parties concerned.

The public gets **legal** protection from a notary in terms of legality of every action or transaction of the community. A notary must adhere to social and legal norms when making an authentic deed, which must be clearly understood by both parties and contain the wishes of the parties. Notaries are required to read the contents of the deed to ensure that the parties know all relevant information and clear its contents. So that the decision to agree or disagree with the contents of the authentic deed is determined by the parties who will later sign it. The prevailing regulations have stipulated the responsibilities and obligations of notaries in their implementation, Article 16 of the UUJN-Amendment regulates how notaries must carry out duties in making authentic deeds. The reading of the deed made by a notary is one form of notary obligation, namely reading the deed must be done before the face and has been attended by at least 2 witnesses.

In making a will, 4 witnesses are needed and signing is done right then and there by the facers, witnesses and notaries. The sanction received by a notary who does not read the deed he made is specified in Article 16 paragraph (9) of the UUJN- Amendments that cause a notary deed to no longer have legal force as an authentic deed and are only limited to deeds under hand. In the previous regulation, violations committed by notaries without reading the deed they made would make the deed have the power of proof as a deed under hand, it could even be canceled by law and based on being able to be used as a basis for the aggrieved party to ask for compensation to a notary, as referred to in article 84 of Law Number 30 of 2004 concerning Notary Position.

However, based on the new UUJN-Amended regulations state that the previous rules are no longer valid. The reading of the deed is part of proving or inaugurating the reading and signing of the deed concerned. which states that if the notary himself reads from the deed, then the notaries on one side have the assurance that they have signed what they heard before (the notary's reading), and the notary and the claimants have confidence that the deed actually contains the contents of the deed.²

Information technology has developed rapidly, changing human existence in many ways Vand these developments directly affect the birth of new legal acts, then how are the opportunities and challenges of notaries in the era of

¹ Rudy Haposan Siahaan. 2021 Notary. Education, Appointment, Supervision, Development, and Organization. Indonesia-Italy-Austria-Netherland. Medan, USUPress. Matter. 5

²G.H.S Lumbun Tobing. 1996. Notary Position Regulations. Jakarta. Erlangga. Matter. 201

globalization that requires notaries to be able to operate both manually and with technology-based information, this is inevitable information technology and electronic transactions which are the cornerstone of the current globalization era. It is currently sweeping across most of the world. Because advances in digital technology lead to integration or convergence in the development of information technology, media and telecommunications, technological advances and developments will eventually change organizational structures and social interactions. This series is realized in a form of technology that integrates the capabilities of information systems and communication systems based on computer systems, which are then connected in one information system network and hereinafter referred to as electronic systems.

Many countries have empowered the function and role of notaries in electronic transactions by taking into account the development of common law and civil law. Therefore, the Indonesian government must contribute in encouraging the use of notary services in electronic transactions, even to the provision of notary services electronically. As explained above, the use of information technology also has an impact on the emergence of various legal problems, considering the development of law in Indonesia which is still lagging behind due to the many legal regulations that do not keep pace with the rapid development of information technology.

Electronic transactions are carried out without physically meeting with the parties, as is the case when a notary is used to make a deed. This shows that because online transactions are more effective and efficient, which can be said to be very complex than traditional transactions. Naturally, regulations that can ensure legal certainty for elements of transactions carried out electronically that are currently part of daily life must compensate for the existence of this method of electronic transactions. Related to the problems mentioned above, hereby the author is interested in discussing and conducting further research as outlined in the form of a Thesis entitled "Legal Validity of Notary Deed Reading Before the Face Through Video Conference".

B. Problem Formulation

Based on the background description above, it can be formulated the error of this research, namely:

1. How to use electronic systems in making authentic deeds?
2. How is the legal validity of reading the deed by a notary in front of the face through video conference?

C. Research Methods

The method used by the author is normative legal research (legal research) is usually "only" a study of documents, namely using sources of legal materials in the form of laws and regulations, court decisions / decrees, contracts / agreements / contracts, legal theories, and opinions of scholars.³ The approach used by the author is a statutory approach (statute approach), this approach is carried out by

³ Muhaimin. 2020. Legal Research Methods. Mataram: Mataram University Press. Pg. 56.

reviewing all laws and regulations related to the legal issue being studied. The technique of collecting legal materials used in this study is to use secondary materials or literature studies on legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials. The technique of collecting Primary Legal Material is carried out by collecting material based on laws and regulations, using applicable rules, identifying laws and collecting laws and regulations in accordance with the issues discussed, Secondary legal materials by reading, recording, reviewing library materials, or searching through internet media related to the issues discussed, Tertiary legal materials are carried out and billed by reviewing and identifying Legal dictionaries and large dictionaries Indonesian.

Legal Material Analysis Techniques The legal materials that have been collected are analyzed using qualitative descriptive guidance, namely describing or explaining the provisions of existing laws and regulations and legal concepts that are linked to existing legal materials so that conclusions and suggestions can be drawn.

2. Discussion

B.

A. How to Use Electronic Systems in Making Authentic Deeds.

The development of electronic systems on the role and function of notaries in social life in terms of the authority of notaries as general officials who are authorized to make an authentic deed, seeing that the development of information technology that occurs in society is now changing where different sides of human life were originally social interactions that were used in real time to interact through virtual media. The current condition of transactional practice has undergone radical changes due to the development of Information and Communication Technology (ICT) technology is currently able to solve distance and time problems carried out when conducting conventional transactions. At first the parties involved had to do face-to-face witnessing, but now with the development of telegram, telephone, and internet technology the parties are able to interact and conduct transactions faster.

Cyber Notary is the use or utilization of electronic systems to perform their duties and authorities as a notary, one of the examples of this electronic system is a computer and the use of electronic system facilities such as video conferencing or teleconferencing. So, if a notary uses an electronic system in carrying out his duties, it is already referred to as cybernotary.

According to Gustav Radburch's view, legal certainty is one of the goals of law and it can be said that the effort to achieve justice. Legal certainty as a manifestation is to form the application or enforcement of law in an act regardless of who is doing it. With legal certainty, everyone can predict what will happen if they do the legal actions they do. Legal certainty is needed to realize the principle of equality before the law without discrimination. Based on the theory of legal certainty, the scope of notary authority over cyber notary which was initially unclear due to a legal vacuum (*rechstavacuum*) became clear, but only applies to certification from electronic witnesses.

Law Number 2 of 2014 concerning Notary Position article 15 paragraph (3) in the explanation of this meaning there is the term cyber notary. The preparation of minutes of the General Meeting of Shareholders (GMS) of Limited Liability Companies by notaries is an example of the use of electronic systems to carry out their duties and authorities, by recognizing electronic systems such as teleconference or video conference as one way of holding the General Meeting of Shareholders (GMS), Law Number 40 of 2007 concerning Limited Liability Companies (PT) has accommodated and accommodated the development of Information Technology.

In the use of cyber notary there is the term Electronic Signature also known as Digital Signature which is usually used as a physical signature to sign deeds. If we talk about cyber notary where authentic deeds use electronic systems and the signing uses electronic signatures, then the strength of authentic deeds signed digitally is not as strong as authentic deeds made conventionally.

Signing signatures in making deeds using an electronic system. Based on the explanation of Article 1 paragraph (12) of Law Number 11 of 2008 concerning Electronic Information and Witnesses, an electronic signature is a signature related to electronic data and documents that have been registered in an electronic system management system (third party), this also serves for authentication and verification. with the limitations of the ITE Law which does not allow electronic making if letters / documents are required to be made in written form and or in notarial deeds. This further strengthens the Notary Office Law Regulation which states that the face must be physically present in reading the deed to the notary and to sign the deed.

Law Number 11 of 2008 concerning Information and Technology indicates that electronic signatures are recognized as valid evidence, contained in Article 5 which states:

1. Electronic Information and/or Electronic Documents and/or printouts thereof are valid evidence
2. Electronic Information and/or Electronic Documents and/or printouts as referred to in paragraph (1) are extensions of valid evidence in accordance with the applicable Procedural Law in Indonesia
3. Electronic Information and/or Electronic Documents are declared valid if using Electronic Systems in accordance with the provisions stipulated in this Law.
4. The provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) do not apply to;
 - a. a letter which according to the Act must be made in writing; and
 - b. letter and document which according to the Law must be made in the form of a notarial deed or a deed made by the deed maker.

Authentic deeds are not included in electronic documents mentioned in the provisions of Law Number 11 of 2008 concerning Information and Witnesses Article 5 paragraph (4) then the deed does not have the same level of perfect proof as an authentic deed, electronic deeds are only considered as deeds under the hands that are equated with documents, letters, and electronic certificates.

therefore, even though Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Positions has been enacted, electronic deeds are not considered authentic deeds. Thus, it cannot always be adjusted to the demands and desires of the community in making notarial deeds electronically, which can result in a lack of legal certainty regarding the authority of notaries to make deeds electronically. Every power must have a legal basis in a country based on law (*rechstaat*) In order to fulfill its obligations and exercise its power, the notary must rely on the appropriate laws and regulations.

The urgency regarding Cyber Notary is one of them by remembering that notaries must adapt to changes and increasingly dynamic community development, including the entry of e-commerce into Indonesian territory which requires notary performance. Indonesia is one of the largest users of internet services in the world, there have been laws and regulations as a reference for the creation of special rules governing the regulation of Cyber Notary in providing services. However, the implementation of deeds made electronically by notaries tends to be considered inadequate to the requirements for the authenticity of an authentic deed considering the legal substance of the Notary Office Law and the Civil Code which regulates how to make authentic deeds and the need for the authenticity of deeds made by notaries. Based on this, the use of deeds made electronically by notaries is not in accordance with the function and purpose of making authentic deeds, namely to have moral characteristics, especially to provide legal certainty and have value as evidence.

The following is the procedure for making a conventional notarial deed:

1. There are two options if the applicant is facing a notary, namely:
 - a. The face came directly to the notary's office. This is usually if the face has no obstacles, the facer tends to come to the notary's office.
 - b. The parties determine the place to meet with the meaning that the meeting of the parties does not take place in the notary's office, but the notary usually goes to the place where it has been determined by the face. As the face is in prison so it is not possible for him to come out, another example when a notary is asked to make minutes of the GMS deed, the notary usually comes directly to the location of the GMS.
2. Deed making
The contents of the deed agreed with the face will be made by a notary using paper media. The creation of a deed can take more than a day to complete. Therefore the deed waits a few days after stating the intention of his arrival until the deed is completed. Notaries start making deeds after the draft has been agreed and accepted by the face.
3. Reading and Signing of the Deed.
After the deed is made, it is read by a notary and signed by the face, witnesses and notary.

As explained above about the procedure for facing to come and convey his desire to make a deed, the process of making a deed through cyber notary is almost the same as what has been done so far, it's just that there are two things that distinguish it, first in attendance and the actual signature face to face now

replaces physical presence with teleconferencing or video conferencing. and the second where the signature is done digitly.

B. How is the legal validity of reading the deed by a notary in front of the confronter via video conference.

Article 1868 of the Civil Code regarding public officials has not provided a comprehensive explanation but according to the provisions of Article 1 Paragraph (1) of Law Number 2 of 2014 concerning Notary Positions. Notary Public is the only public official authorized to make authentic deeds relating to all deeds of agreement and make the required stipulations in an authentic deed, guarantee the certainty of the date of making the deed, keep the minutes of the deed, provide grosse deeds, copies, and quotations of deeds. During the making of the deed is not legally assigned or excluded to other officials. One of the obligations that must be carried out as a notary is contained in article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions which states that "Reading the deed in front of the face in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for making a will deed under hand, and signed at a moment's notice by the face, witnesses, and Notary".

Related to the authority of notaries in this case to make authentic deeds in article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions states that "In addition to the authority referred to in paragraph (1) and paragraph (2), Notaries have other authorities regulated in laws and regulations". In this article, other authorities stipulated in this law are the authority to certify transactions carried out electronically (cyber notary), aircraft mortgages and make waqf pledges.

Before discussing the authority, the author will give an overview of cyber notary where according to R.A Emma Nurita cyber notary is a notary activity that performs the duties and authority of its position based on electronic systems, especially in making deeds. Cyber Notary is a technique for notaries that can facilitate their work, especially in carrying out their main responsibilities, one of which is related to the notary's responsibility to maintain the minuta of the deed he makes. Another purpose of cyber notary is to perform certification and authentication in the flow through electronic system witnesses. The certification itself assumes that the notary has the authority to function as a certification authority which means a trusted organization that guarantees the security of websites or applications downloaded on the internet as a result of which notaries can issue digital certificates to interested parties, legal requirements must be met when carrying out electronic witnesses, such as using authentication functions. Certification is the process of evaluating a professional, service or product for conformity, quality, or standards. In Law Number 11 of 2008 concerning Electronic Information and Witness in article 1 paragraph (9) provides the definition of Electronic Certificate is an electronic certificate containing an electronic signature and identity indicating the status of the legal subject of the parties in the electronic witness issued by the electronic certification operator.

There are 2 types of deed making, namely conventional deed making and modern deeds:

1. Conventional manufacturing is a deed that is usually made based on laws and regulations, namely Law of the Republic of Indonesia Number 2 of 2004 concerning Amendments to Law of the Republic of Indonesia Number 30 of 2014 concerning Notary Positions. One example of making a conventional deed is a lease deed, grant deed, sale and purchase deed and others.
2. Modern deed making is a deed that is usually made with the help of sophisticated technology but still meets all applicable legal requirements, for example making a modern deed, namely the deed of minutes of the General Meeting of Shareholders (GMS).

Cyber notary has been carried out by a notary, for example in the implementation of the General Meeting of Shareholders of Limited Liability Companies where the type of deed is a deed of relaas, in this case it is contained in Article 77 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies which states that "in addition to the holding of the GMS as referred to in article 26, the GMS can also be carried out through teleconference media, video conferencing or other electronic media means that allow all GMS participants to see and hear each other directly and participate in meetings". The validity of the deed of relaas is valid and is a valid legal evidence if the deed of minutes of the meeting is approved and signed by all participants of the general meeting of shareholders or GMS, which means that it is approved and signed physically and electronically. So that the validity in making relaas deeds uses the principle of *lex specialis*, namely laws that are special overriding laws that are general. Unlike the *partij* deed where the making of this deed does not get support to be carried out by means of cyber notary.

The form of the notarial deed as referred to in article 38 of Law Number 2 of 2014 concerning Notary Position will not affect the form of the deed read via video conference. The deed will be issued in the same form as the written deed (paper based) even though the reading and signing is done through an electronic video conference system. In other words, the only difference is how the deed is read and likely signed, but the resulting deed will remain in the form required by law.

Related to the validity in the mechanism of making deeds through cyber notary based on the theory of authority has 3 (three) things that must be important, namely:

1. The notarial deed referred to in Article 1 paragraph (7) of Law Number 2 of 2014 concerning Notary Position, namely a notarial deed hereinafter referred to as a deed is an authentic deed made by or before a notary according to the forms and procedures stipulated in this Law.
2. If the deed described in article 15 paragraph (3) of Law number 2 of 2014 concerning Notary Position is interpreted in other words as a letter under the hand (legalization) of the deed, then the deed in question is not an authentic deed. This is because to legalize a deed, the notary must certify the date and signatures of the parties or the parties. Therefore, even if the parties themselves make the letter under hand, the letter must be read and signed in

the presence of a notary or the parties. In front herein is intended to refer to the presence of physical presence which is actually not presence through an electronic system because to make an authentic deed the notary is obliged to ascertain the date and signatures of the parties or the parties to the face.

3. If the attestation has a purpose that is in line with the letter under the hand registered by the notary (warmekiing), then even though the attestation is carried out using a cyber notary it will not be a problem because the notary does not have a good responsibility for the certainty of the date, time, and the letter made by the parties and the form of the letter.

From the explanation above, the author draws a conclusion that the legal validity of reading the deed before the face is considered invalid, because basically it does not have strong legal force and not all technological actions with video conferencing capabilities can be carried out. If the notary and the parties do not meet the requirements of "confronting" when reading an authentic deed, then the status of the deed can change from being considered authentic and having the strongest evidentiary power to become a deed under hand.

In its application, despite the threat of witnesses for those who violate article 16 paragraph 1 letter m of Law Number 2 of 2014 concerning Notary Positions, some notaries still violate the regulations on the obligation to read deeds, notaries sometimes ask employees to read the deeds they made, or worse in this case agreed by the parties and witnesses because they often use excuses to save time.

1. Conclusion

- A. There is still a lack of laws and regulations governing the use of electronic systems in making deeds, so that in making notarial electronic deeds unreliable, the use of cyber notary is also not clear enough because the authentic deed itself still conflicts with the requirements of the mechanism in making deeds.
- B. The legal validity of reading the deed before the confronter via video conference is considered invalid, because basically it does not have strong legal force and not all technological actions with video conference capabilities can be carried out. If the notary and the parties do not meet the conditions to face under Article 40 of Law Number 2 of 2014 concerning Notary Position when reading an authentic deed, then the status of the deed can change which was originally considered authentic and has the strongest evidentiary power to become a deed under hand.

2. Advice

The Notary Position Law and the Electronic Information and Technology Law require changes, especially those related to the responsibility and authority of notaries, in order to provide legal certainty for notaries in making deeds electronically. The Indonesian government must firmly make laws that regulate the validity of readings that utilize technology, especially electronic media so that Notaries can carry out their duties in accordance with the provisions of laws and regulations and also so that Notaries can act without hesitation in making decisions,

especially when it comes to the idea of utilizing technology and electronic media in systems that provide services in the notary sector in Indonesia.

3. References

Books

- Rudy Haposan Siahaan. *Notary. Education, Appointment, Supervision, Coaching, and Organization*. Indonesia-Italy-Austria-Netherlands. Medan, USUPress. 2021.
- G.H.S Lumbun Tobing. *Notary Office Regulations*. Jakarta. Erlangga. 1996
- Edmon Makarim. *Notaries and Electronic Transactions*, Legal Studies on. 2013.
- Cybernotary or Electronic Notary*. Jakarta: Rajawali Perss.
- Muhaimin. *Legal Research Methods*. Mataram: Mataram University Press. 2020

Legislation

Code of Civil law.

Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position

Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Witness

Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies.