

Urgency of Cyber Notary Application In The Pandemic of Covid-19 For The Need of Authentic Deed

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ABSTRACT

This article aims to find out the urgency about the application of Cyber Notary in the recent times that are experiencing a covid-19 pandemic, this research uses a normative method with deductive logic that explains a general thing then draws it to a specific conclusion. That Cyber Notary should have been implemented in Indonesia where it has previously been provided with facilities in Article 6 of the ITE Law and Article 77 paragraphs (1) and (4) of the Company Law, but because the UUJN-P has not yet regulated and as a *lex specialis* notary position, the Cyber Notary not applicable yet. However, this must be considered again, considering that during the covid-19 era, which was expected to reduce activities outside the home, to reduce the risk of covid-19 virus and not reduce legal services to the community in the form of making authentic deeds. For the implementation of Cyber Notary requires the requirements in the form of changes to several articles in the legislation namely: (1) Article 1868 of the Civil Code, (2) Articles in UUJN-P, (3) Article 5 paragraph (4) in UU ITE, and (4) The Stamp Duty Act which has always identified authentic deeds is always in the form of a written deed. And to reduce the security risks of Cyber Notary, external factors that must be considered are: (a) notary ethics, (b) ongoing notary education, (c) electronic data security techniques, and (d) certification authorization.

Keywords: Cyber Notary, Electronic Authentic Deed, Amendments To UUJN-P.

1. INTRODUCTION

Currently, countries in the world are experiencing a corona virus pandemic (Covid-19) where almost all countries make every effort to safeguard and rescue their citizens, including restrictions on foreign nationals entering their territory. In Indonesia, the government of the Republic of Indonesia also did the same thing so as to make a decision on the Large Scale Social Restrictions (PSBB) that apply in provincial and city / regency areas. Even including the villages now also set a total tightening of guests who come to the homes of residents.

As a result of this virus pandemic, the Government advised its people to conduct social distancing and physical distancing in order to reduce the spread of the virus to the community quickly, because this virus works very quickly to infect people who not yet exposed to a virus. And as a result of the implementation of the policy, many offices or companies dismiss themselves and ask their employees to work from home and then communicate through online media.

This also applies to several notary / PPAT offices, where they choose to close their offices and do work from their homes to limit meeting with others so that the possibility of contracting the Covid-19 virus can be minimized. The question is how the quality of legal services to the community? Is it permissible for a Notary / PPAT to provide his services without having a face to face meeting with the parties? And how is the procedure to overcome this where in Law Number 2

of 2014 concerning Amendment to Law Number 30 of 2004 concerning Position of Notary Public (UUJN-P) requires Notaries to read, sign deeds in front of the parties, witnesses and Notary Public officials alone.

In the current situation, then inevitably and should not have to, we should turn back to the Cyber Notary discourse which used to be widely opposed because it is not in accordance with normative law. In fact, with the development of technology and science at this time, the concept of Cyber Notary is very common to do so there should not be any more opposition and obstacles to its application in the Republic of Indonesia.¹ What must be underlined in the implementation of this Cyber Notary is to maintain the authenticity of the deed made by the Notary Public so that the legal force of the authentic deed is maintained as the main evidence in the trial and for that it requires a high degree of faith to maintain the dignity, dignity and reputation of the Notary profession.

What exactly is it called Cyber Notary? Some opinions state that Cyber Notary is :

- a. The concept of Cyber Notary can be interpreted temporarily by a notary who carries out his work using an information technology base, specifically to make a deed.²
- b. Notary who carries out the role of a notary based on information technology.³

UUJN-P provides a loophole for the application of Cyber Notary, although according to the author it is still in the category of gray areas where in the explanation of article 15 paragraph (3), the Notary has the authority to certify transactions conducted electronically. Many things have to be asked with this explanation because what is meant by transactions conducted electronically? About the transaction or the document? And what about the Notary's product? Just register and legalize or to make the deed? This is a question mark about the validity of Cyber Notary in Indonesia. Because the articles in UUJN-P have not yet signaled that Cyber Notary is permitted, especially in making authentic deeds (Roesli, Heri, & Rahayu, 2017).

Actually in other laws and regulations has facilitated the existence of Cyber Notary, for example by making Law Number 11 Year 2008 on Information and Electronic Transactions (UU ITE), it's just that the article is still unclear because it still excludes deeds that are physically required ., Likewise Article 77 paragraph (1) and paragraph (4) of Law Number 40 Year 2007 concerning Limited Liability Companies (UUPT) which states that the implementation of the General Meeting of Shareholders (GMS) can be conducted using teleconferencing media or other online media facilities that allow the participants of the GMS can see and hear each other directly

¹ Edmon Makarin, *Notaris dan Transaksi Elektronik, Kajian Hukum tentang Cyber Notary atau Electronic Notary*, Edisi ke-2, Rajawali Pers, Jakarta, 2013, hlm. 133.

² R.A. Emma Nurita, *Cyber Notary, Pemahaman Awal dalam Konsep Pemikiran*, Refika Aditama, Bandung, 2012, page xii.

³ Brian Army Prastyo, *Peluang dan Tantangan Cyber Notary di Indonesia*, <http://staff.blog.ui.ac.id/brian.army/2009/11/29/peluang-cyber-notary-di-indonesia/>, accessed on March 30, 2020 at 05:30 a.m.diakses tanggal 30 Maret 2020 pukul 05.30 WIB.

and participate in the GMS directly as well and on the GMS must be made a notarial deed by the Notary Public.

But with the current COVID-19 virus pandemic without any time limit, is it possible for the parties, witnesses and notaries to meet directly and in one place? And that also becomes the object of research of the Researcher so that he conducts research with the title "**URGENCY OF APPLICATION OF CYBER NOTARY IN THE PANDEMIC OF COVID-19 FOR THE NEED OF AUTHENTIC DEED**".

Formulation of the Problem

Based on the description above, the formulation of the problems raised in this study is as follows:

1. Is Cyber Notary able to answer the need for authentic deeds during the Covid-19 pandemic?
2. What must be done the Cyber Notary can be implemented in Indonesia?

2. RESEARCH METHODOLOGY

Research Type

The research used in this study is normative legal research. According to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles, in order to answer legal problems, normative legal research is carried out to produce new arguments, theories or concepts as prescriptions (judgments) in the problems faced.⁴ Researchers use this type of normative research because this research is to find coherence, namely whether there are legal rules in accordance with legal norms and whether norms in the form of commands or prohibitions are in accordance with legal principles, and whether one's actions are in accordance with legal norms or legal principles.⁵

Problem Approach

The approach used in this study is as follows:

1. Statue Approach

This approach is carried out by examining the laws and legal regulations related to the legal issues being addressed.⁶ This approach is carried out to further study the validity of Cyber Notary in Indonesia based on the applicable laws and regulations.

2. Conceptual Approach

⁴ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Kencana Prenada Media Group, Jakarta, 2008, page 141.

⁵ Peter Mahmud Marzuki, *Op. Cit.* page 47.

⁶ Peter Mahmud Marzuki, *Op. Cit.*, page 133.

The conceptual approach moves from the views and doctrines that develop in the science of law. Studying the views and doctrines in law, researchers will find ideas that give birth to legal understandings, legal concepts, and legal principles that are relevant to the issue at hand.⁷

Legal Material Sources

1. Primary legal material.
2. Secondary legal material.
3. Tertiary legal material.

APPLICATION OF CYBER NOTARY IN THE PANDEMIC OF COVID-19

Covid-19 Pandemic

On March 11, 2020, the World Health Organization (WHO) has established the corona virus (Covid-19) as a pandemic which means that Covid-19 is a world disease and therefore all countries in the world are required to prepare themselves to treat victims infected with Covid-19. Pandemic in health terms is known as an outbreak of a new disease that attacks many victims and causes death and coverage is very broad and simultaneous.

The rapid and widespread spread of Covid-19 is causing public concern because one result is that sufferers may experience death. Likewise, the transmission process is very fast so that only physical contact or contracting the patient's saliva can also be said to be a layman has been detected with the Covid-19 virus.

Previously, this new type of corona virus appeared in Wuhan, China. WHO first received a report on this virus on December 31, 2019, and due to the rapid spread of this virus caused WHO to establish an outbreak of this virus as the Public Health Emergency of International Concern. And for this, the WHO recommends governments throughout the country for emergency response to the spread of the Covid-19 virus.

The impact of the spread of this virus resulted in all governments in the world ordering its citizens to be vigilant and reduce physical contact with others. And therefore the campaign arises to stay at home or even work from home . It aims to break the chain of the spread of the Covid-19 virus so it is not transmitted to more people, because a vaccine to cure or fight the virus has not yet been found.

The Impact of the Covid-19 Pandemic on Notaries

Covid-19 pandemic has hit many parties, not least in the field of notary, so most of the notaries dismiss their offices and work at home so that some jobs become delayed for indefinite periods. Whereas although the notary states that no party is harmed by this matter, the quality of

⁷ Peter Mahmud Marzuki, *Op. Cit.*, page 135-136.

the notary's work must be disrupted and this is contrary to the notary's obligation as a legal service official for the community. As stated in article 15 paragraph (2) letter e, namely providing legal counseling in connection with the making of the deed.

The Indonesian Notary Association has issued a Letter of Appeal number 65/33-III / PP- INI / 2020 dated March 17, 2020 stating that the Notary Office reduce activities in the office or outside the office and if there is no urgent need, the work must be completed , as much as possible resolved at home. In terms of guidelines for working at home, the Indonesian Notary Association (PP- INI) Central Board provides rules which are:⁸

1. Reorganize the schedule for signing the deed with the parties, until conditions allow it;
2. Recommending other Notary colleagues whose conditions allow for the position;
3. For agreements, deeds, or meetings which according to statutory regulations, documents can be made under the hand, to include the clause "*will be made / restated in the Authentic Deed as soon as the emergency conditions of Covid-19 are revoked by the Government*"

That authentic deeds that can be included in the deed group in accordance with the PP- INI circular according to Prita Miranti Suyudi, are divided into two, namely :⁹

- a. The deed can be postponed;
- b. The deed cannot be postponed.

Included in this classification are several deeds as follows :

1. Land certificates.
2. Deeds concerning changes to the legal entity and its registration.
3. Deeds relating to the relationship between individual legal subjects such as marriage agreements, accounts payable and notary wills and their registration.

PP- INI has provided exceptions that for deeds whose settlement cannot be postponed, the Notary can still serve the needs of the tappers in the Notary Office as stipulated in the Notary Code of Ethics Article 3 number 8.¹⁰ As a consequence, the Notary is obliged to implement the protocol to prevent the spread of Covid- 19 in accordance with Government regulations.

The exception has actually violated the regulations made by the Government of the Republic of Indonesia related to handling the spread of the Covid-19 virus, which in essence the Government of the Republic of Indonesia wants its citizens to be submissive and obedient not to

⁸ Surat Edaran Pengurus Pusat Ikatan Notaris Indonesia nomor 67/35-III/PP- INI/2020 dated March 17, 2020.

⁹ Prita Miranti Suyudi, https://www.hukumonline.com/berita/baca/lt5e8efcaac54aa/notaris-ppat-dan-pandemi-covid-19-oleh--prita-miranti-suyudi/kamis_09_april_2020, accessed on April 16,2020 at 08:00 p.m.

¹⁰ Perubahan Kode Etik Notaris yang ditetapkan di Banten tanggal 29-30 Mei 2015 dalam Kongres Luar Biasa Ikatan Notaris Indonesia, Bab III – Kewajiban, Larangan dan Pengecualian, Pasal 3 angka 8 : "*Menetapkan satu kantor di tempat kedudukan dan kantor tersebut merupakan satu-satunya kantor bagi Notaris yang bersangkutan dalam melaksanakan tugas jabatan sehari-hari*".

leave the house and carry out activities that intersect with many people so that the chain of the spread of the virus Covid-19 can be disconnected or minimized.

Because it is violating, the need for the Indonesian Notary Association to make a new breakthrough so that the regulations that have been made by the Government of Indonesia can run effectively and can help the Government of Indonesia's efforts to break the chain of spread of the Covid-19 virus.

The Urgency of Application of Cyber Notary in the Covid-19 Pandemic Period

The urgency of electronic notary functions and roles (Cyber Notary) has actually begun at the XXIV International Congress of the Latin Notary in 2004 which was discussed in the Working Group for Theme II (The Notary and Electronic Contracts), which is essentially a notary organization must realize to open themselves by accommodating all these developments, especially information technology, well, by not reducing the provisions as they should. This conference has realized the possibility of making authentic deeds electronically.¹¹

Several countries in the world have implemented Electronic Notary or Cyber Notary in their national legal systems, especially in the context of the need for guaranteed authenticity of electronic information regarding the implementation of digital signatures. The United States and France are two countries that represent two different legal traditions (Common System and Civil Law System), but in terms of notary, both countries have included the concept of Cyber Notary in their national legal system. And some countries have also appreciated it the same.¹²

The use and making of notary deeds electronically is inseparable from the legal system adopted by a country. Among the various legal systems that exist in the world are broadly divided into two legal systems, namely the Anglo Saxon legal system or also called the Common Law System and the Continental European legal system which is generally referred to as the civil law system (Civil Law System).¹³

The authority of notaries in Anglo Saxon System countries is the registration of only letters, which for notaries in Indonesia who adhere to the Continental European legal system are waarmeking (under the hand registration), notaries in the Anglo Saxon legal system do not play a role in making and determining fill in the letter / deed. Deed which is a product of the Anglo Saxon notary is not considered as evidence in court.¹⁴

¹¹ Edmon Makarim, *Op. Cit.*, page 3.

¹² Edmon Makarim, *Op. Cit.*, page 5.

¹³ Wasis S.P., *Pengantar Ilmu Hukum*, UMM Press, Malang, 2002, page 29.

¹⁴ Anonim, Notary Represent the Country, accessed through the website: <http://taligara.wordpress.com>., accessed April 23, 2020 on 06:00 a.m.

The power of written evidence in the form of authentic deed has the highest, strongest and most complete place or perfect evidence in the Continental European legal system, this causes the position of a Notary in the system is very important considering its duties and authorities in making authentic deeds. Indonesia as one of a country that adheres to the Continental European legal system includes a country that glorifies an authentic deed and is therefore considered to have the most perfect legal force in court.¹⁵

During the Covid-19 pandemic, the position of the Notary Public as the authorized official to make an authentic deed was a dilemma. On one side there is a legal service obligation to the community in accordance with the mandate given by UUJN-P, but as a good citizen must also obey the rules made by the Government which in essence is to protect their citizens from the possibility of contracting the Covid-19 virus.

Therefore the need for Cyber Notary to meet the needs of authentic deeds by the community, for the time being is very important because without reducing the quality of legal services but also safe and sound from the Covid-19 virus attack. So therefore the paradigm of normative law must immediately be abandoned and then move on to progressive law where the law follows the conditions so that all legal actions have a basis.

The discourse was actually preceded by a speech by the President of the Republic of Indonesia Ir. Joko Widodo at the opening of the 29th International Notary Congress which took place in Jakarta on 27-30 November 2019, where the President had asked the notary organization (INI) to respond to the challenges of the industrial revolution era 4.0.¹⁶

REQUIREMENTS FOR IMPLEMENTATION OF CYBER NOTARY IN INDONESIA

Opportunities for Application of Cyber Notary

The use of computers in making physical deeds and in the process of registering legal entities through the Legal Entity Administration System (Sisminbakum / SABH) indicates that the concept of Cyber Notary has actually been used in Indonesia. SABH is a computerized system of establishing legal entities that is implemented in the Ministry of Law and Human Rights of the Republic of Indonesia (Kemenkumham).¹⁷

In its development, the ministry then made AHU online which resulted in a shorter registration bureaucracy process because there was no need for physical meetings between service providers and users so as to minimize the possibility of corruption, collusion and nepotism.

¹⁵ Emma Nurita, *Op.Cit.*, page 36.

¹⁶ State Secretariat of the Republic of Indonesia, https://www.setneg.go.id/baca/index/buka_kongres_ke_29_notaris_dunia_presiden_ingatkan_tantangan_era_disrupsi_terhadap_layanan_kenotariatan, accessed April 23, 2020 on 06:15 a.m.

¹⁷ Legal Entity Administration System, <http://www.sisminbakum.go.id/kumdang/news1a.php>, accessed April 23, 2020 on 07.00 a.m.

The success of online services by the Ministry of Law and Human Rights has inspired many parties to use technological sophistication in the implementation of their daily work so that they are able to be more efficient and effective, including the role of a notary public and one way to answer these demands is to adopt the concept of Cyber Notary in our statutory system including UUJN-P.

The concept of Cyber Notary is a form of concept that adopts the use of computers by notaries in carrying out their duties and authorities. In Indonesia, the deed that is made by and before a Notary is an authentic deed. An authentic deed based on article 1867 of the Civil Code is a perfect proof. Notary deed can be an authentic deed if it meets the requirements of the legislation, especially Article 1868 of the Civil Code. Various requirements that must be met in making authentic deed make the application of the concept of Cyber Notary in Indonesia more difficult.

Indonesia as a modern law state certainly cannot escape from the development outside the law, but in order to absorb values that are outside the law, lawmakers must be careful with the community's readiness for change and the negative effects of the change itself. The impact of technological change more or less now has emerged. This is indicated by the misuse of the validity of technology through the process of dematerialization and the difficulty of determining one's existence (deteritorialization) because technology has created its own world, the virtual world. The problems of dematerialization and deteritorialization are of course very closely related to the authority of the notary civil law in making an authentic deed.

If the requirements of this authentic deed are related to dematerialization and deteritorialization, both of these are challenges for the application of Cyber Notary in connection with making an authentic deed by a notary public. The application of this concept will affect the signing of the deed, the requirement that the applicant must be introduced or introduced to the notary, the obligation to read the deed by the notary, the presence of the tappers and witnesses and the notary's jurisdiction. For territorial issues, the notary's authority will deal with the UUJN and Article 1868 of the Civil Code on the requirements for authentic deeds that the deed must be made by an authorized official at the place where the deed was made. While other problems are related to the strength of proof of deed. According to UUJN, negligence in fulfilling several requirements will make a notarial deed become a private deed.

The problem is that the strength of proof private deed is much weaker than the authentic deed and it will harm the parties.

Opportunities for the process of making authentic deeds can be done online or only through cyberspace without meeting directly between the parties can be done by removing the requirements that require the meeting of the parties. But of course it must be supported by technological sophistication such as teleconferencing facilities that allow the deed to be read by a

notary through the media and heard and witnessed by the parties online. But the problem is the truth of the parties to the teleconference and they can only be carried out under pressure that will not be seen through the teleconference media. In addition to the teleconferencing records, the truth must be tested in advance if there is a case in the future because the possibility of engineering may occur to the results of the technological sophistication. If this happens, the strength of proof of the results of teleconferencing is basically the same as the strength of proof under the hand. In fact, if there is a case in connection with the authentic deed, the reference is the result of the teleconference. So if this is done the same as reducing the power of proof from the notarial deed to be the same as the deed under the hand. This will result in people more inclined to ask for a private deed because it's easier and cheaper.

In addition, the making of a notary deed online can only be applied to certain groups who understand technology and / or who have substantial funds. Whereas for people who do not understand technology and / or weak people, it is difficult to be touched and they will still have a tendency to use manual deed making. With that in mind, extralegal work and legal counsel from a notary as theorized by A.W. Voor and mandated by Article 15 paragraph (2e) UUJN-P will not run optimally.

In addition to making authentic deeds, the notary also has the authority to ratify the signature and determine the certainty of the date of the private document by registering in a registered book. This provision is the legalization of a private deed that is made by individuals or by parties on paper which is sufficiently stamped by registering in a registered book provided by a notary. The practice of legalizing electronic deeds is certainly very dependent on the ability to sign electronic deeds. Until now there are no rules governing this matter. For that we need a signature deposit called the Third Third Party (Netherlands) or Source Code Escrow (US). According to Herlien Budiono, a notary is the ideal Trusted Third Party.¹⁸ If this rule will be applied in Indonesia, of course notaries who can play the role of Trusted Third Party are only special notaries who have passed the certification process to become a Trusted Third Party.

Electronic signing is very likely to be implemented in Indonesia. The legalization process can only prove the truth of the party who signed the deed. The problem is that the legalization rules contained in Article 15 paragraph (2a) of UUJN-P also regulate not only the notarization of the notary's signature but also the certainty of the date of the private letter. In practice to establish certainty, the notary asks directly to the parties who will sign the legalization process regarding the truth of the date the letter is under the hand. So that if the rules are issued regarding the electronic signing of the deed then this provision must be amended, deleted or made an affirmation in the new regulation that with electronic signing in the framework of legalization means the parties have

¹⁸ Herlien Budiono, *Op. Cit.*, page 221.

agreed that the date contained in the electronic data is the date of the letter under the hand. Whereas registration and bookkeeping of private documents on registered books can be done electronically as stipulated in the UUJN-P.

Another notary authority is to record private documents by registering in a registered book. This authority only concerns registration so it does not matter whether it can be electronic or direct. Likewise with the authority to make copies from original private document it can also be done electronically because it is not related to the authentication of the deed. But sending copies electronically, of course, must be done carefully. Whereas the legalization authority is difficult to do electronically because the original evidence must be seen by a notary public.

Based on Article 15 paragraph (2e) UUJN-P, that in connection with the making of the deed, the Notary has the authority to provide legal counseling relating to the notary's external duty. According to A.W. Voor that the notary's extralegal work concerns aspects of service to weak parties and does not understand the law.¹⁹

Legal Basis for the Application of Cyber Notary in Indonesia

The application of Cyber Notary in Indonesia, especially to authentic deeds, does not have the perfect proofing strength as it should be. Until now, the notary deed against the enactment of Cyber Notary has only been regarded as an private deed which is equated with electronic documents, letters and certificates. Although Article 15 paragraph (3) UUJN-P states that the Notary Public has other authority regulated in the legislation, in this case the authority to certify transactions conducted electronically. However, the strength of the certification is not the same as the strength of the authentic deed as in Article 1868 of the Civil Code.²⁰

Roscoe Pound's theory of law as a tool for community renewal (law as a tool of society engineering) which explains that the law should be at the forefront in a development or change in society²¹ because of the very importance of the degree of certainty and legal justice in a development resulting in the possibility of the concept of Cyber Notary will be accepted in Indonesian society.

The following are notes in an effort to legalize Cyber Notary in the Indonesian national legal system:

1. Deed must be made by (door) or in front of (ten overstaan) a public official

¹⁹ Tan Thong Kie, *Op. Cit.*, page 452-454.

²⁰ Eddy O.S. Hiariej, *Telaah Kritis Konsep Cyber Notary dalam Sudut Pandang Hukum Pembuktian*, Paper presented at the National Seminar, "Membangun Hukum Kenotariatan di Indonesia", Yogyakarta, 2014, page. 9.

²¹ Salim. H.S., *Perkembangan Teori dalam Ilmu Hukum*, Raja Grafindo, Jakarta, 2010, page 70.

Article 1 number 7 UUJN-P states that a notarial deed can be an authentic deed if it is made by or before a Notary Public, meaning that the Notary Public must require the presence of physical documents as a means to make the wishes of the parties in his act constant. The article should be changed (or an explanation of the Law), ie the user does not have to face physically, but it can be done through online media such as teleconference, skype or zooming, so that zooming can reduce barriers in the form of territorial boundaries. State / city / province boundaries.²²

2. Deed must be made in the form and procedure which determined by the law

This refers to the provisions of Chapter VII Part One UUJN-P. In that chapter, there are several articles that need to be changed so that the notary deed of Cyber Notary is authentic, including:

- a. Article 38 UUJN-P, this article regulates the form of deed. In this article, it is better to explain the notary deed in electronic form, because later the notary deed against Cyber Notary is paperless.
- b. Article 39 paragraph (1) UUJN-P, this article regulates those which must be known by a notary public, including witnesses who know and have the ability to do legal actions. The change that needs to be made is that in the concept of Cyber Notary the physical presence of the user is not necessary, so what must be an important point is that the Notary can trace the validity of the supporting evidence of the parties to the organizer's website, for example the National Identity Card (KTP) and Family Card (KK), marriage certificate to the Population and Civil Registry Service (Dispendukcakil), inheritance deed to the district court system and others, using certain accesses.²³

According to Edmon Makarim, that the identity of the parties can use the electronic KTP (e-KTP) because the e-KTP contains a security code and electronic record as a means of verifying and validating data on the identity of the population and biodata, signature, passport photo and fingerprint fingers of the population concerned.²⁴ So it can be seen that the parties to be conferred are actually the parties concerned and known by the Notary.

- c. Article 40 paragraph (1) UUJN-P, this article regulates the reading of the deed in front of the parties. By Cyber Notary, the reading of the deed in front of the parties can be done online by using a media of view of hearing (such as teleconference, skype, or zoom).
- d. Article 44 paragraph (1) UUJN-P, this article regulates the signing of the deed by the parties, witnesses, and notaries. By Cyber Notary, the process can use digital signatures or

²² Habib Adjie, *Konsep Notaris Mayantara: Notaris Indonesia Dalam Menghadapi Tantangan Persaingan Global*, Paper, Presented at a National Seminar "Konsep Cyber Notary Bagi Notaris Indonesia dalam Menghadapi Tantangan Persaingan Global", Yogyakarta, 2015, page 18.

²³ *Ibid.*, page 16.

²⁴ Edmon Makarim, *Op. Cit.*, page 147.

even can be added with digital fingerprints (Article 16 paragraph (1) letter c UUJN-P)²⁵ as well as digital stamp and brand.²⁶

3. The authority of Notary to make and make it before him on the deed.

The authority includes:

- a. The notary must be authorized as long as it concerns the deed that must be made.

By Cyber Notary, the deed will be saved and / or submitted in the form of a microchip, microfilm or other media with password only for the parties, which can be printed as needed after obtaining prior Notary approval. That already has a legal basis, namely in Article 68 paragraph (1) of Law No. 43 of 2009 concerning Archives that allows archivists and / or archival institutions to make archives in various forms and / or other media.²⁷

- b. The notary must be authorized as long as it is for the benefit of whom the deed was made.

In Cyber Notary, the status of the parties can be traced through e-KTP and / or e-passport as identity that contains biodata, signature, passport photo and fingerprints of the confronting hand. If it cannot be traced so that the notary's conviction is questioned, the Notary has the right to refuse the request of the parties as required in the principle of "prudence" and its "renegade" rights.

- c. The notary must be authorized as long as regarding the place where the deed was made.

With Cyber Notary, violations of occupational boundaries and leaving the place of occupation can be resolved, because by means of online media that are full of technology like today (teleconference, Skype, Zoom) so the parties can see and hear directly and at the same time because the ability of the media can penetrate boundaries and even borders without the parties coming in physically or requiring the Notary to leave the place of domicile.²⁸

- d. The Notary must be authorized as long as the time of making the deed.

Cyber Notary can optimize the quality of the completion of the deed by fulfilling the required requirements quickly and accurately through information technology.

4. Harmonization of laws and regulations.

In addition to changes to UUJN-P, Cyber Notary can be applied in Indonesia, requiring harmonization with other laws and regulations, namely:

- a. Article 5 paragraph (4) of Law No. 11 of 2008 on Information and Electronic Transactions (ITE Act) on a letter or document that must be in written form and in Notary deed.

²⁵ Article 16 paragraph (1C) of the UUJN-P regarding affixing letters and documents and fingerprints on the minutes of the deed.

²⁶ Habib Adjie, *Op. Cit.*, page. 16.

²⁷ Edmon Makarim, *Op. Cit.*, page 140.

²⁸ Habib Adjie, *Op. Cit.*, page 15.

b. Amendments to Article 5 paragraph (4) of the ITE Law concerning content and / or deleting it contents so that the next notary deed made by Cyber Notary remains authentic, because Article 5 paragraphs (2) and (3) of the ITE Law have stipulated that electronic documents are evidence which is legal if it uses an electronic system in accordance with the provisions stipulated in the ITE Law.

c. Law Number 13 of 1985 concerning Stamp Duty (UUBM)

Notary Deed requires a stamp to be affixed to the minutes of the deed, so with the Cyber Notary the stamp attached to the electronic deed must be in the form of an electronic stamp as well. For this reason, the harmonization that must be done is by changing the contents of the UUBM article that the stamp duty other than the official printed one can also be in electronic form.

5. Other external factors

In addition to factors in the form of legislation, the things that must be done to be able to legalize Cyber Notary and the deeds it produces to keep it authentic:

a. Notary Ethics

As a Cyber Notary, the Notary Public bound to the rules in the Notary Code of Ethics requires a Notary Public to act professionally, independently and with integrity. Because in the Cyber Notary is very prone to fraud that results in dragging the Notary Public towards a criminal case and it is very likely to be languishing in a prison cell, therefore the Notary must always maintain the dignity, dignity and spirit of the Notary as an *Officium Nobile*.

b. Continuing Education

INI Participation as the only organization of Notaries in Indonesia in maximizing Cyber Notary, especially in the era of disruption and the Covid-19 pandemic, must be carried out through making continuing education programs for Notaries and Notary Candidates so that the quality of Notaries and their products are maintained in accordance with mandate by law.

c. Electronic Data Security Techniques

To protect the confidentiality and security of electronic data relating to notarial deeds against the application of Cyber Notary in the electronic data exchange of cyber crime, several encryption-description techniques for electronic data are used, including cryptographic techniques and functions hash.

d. Certification Authority

To ensure security in the Cyber Notary, there must be a third party or special authority who authorized to examine the truth of the data, be independent, and be trusted (trusted third party), in this case known as the Certification Authority (C.A.). With C.A. then the

Notary before performing legal services in advance asks permission from C.A. on whom the party whose wish is conferred, besides the Notary Public checks on the validity of that desire for the Indonesian legislation.

4. CONCLUSIONS

Based on the results of research and discussion, the following conclusions are as follows:

1. During the Covid-19 pandemic, where all parties were required to be careful in interacting because the nature of this virus was very contagious and could result in death of the patient so the Government of the Republic of Indonesia had to issue regulations aimed at limiting transactions carried out in outside the house so that it can break the chain of spread of the Covid-19 virus because the cure has not been found and when it will end, including in this case the Notary is required to participate in regulations made by the Government of Indonesia and therefore the Indonesian Notary Association (PP-ANI) Central Board issue a Circular advising Notaries to limit activities outside the home and if so the obligation to make the deed to as far as possible be postponed.

To succeed the Republic of Indonesia Government regulation on the Covid-19 virus and not to reduce the quality of legal services by the Notary Public, the application of Cyber Notary for now is very necessary because it can protect the parties, witnesses, notaries and deed products from the authorities obtained based on the law.

2. The implementation of Cyber Notary in Indonesia requires support in the form of facilities and infrastructure both physically and non-physically. To legalize Cyber Notary, in this case for the authenticity of the deed that it generates, it is necessary to amend the articles contained in the UUJN-P mainly related to (1) the obligation to meet physically and read and sign the deed in front of the Notary at that time together with the parties and witnesses; (2) Notary's obligation to physically print and save documents; (3) Notary's obligation to carry out work must be in his domicile. Because with Cyber Notary, it can all be overcome because of its nature that knows no boundaries (borderless) and time.

Amendments are also needed in Article 5 paragraph (4) of the ITE Law and the UUBM so that the Cyber Notary deed can be considered as an authentic deed and to succeed it must also consider factors: (1) Notary Ethics; (2) Continuing Education; (3) Data security techniques; and (4) Certification Authority.

Recommendation

Upon the results of research on the urgency of implementing Cyber Notary, the advice that can be given are as follows:

1. The official notary organization (INI) should immediately act to socialize Cyber Notary with a legal basis in the form of Indonesian government regulations to temporarily break the chain of the spread of the Covid-19 virus, while subsequently making changes to the law by proposing to the House of Representatives commission and the Ministry Law and Human Rights. This is to anticipate the Covid-19 pandemic which has no time limit and for the future the legal services of the Notary profession will not be disrupted again.
2. In order to the notary deed of the Cyber Notary can still be considered as an authentic deed in accordance with Article 1868 of the Civil Code, the Government of Indonesia can immediately change the legislation related to the authenticity of the electronic deed of a Notary product so that it can still become evidence that has perfect strength in court (Article 1867 Civil Code).

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