

The obligations of the parties to be face-to-face during the creation of authentic deed online

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Abstract

The obligation of the parties and the Notary to be physically present in the Creating an authentic deed is regulated by Article 16 Paragraph (1) letter (m) of the Rules of Notary Profession and Article 1868 of the Civil Code. However, with the advancement of the 4.0 industrial revolution and especially during the COVID-19 pandemic, the use of technology and the implementation of work-from-home for notaries have increased, raising issues regarding the requirement for physical presence in the deed-making process.

The purpose of this writing is to analyze the laws and regulations in Indonesia related to face-to-face obligations in making authentic deeds online, to analyze whether the online meeting system for creating authentic deeds has legally fulfilled the face-to-face requirements, and to explore the legal implications of online meetings on the validity of authentic deeds. The research method used is normative juridical with statutory, case, concept, and historical approaches. This research also uses primary data as complementary data through source interviews. Legal materials are analyzed prescriptively.

The research showed that in Indonesia, the Rules of Notary Profession and the Civil Code only regulates the requirements for the face-to-face making of authentic deeds offline, while in practice, there is the making of authentic deeds that have been regulated online only in certain types, namely deeds of release (GMS and Auction). The online meeting system in the making of authentic deeds does not meet the requirements of legal face-to-face. Still, in practice, online deeds of relaas are done so that the faces can see, hear, and actively participate and fulfill the obligation to read and sign the deed. The legal implications arising if an authentic deed is done online will result in the deed being relegated to a deed under the hand and null and void.

This research concludes that the Rules of Notary Profession and the Civil Code have not explicitly regulated the making of authentic deeds of the parties online. Considering that the era has moved to the Industrial Revolution 4.0, evaluating the relevance of the principles and articles related to the making of authentic deeds online is necessary.

Keywords: Obligations of the Parties, Authentic Deed, Online Creation.

Introduction

The development of the world of Technology, Information, and Communication has increased along with the post-COVID-19 pandemic, resulting in individuals socializing more, doing work, and even conducting business transactions online or using audiovisuals. The COVID-19 pandemic has greatly affected various sectors that require interaction between individuals. In the end, the government addressed this problem by issuing Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions and Presidential Decree of the Republic of Indonesia Number 11 of 2020 concerning the Determination of the Corona Virus Disease 2019 (COVID-19) Public Health Emergency to all people to stay at home or also known as the social distancing and work from home policy. This policy gave birth to technological advances with the emergence of online media such as Google Meet, Zoom Meetings, Microsoft Teams, Skype, etc. Over time, the wheels of digitalization have encouraged the Indonesian government to implement various types of digital bureaucracy on a large scale in the hope of helping the process become simpler, faster, and cheaper. (Yusuf, 2021)^[17] (Putri, 2020)^[12]

The social distancing policy also applies to notaries, who previously required physical presence to do authentic deeds but are now replaced by an electronic system. Notaries, as public officials who have the authority to make authentic deeds, are regulated in Article 15, paragraph (1) of the Notary Law. The PP of the Indonesian Notary Association

(PP-INI) has issued an appeal number 67/36-III/PP-INI/2020 to prevent the spread of COVID-19, asking Notaries to work from home and implement physical distancing or remote Notary. However, this raises challenges related to the obligation of physical presence and signing of deeds. (Makarim, 2020)^[10] (Latumeten, 2022)^[9] This is as stated in Article 16 Paragraph (1) letter (m) of the Notary Law, hereinafter abbreviated as UUJN, which reads: "In carrying out his/her duties, a Notary is obliged to read the Deed before the person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a Deed of Will privately, and signed at that time by the person appearing, witnesses, and Notary."

The obligation before the person appearing in the article emphasizes that the Notary and the parties are required to be physically present to be able to listen to the reading of the deed and continue by directly signing the deed at that time in front of each other. Being physically present, if explained, means being there or coming physically, in the form of something, or being physically visible. This situation changes the understanding of presence in signing a Notary deed, considering that there are differences between the provisions in the Notary Law and the COVID-19 appeal issued. (Adjie H, 2011)^[1] (Rusdiant, 2020)^[14] (R. Soeroso, 2010)^[13]

Article 1868 of the Civil Code (BW) states that an authentic deed must be made in the form prescribed by law before an authorized public official, including a Notary. The physical presence of the Notary, the person appearing, and the

witnesses ensures the validity and competence of the parties in carrying out legal actions. However, this condition is no longer in line with the times, especially during the COVID-19 pandemic, which has encouraged a reduction in physical interaction and the implementation of work-from-home for Notaries. (Kusumaningrun, 2023)

Electronic signatures, as regulated in Article 1 number 12 of the ITE Law, are used in signing via teleconference as a verification tool with apparent legal force. Electronic signatures are divided into two categories: those that are certified, which have stronger legal force and use an Electronic Certificate from an Electronic Certificate Provider (PSrE) recognized by the Ministry of Communication and Information, and those that are not certified, which have less strong legal force than those that are certified. This division is explained in Article 60, paragraph (2) of the PP PSTE. (Barkatulla, 2012)^[3] (Selva Omiyani, 2024)^[15]

In the implementation in the field (*das sein*), currently, many notaries do not read the deeds that are made but include at the end of the deed that the deed has been read. This is done because the Notary is constrained by technical problems such as having to read and sign the deed simultaneously in different places. The facts in practice also show that the obligation to face each other is not fully implemented. The facts in the field make it difficult to implement this obligation to face each other. Current technological advances allow verification of identity and other documents, reading of Deeds, and signing of Notarial Deeds to be carried out digitally in accordance with the provisions of cyber notaries. (Kerina Maulidya Putri, 2022)^[8, 12]

Other Notary authorities (cyber Notary) allow the parties to be physically not in the same place. The parties, notary, and witnesses remain face to face; there is only a difference in a place where the incident or legal event can still be witnessed by all parties. The digital era brings changes in values and norms that affect various aspects of life, communication patterns, and social interactions, as well as new changes such as speed of response, unlimited space, and unlimited accessibility of information. (Emma, 2021)^[6]

Online meetings between Notaries, parties, and witnesses are a solution to create authentic deeds in the digital era. Cyber Notary allows Notaries to perform their duties electronically so that the creation of deeds that are usually done physically can now be done online. Processes such as verification, reading, and signing of deeds can be done via teleconference. However, this implementation requires clear legal requirements, including electronic signature authorization and types of authentic deeds that can be created online, to ensure the validity and security of the resulting deeds. (Dwi Merlyani, 2020)^[5]

Indonesia also has a culture of notaries that use information technology to create authentic deeds based on regulations to support electronic services. Such as in the Regulation of the Minister of Law and Human Rights Number 14 of 2019 concerning the ratification of cooperatives, Regulation of the Minister of Law and Human Rights Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships, Regulation of the Government of the Republic of Indonesia Number 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making Fiduciary Guarantee Deeds, and Regulation of the Minister of Law and Human

Rights Number 2 of 2016 concerning Procedures for Submitting Applications for Ratification of Legal Entities and Approval of Articles of Association and Submission of Notification of Amendments to Articles of Association and Changes to Foundation Data in conjunction with. Regulation of the Minister of Law and Human Rights Number 13 of 2019 concerning Amendments to Regulation of the Minister of Law and Human Rights Number 2 of 2016 concerning Procedures for Submitting Applications for Legal Entity Approval and Approval of Articles of Association and Submission of Notification of Amendments to Articles of Association and Amendments to Foundation Data. (Emma, 2021)^[6] (Pangesti, 2020)^[11]

The burden of proof for conventional and modern deeds is the same because both follow similar provisions, although the process of making them differs. Both types of deeds require the development and harmonization of laws and regulations so that it is clear what deeds are and the correct mechanisms in accordance with the regulated procedures. An orderly and systematic preparation is required in accordance with the format determined by Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

Technological advances have shifted conventional values to digital ones, which should make it easier for Notaries to provide legal services. The obligation to meet face-to-face requires further mechanisms related to the reading of deeds via teleconference and also electronic signatures. However, the legal umbrella has not been regulated in detail according to the needs and developments of the times. In fact, the development of information technology affects the making of deeds, including legal services. Technology allows notaries to be present not only in one place; access for parties can be easier, faster, more responsive, and time efficient. The expansion of the meaning of meeting face-to-face between parties has become a necessity; only there is no legislation that regulates in detail how this obligation to meet face-to-face should be implemented.

Materials and Methods

Based on this research, the method of normative legal research is based on library legal research by examining library materials or secondary data and also using primary data as complementary data obtained directly from the field through interviews. The research approach used in this study includes several methods. First, the statute approach is carried out by examining laws and regulations related to legal issues. Second, a conceptual approach provides an analytical perspective on solving legal problems based on the concepts and values underlying them. Furthermore, the case approach examines legal problems as a reference in resolving legal cases. Finally, the historical approach is based on historical research to understand the current law. Research materials obtained from library research are taken in document searches, archival studies, literature studies, and electronic document searches, which are part of primary and secondary legal materials. This research uses a qualitative legal analysis method, namely an in-depth interpretation of legal materials, which is common in normative legal research. This analysis will then be linked to the problems in this research to produce an objective assessment to answer the problems in the research.

Results and Discussion

The making of a notarial deed conventionally is required to comply with Article 16 paragraph (1) letter m of the UUJN, which reads:

"Reading the Deed before the person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a Deed of Will privately, and signed at that time by the person appearing, witnesses, and Notary." "in front of the person facing" means being in a position where two or more people face each other. This confirms that facing the person facing the person directly is a must that must be fulfilled. The context of facing is also stated in Article 1868 of the Civil Code. In the context of social interaction or communication, this term is often used to describe a situation where two or more people are in close proximity. Facing often occurs in the context of conversation, meeting, or discussion so that you can directly see facial expressions and body movements and hear each other's voices clearly. According to Mehrabian and Wiener, who studied the impact of facial expressions in 1967, nonverbal communication is the essence of communication that can support and clarify verbal communication. This leads to effective communication through feelings and reactions so that all information is conveyed clearly, which can increase trust and openness in communication. (Ardhoyo, 2013)^[2]

Physical presence refers to the presence of a person in a particular location directly and in real-time, not through virtual or digital media. In a legal context, this means that the parties, witnesses, and Notary are in the same place to interact, such as reading and signing documents. Physical presence is considered important to ensure the validity and clarity of the legal process, as well as to build trust between all parties involved.

In making an authentic deed, the reading of the deed must be done and explained at the end of the deed. The reading of the deed by the Notary is done so that the parties understand the deed they have made so that there is no denial at any time. However, the reading may not be done if the parties wish that the deed not be read because they have read it themselves, know, and understand the contents of the deed with the provision that the Notary must state this in the closing section of the deed and the parties, witnesses, and also the Notary initial each page of the minutes of the deed in accordance with the provisions of Article 16 paragraph (7) UUJN. After the deed is read, the parties appearing, witnesses, and the Notary continue to sign the deed, which is mandatory for the parties appearing, witnesses, and the Notary. Its function is to guarantee the certainty of the date and to guarantee that the parties do not deny the contents of the deed at any time so that the deed can be legally binding for the parties who wish it. If there is a violation committed by the Notary, then the deed will be degraded so that its evidentiary power is reduced as with a private deed. It can be concluded that the deed loses its authenticity, as stated in Article 16, paragraph (9) of the UUJN. (Sudirhato, 2015)^[16] The meaning of "physically present" is what causes the preparation of the deed not to be able to be done digitally. The authority of a notary to prepare the minutes of the GMS in the form of a release deed is considered valid, but not with a party deed that does not have a strong legal basis. The digital preparation of a notarial deed, which can be done remotely and followed by a physical signing, fades the

essential meaning of the digital notary itself. (Lukman, 2023)

The concept of physical contact is also in accordance with the principle of rebellion's official fidelity exercise, which requires notaries to work traditionally. Notaries should still use manual methods in making deeds so that the reading of the deed can be attended directly by the parties.

The concept of a digital notary is a method used by notaries to utilize technological developments in carrying out their duties. This concept has emerged since the enactment of the UUJN-P in 2014. However, its implementation began when the COVID-19 pandemic spread because it encouraged people to work from home. The tasks and responsibilities that were initially carried out conventionally switched to using digital media. The influence of notaries in accordance with the digital era has changed the concept from having to be physically present to utilizing the internet as a medium in the process of making deeds.

The processes that are part of notaries in the digital age include:

1. digital signature
2. Digital ensured document
3. Video conference

Based on the three points, it can be concluded that the implementation of the General Meeting of Shareholders of a Limited Liability Company, the deed of which is a type of release deed, can and has implemented the notary concept in accordance with the digital era. This is because it refers to the provisions of Article 77 of the UUPT, which permits the holding of a General Meeting of Shareholders (GMS) via video conference or other electronic media that allows all GMS participants to see, hear, and directly participate in the meeting. (Dewa Ayu Indra Dewi, 2014)^[4]

There are several other words that can utilize technology at certain stages, although the manufacturing process must still comply with applicable legal provisions, including:

1. Deed of Statement of Meeting Decisions

In the case of a board of directors meeting or a board of commissioners or company meeting being held online, a notary can attend the meeting virtually and then record it in the form of a release deed.

2. Deed of Statement

In some cases, a deed of statement containing only a unilateral statement from the party appearing can be prepared with the help of technology in the early stages, such as through online consultation and electronic document verification.

3. Deed of Agreement or Agreement

Although the signing of the deed must be done in person, the stages of discussing the clauses and negotiations can be done online before being stated in a notarial deed.

This condition creates challenges for the implementation of technology in the notarization process because although digital developments offer convenience and efficiency, there are still legal provisions that require direct interaction. Therefore, to realize notaries in the digital age in making party deeds, there needs to be a change in regulations that recognize the validity of the use of technology in making deeds so that it can accommodate the needs of the times without sacrificing applicable legal principles. However, if it is possible to prepare a Party deed using a digital method,

such as that carried out in the holding of a General Meeting of Shareholders, and supported by a strong legal basis, then at the end of the deed, a clause can be provided stating that the reading and signing of the deed is carried out in more than one city according to the location of the parties. Making a party deed through video conference technology is possible in its implementation, but the problem that arises is that the authenticity of the notarial deed can be fulfilled in accordance with Article 16 paragraph (1) letter m UUJN, Article 39 UUJN, Article 1320 and 1868 of the Civil Code. Initially, the ITE Law stated that notarial deeds made electronically were considered invalid and only had ordinary evidentiary force, not equivalent to authentic deeds. However, along with the development of technology and the public's need for digital services, this statement was removed in 2024, indicating a change in the law that is more open to innovation. With this removal, Notaries can now prepare deeds digitally, although currently, the law only allows release-type deeds for GMS that can be prepared electronically. The obstacle to the implementation of the digital notary concept is caused by formal requirements that require the direct presence of the parties before the Notary. This shows that the formal requirements for doing a notarial deed are cumulative in nature, meaning that all requirements must be met simultaneously, not alternatively. In other words, the physical presence of the parties in front of the Notary is a necessity that cannot be ignored.

The application of facing and facing, in this case, is hampered by the existence of Article 1 paragraph (7) UUJN and Article 16 paragraph (1) letter m UUJN, which requires the parties to be physically present in the real presence. The procedure for doing a notarial deed using a digital system is basically similar to the procedure that has been implemented so far. However, the main difference lies in the method of meeting, which is usually done physically, while in the digital context, meetings are carried out using electronic devices, such as via teleconference or video call.

There is an example of the preparation of the Minutes of the Annual GMS conducted online by PT Jaya Sarana Utama non Tbk, which was conducted on Monday, August 3, 2020, at 10.05 WIB by Notary Habib Adjie with GMS participants. This meeting was conducted in a hybrid manner, and there were differences in location between the notary and several meeting participants. At that time, Habib Adjie was in the same room with some of the participants who were centered in Surabaya, while all other participants were connected from different locations so that the meeting in this GMS was conducted via video conference using the Zoom meetings application as the communication media used. (Hafidh, 2022)^[7]

There is an example of the implementation of an auction via teleconference media carried out by the Regional Office of the Directorate General of the Ministry of State for Aceh on September 25, 2024, at the Mandiri Lelang Festival 2024 event. At that time, the auction carried out was a mandatory non-execution auction whose object was the remaining assets of Bank Mandiri, precisely under the Class I Auction Officer of the Banda Aceh State Asset and Auction Service Office (KPKNL), namely Aman Zulmas Telaumbanua. The auction carried out was an auction without the presence of participants which had previously been carried out electronically via the portallelang.go.id website for several days.

The Auction Officer opens the Auction bid list together with the Seller, 2 (two) witnesses from the Auction Organizer and/or from the Seller. Then, the Class I Auction Officer announces and ratifies the results of the auction with the highest bid that has reached or exceeded the limit value. Finally, after ratification, because at that time the Seller and buyer were present virtually, the conditions were explained at the end of the deed and the screenshot became legal evidence attached to the minutes of the deed showing the Auction Officer, Seller, and witnesses. (Yuwana, 2024)^[18] Through examples of the implementation of the making of deeds carried out online, the implementation of the making of release deeds such as auction minutes and minutes of the GMS, which both have a strong legal basis so that they can be made valid and guaranteed certainty in the eyes of the law. The release deed, in this case, applies the principle of *les specialis derogate legi generalis*, which makes it valid in the eyes of the law. Currently, there are no laws and regulations that serve as a legal basis for making online party deeds. However, it can be said that if the party deed also applies to online meetings, the implementation procedures will follow the same procedures as in making release deeds. However, it should be noted that there is no legal umbrella that expressly regulates these conditions, so it creates a legal vacuum in the implementation of the making of party deeds. However, in certain situations, such as a pandemic or other urgent circumstances, several aspects of the process of making authentic deeds may be carried out online, such as the initial stages in making the deed, namely:

1. Verification of the identity of the parties where the parties are required to submit identity documents and other supporting documents to be verified first.
2. Consultation and clarification of online meetings to explain the substance of the deed, ensure the understanding of the parties, and answer related questions.
3. After all documents have been verified and the substance of the deed has been agreed upon, a face-to-face meeting is scheduled for the reading and signing of the deed directly before a notary.

Thus, it can be concluded that although there is a deed-making process that can use technology for online meetings, such as in the deed of release of GMS and auctions, as well as the Deed of Statement of Meeting Decisions, it should be emphasized that for party deeds, it still requires the physical presence of the person appearing before the Notary in accordance with the provisions of the UUJN. Therefore, although technology can be used as a tool in the preparation and communication process, the making of party deeds is still guided by the basic principle of direct presence to maintain the validity and legal force of the deed because there is no legal umbrella that underlies online meetings in the making of this party deed.

Notaries have a very big responsibility to ensure that the entire deed-making process, including online meetings, runs in accordance with applicable law. Notaries are required to comply with all provisions stipulated in the law regarding the making of authentic deeds. In addition, notaries must also provide a clear explanation to all parties regarding the legal consequences of the deed made so that all parties understand their respective rights and obligations. Failure to comply with this duty can result in legal liability for notaries, including administrative sanctions and significant

reputational impacts as stated in Article 16 paragraph (11) of the UUJN, where notaries, if they do not carry out their obligations and authorities properly in accordance with statutory regulations.

The procedures carried out by a notary in an online meeting must have a clear legal umbrella and include concrete steps related to the meeting procedures, verification of the identity and documents of the person appearing, reading the deed, and signing the deed. Every step in the process must comply with applicable legal provisions, including the ratification of the deed. The Notary must ensure that all parties are actively involved and provide consent without any element of coercion or pressure. This is important to maintain the integrity and validity of the authentic deed produced.

Notaries are required to fulfill the obligation to do authentic deeds in accordance with Article 16 paragraph (1) letter m and Article 39 UUJN, where the obligation is as follows:

1. Identification, Verification, and Will of the Parties
2. Reading of the Deed
3. Signing of the Deed Online

If the parties do not comply with this, then in this case, the parties will bear the risk of defects in the deed as stated in Article 12 of the ITE Law. Virtual presence in signing the deed must be properly regulated to ensure that all parties are actively involved, especially in making the deed party. If one party cannot attend or give consent, the signing process cannot continue. Therefore, there needs to be a clear mechanism to ensure the presence and consent of all parties. The use of online meetings can increase the risk of legal disputes if there are discrepancies in the process of reading or signing the deed. If one party feels that the process is not transparent or legitimate, the parties can file a legal challenge to the validity of the deed.

In the making of authentic deeds, especially party deeds, there are still no more specific regulations that explicitly regulate the making of party deeds electronically. Legal certainty can be questioned when doing this deed electronically, and the online method does not necessarily meet the standard formality requirements determined by the UUJN. Not to mention, the opportunity for identity manipulation or intervention from third parties is greater. In addition, no system guarantees the authentication, integrity, and security of documents, so in this case, it can be questioned how to ensure that all parties understand the contents of the deed and act with full awareness without pressure. Not only will notaries have difficulty in making party deeds electronically, but sophisticated technological facilities and infrastructure that guarantee security in identity verification, document storage, and data encryption; it can be underlined that not all parties have access or sufficient understanding of this technology, so this will make the process of making authentic deeds, especially party deeds electronically more difficult.

For online meetings to be legally recognized, especially in the making of party deeds, regulations are needed that regulate the methods and procedures for making party deeds online. These regulations must cover all aspects related to the use of technology in making deeds, including technical and procedural standards that must be followed. Without a clear legal basis, the validity of the deed can be a problem that results in legal uncertainty for all parties involved. Good regulations will provide legal protection for all parties involved and reduce the risk of disputes in the future. This is

also important to ensure that the process of making party deeds can take place efficiently and effectively without sacrificing legal integrity. With clear regulations, public trust in using online meetings to make authentic deeds can increase significantly.

Conclusion

UUJN and KUHPPerdata regulate the offline making of authentic deeds. Still, the practice includes online deeds, such as the release of the Minutes of the GMS (Article 77 of the Limited Liability Company Law) and Auction Minutes (Minister of Finance Regulation Number 122 of 2023 and Number 86 of 2024). The making of this online deed is contrary to Article 16 paragraph (1) letter m and Article 39 of UUJN, as well as Article 1868 of the Civil Code, and violates the principle of rebellions official fideliter exercerbo.

The online meeting system for authentic deeds does not yet meet legal requirements due to the lack of technological facilities for authentication and the difficulty of notaries in ensuring the parties' awareness. Access to technology is also an obstacle for some parties. However, a release deed (GMS and Auction) can be made if the parties can see, hear, and actively participate. Notaries and auction officials are still required to identify the parties and read the deed, while the signing of the deed can be exempted with certain conditions explained at the end of the deed.

The legal implications arising from the creation of authentic deeds online can degrade the deed into a private deed and render it null and void by law. In addition, the risk of disputes and data manipulation will be greater for notaries and parties creating deeds through an online meeting system.

Suggestion

It is necessary to evaluate the relevance of the principles and articles related to the creation of authentic deeds online and to update regulations in line with technological advances in the era of the Industrial Revolution 4.0, where technological practices are getting closer to the community. In addition, there must be adequate electronic system facilities and infrastructure to implement the creation of authentic deeds online, including data and document verification systems, online meeting media, and electronic document storage to maintain data certainty and confidentiality. Furthermore, training for notaries who want to adapt digitally to the use of technology in creating electronic deeds is very important, accompanied by in-depth education and socialization for the parties so that they understand and can use technology to create authentic deeds online.

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