

Jurnal Notariil

Jurnal Notariil, Vol. 8, No. 1, 2023; 8-14

Available Online at <https://ejournal.warmadewa.ac.id/index.php/notariil>

P ISSN 2540 - 797X

E ISSN 2615 - 1545

CYBER NOTARY IN INDONESIA: REVIEW DURING THE COVID-19 PANDEMIC AND THE URGENCY OF POST-PANDEMI COVID-19 LEGAL REGULATIONS

Desia Rakhma Banjarani*, Neisa Ang rum Adisti, Isma Nuriilah and Helena Primadianti

Faculty of Law, Universitas Sriwijaya

*Email: desiabanmarani@fh.unsri.ac.id

How To Cite:

Banjarani, D. R., Adisti, N. A. R., Nuriilah, I., Primadianti, H. (2023). Cyber Notary in Indonesia: Review During The Covid-19 Pandemic and The Urgency of Post-Pandemi Covid-19 Legal Regulations. *Jurnal Notariil*, 8 (1), 8-14, Doi: <https://doi.org/10.22225/jn.8.1.2023.8-14>

Abstract

The role of the notary is required to be able participate in the development of technology and information, because in an electronic transaction is very possible for the intervention of a notary as a trusted third party. It is very inappropriate if the notary still uses conventional methods in providing services, because speed, timeliness and efficiency are needed by the parties. So, the research problem can be formulated as follows: How is the development of cyber notary in Indonesia? Why is cyber notary regulation so urgent in Indonesia after the Covid 19 Pandemic? In this research, the authors objectively describe cyber notaries in Indonesia. This research is normative research with the authors arranged descriptively through a qualitative approach. There are no specific legal provisions that regulate cyber notaries, while the use of cyber notaries is increasingly urgent during the pandemic era, such as the Covid 19 Pandemic. However, due to the absence of regulations governing cyber notaries, there were several problems in implementing cyber notaries during the Covid 19 Pandemic era. Therefore, after the Covid 19 Pandemic there was a need for special regulations governing cyber notaries. This is because the Notary Office Law, which has been the legal basis for implementing cyber notaries, actually has several articles and provisions that hinder the implementation of cyber notaries.

Keywords: cbery notary; covid-19; urgency

1. INTRODUCTION

Currently, the world is facing a post-covid-19 or corona virus pandemic which it has spread to various countries and the impact on various aspects of life, including aspects of information and communication technology. The impact of this virus cannot be underestimated, apart from the increasing number of human deaths, other impacts have also penetrated other sectors in various aspects of life. Let's say the legal aspects are also forced to change according to the circumstances of the

Covid 19 pandemic. At the beginning of 2020, WHO announced a number of health movements in order to reduce the transmission of covid 19. One of these movements is to limit various spaces for human movement in various public places. This has an impact on limited interactions and activities between humans and other humans.

Indonesia is one of the various countries that have a large number of Covid 19 cases. Until 2023, the number of Covid 19 cases in Indonesia has reached

6.73 million with 161 thousand deaths. This figure is the basis for the Indonesian government in forming various legal policies during the Covid 19 pandemic, such as social distancing and physical distancing policies or policies on social restrictions and physical contact. There are various other policies such as the Large-Scale Social Restrictions (PSBB) policy, the 3M health protocol policy (wearing a mask, keeping distance, and washing hands), Work From Home (WFH) and the stipulation of a policy to limit human activities or lockdown

The other impact of the Covid-19 Pandemic is forced people to leading the use of technology and utilize in various fields of life, such as education, trade, services, law enforcement, and others. Currently the use of information and communication technology has experienced developments that make it easier for people to do business and transact or what is called e-business and "e-commerce". Whereas in the education sector, the use of technology during the COVID-19 pandemic is the emergence of e-learning in the form of online learning due to government policies that prohibit gatherings during a pandemic.

In other words, the COVID-19 Pandemic has changed various aspects of people's lives which previously manual or using analog technology, then switched to digital technology connected to the internet. Changes in aspects of human life from before and after the COVID-19 pandemic are often referred to as the new normal era. Technological developments in this new normal era should also utilized by various professions, such as the notary profession.

The legal service work carried out by advocates and notaries as general officials is also inseparable from the impact of the Covid-19 Policy. The notary affected by the implementation of the PSBB is the mandatory work from home or WFH policy. However, with the norm of physically present in making Authentic Deeds by Notaries as stipulated in Law

Number 30 of 2004 concerning the Position of Notaries (hereinafter referred to as UUJN), the notary profession experienced obstacles in carrying out its profession during the Covid 19 pandemic. As for solving this problem, a notary can take advantage of technological developments or what is known as a cyber notary.

The concept of cyber notary is interpreted as a notary who carries out the duties or authority of their position based on information technology, which is related to the duties and functions of a notary, especially in making deeds. The idea of a cyber notary has actually emerged since 1995. However, the lack of a legal basis impeded the development of the implementation of a cyber notary. Currently, notary services that are developing in society are still conventional. But along with technological developments, inevitably forcing various aspects of life to transmigrate from conventional systems to electronic systems. So that notary services must also shift towards electronic-based services. The role of the notary is required to be able to participate in the development of technology and information, because in an electronic transaction it is very possible for the intervention of a notary as a trusted third party. It is very inappropriate if the notary still uses conventional methods in providing services, because speed, timeliness and efficiency are needed by the parties.

Based on the background above, the research problem can be formulated as follows: How is the development of cyber notary in Indonesia? Why is cyber notary regulation increasingly important in Indonesia after the Covid 19 Pandemic?

2. METHOD

In this study, the authors objectively describe cyber notaries in Indonesia. This research is normative research with the authors arranged descriptively through a qualitative approach.

3. DISCUSSION

Development Of Cyber Notary in Indonesia

In fact, the use of the term cyber notary in Indonesia as a country that has inherited the Continental European tradition is inappropriate. Based on the literature explaining cyber notary history, the terms cyber notary and electronic notary seem to have been born from two different concepts, namely the term "e-notary" which was popularized by legal experts from countries that inherited Continental European traditions, while the term "cyber notary" was popularized by legal experts inherited the Common Law tradition. The authority which is the starting point for the concept of cyber notary in Indonesia is contained in Article 15 paragraph (3) of Law JN2/2014, which reads: "In addition to the authority referred to in paragraph (1) and paragraph (2), a Notary has other authorities regulated in the legislation". In the elucidation of the article, it is stated that: "What is meant by "other authorities regulated in laws and regulations", among others, is the authority to certify transactions carried out electronically (cyber notary), deed of pledge of waqf, and aircraft mortgages."

The benefit of a cyber notary is to facilitate transactions between parties who live far apart so that distance is no longer a problem. Shareholders who are in America, Japan or Singapore, can attend the General Meeting of Shareholders or GMS by using teleconference media with shareholders in Indonesia, witnessed by a notary in Indonesia. Thus, the physical presence of the shareholders is not required. Shareholders who are abroad can be considered to still attend the GMS and their voting rights will still be counted in the attendance quorum. The concept of holding GMS by teleconference has been regulated in article 77 paragraph (1) UUPT, which states that GMS can also be held via teleconference media, video conferences, or other electronic media

facilities that allow all GMS participants to see and hear each other directly and participate in a meeting.

The concept of cyber notary is a concept that adopts the use of computers by notaries in carrying out their duties and authorities. This concept is widely used in common law countries. This is because the notary legal system in common law countries allows for a wider application of the concept of cyber notary. Notaries in common law countries are known as public notaries and not appointed by authorized officials and there is no obligation that the form of the deed must be regulated by law as in the civil law system. The duties of a public notary carry out more of the administrative process, namely giving a stamp or seal to an agreement. The value of the stamp or seal is the same as the signatures of the parties which are not accepted by the common law court as evidence regarding the facts written in the document, these facts must be proven in the normal way.

Law Number 30 of 2004 concerning the Position of Notary does not regulate cyber notary. UU no. 2 of 2014 concerning the Position of Notary mentions cyber notary, but does not provide a normative definition, so that with the inclusion of the Explanation of Article 15 paragraph (3) of Law no. 2 of 2014 concerning the Position of Notary, limitatively is categorized as a cyber notary a matter of certifying transactions carried out electronically. The application of the cyber notary concept by the Directorate General of General Legal Administration or the Directorate General of AHU online is regulated in several regulations, namely:

Regarding services related to company, it is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 4 of 2014 concerning Procedures for Submitting Applications for Legal Entity Authorization and Approval for Amendments to the Articles of Association and Submission of Notifications for Amendments to Articles of Association and Changes to Limited

Liability Company Data (Permenkumham 4/2014);

Regarding services related to foundations, it is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 5 of 2014 concerning Ratification of Foundation Legal Entities (Permenkumham 5/2014);

Regarding services related to associations, it is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 6 of 2014 concerning Ratification of Association Legal Entities (Permenkumham 6/2014);

Regarding services related to Fiduciary, it is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2013 concerning Procedures for Electronic Registration of Fiduciary Guarantees (Permenkumham 10/2013) and Circular Letter of the Directorate General of General Law Administration Number AHU.OT.03.01- 11 of 2013 concerning Registration and Elimination of Fiduciary Guarantee Certificates;

Regarding services related to the reporting of wills and registration of prospective notaries, it is regulated in the Amendments to UUJN;

Regarding the imposition of types and rates of Non-Tax State Revenue, it is regulated in Government Regulation of the Republic of Indonesia Number 45 of 2014 concerning Types and Tariffs for Types of Non-Tax State Revenue that apply to the Ministry of Law and Human Rights (Government Regulation 45/2014);

Regarding the procedure for submitting and using the name of the Company, it is regulated in the Government Regulation of the Republic of Indonesia Number 43 of 2011 concerning Procedures for Filing and Using the Name of a Limited Liability Company (Government Regulation 43/2011);

Regarding the use of the name of the

Foundation is regulated in the Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning the Implementation of the Law on Foundations (Government Regulation 63/2008), and the Law of the Republic of Indonesia Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations (Law 28/2004), and Law of the Republic of Indonesia Number 16 of 2001 concerning Foundations (Law 16/2001);

Regarding the use of the name Association is regulated in the Law of the Republic of Indonesia Number 17 of 2013 concerning Community Organizations (Laaw No. 17/2013).

The Urgency of Cyber Notary Regulations in Indonesia During the New Normal Era of the Covid 19 Pandemic

There are 3 (three) reasons why implementing cyber notary is important for the Indonesian state: First reason, that the government is targeting Indonesia to get a minimum ranking of 40 in the top EODB Ease Of Doing Business index or ease of doing business from the World Bank and at the international congress the notary president Joko Widodo conveyed His wish is for the notary to respond to the demands of the times. The second reason is that the establishment of a Limited Liability Company (PT) is one of the indicators used in determining the EODB index. Notary as a public official is given the authority by the state to make the deed of establishment of the PT, apart from having to understand the rules contained in the UUJN, must also understand what changes have occurred in the process of making a PT. Third reason, in Article 22 UUJN stated that the formation of a notary can be opened by taking into account 3 things: (1) business world activities, (2) population, (3) average number of deeds drawn up by notaries each month.

Cyber Notary can be a novelty in the notary world in Indonesia, especially in the

context of the Coronavirus Disease (COVID-19) pandemic has impact on delaying every legal action by involving a third party, namely a notary, this renewal includes making authentic deeds based on UUJN in Article 1 number (7) which requires that it be made face to face with a notary in this case with the existence of a cyber notary the element of dealing can be done using teleconference media. So, it is time for the cyber notary system to be implemented in Indonesia. Even though cyber notary is urgent to be implemented in Indonesia, especially after the COVID 19 pandemic, based on a review of the implementation of cyber notary during the COVID 19 pandemic it turns out that cyber notary experienced several problems.

Notarial deeds made based on the cyber notary concept during the Covid-19 pandemic did not have legal certainty because there were no regulations governing cyber notaries. The Notary Office Law did not explain clearly the provision regarding cyber notaries only found in the elucidation of Article 15 paragraph (3)) Law on Notary Office. The application of the cyber notary concept has been regulated in the elucidation of Article 15 paragraph (3) of the Notary Office Law, but it has not been accommodated by other laws and regulations as implementing regulations. There is still legal conflict regarding how a notary wants to use an electronic system in carrying out his profession as stipulated in general laws, one of which is as stated in the ITE Law. However, using the interpretation of *Lex Specialis Derogat Legi Generali*, and accompanied by the urgency to use a notary in the midst of a pandemic as a response to the credit/bank financing restructuring policy impacted by Covid 19, the implementation of cyber notaries can of course be carried out with the precautionary principle.

For the time being during pandemic, the use of the concept of cyber notary is to certify and authenticate transactions electronically and certificates of waqf pledges and airplane mortgages. Legal

protection for notaries for notary deeds that use the cyber notary concept during the COVID-19 pandemic is regulated in Article 66 of the Notary Office Law which regulates the establishment of a Notary Honorary Council consisting of representatives of Notaries, government and academics who function as legal protection institutions related to the deed drawn up by a Notary. As well as Notaries also get protection from the Indonesian Notary Association (INI) in Article 82 paragraph (2) of the Notary Office Law. In addition, it is protected by the Electronic Information and Transaction Law by applying the principle of *lex specialis derogate lex generalis*, which means that a specific law overrides a general law, in this case the Electronic Information and Transaction Law overrides the law. Notary Office.

Besides that, the implementation of cyber notary services during the Covid-19 pandemic also caused another problem such formal requirements were not fulfilled to support the validity of a notary deed by referring to several articles contained in UUJN. The formal requirements mentioned above are accumulative in nature and not alternative in nature. If one condition is not fulfilled, the notarial deed has the potential to be formally flawed and result in becoming invalid and no evidentiary power. There are several articles in UUJN which actually hinder the implementation of notary deed based on cyber notary, namely as follows:

Article 1 number 7 UUJN regarding deed must be made by or before a notary;

Article 1 number 8 and number 9 of the UUJN regarding the minutes of the deed and the copy of the deed are no longer different;

Article 16 paragraph (1) UUJN, regarding the obligation to read the deed in front of two witnesses and signed at the same time;

Article 38 paragraph (4) UUJN, description of the signing and place of signing or translation of the deed if

available;

Article 48 paragraph (1) UUJN regarding the contents of the deed may not be changed or added, whether in the form of overlapping, inserting, crossing out or deleting and replacing it with something else;

Article 50 of the UUJN concerning deleting the part that must be crossed out can still be read as originally stated.

4. CONCLUSIONS

Adapun manfaat dari cyber notary adalah mempermudah transaksi antara para pihak yang tinggalnya berjauhan sehingga jarak bukan menjadi masalah lagi. Konsep cyber notary adalah sebetulnya konsep yang mengadopsi penggunaan komputer oleh notaris dalam menjalankan tugas dan kewenangannya. Perkembangan cyber notary di Indonesia pada dasarnya telah diatur secara tersirat dalam UU Jabatan Notaris dan Direktorat Jenderal Administrasi Hukum Umum atau Ditjen AHU. Sehingga hal tersebut menunjukkan bahwa belum ada ketentuan hukum khusus yang mengatur terkait cyber notary, sedangkan penggunaan cyber notary semakin urgen dilakukan ketika era pandemic seperti Pandemi Covid 19 lalu. Namun dikarenakan belum adanya peraturan yang mengatur tentang cyber notary maka terdapat beberapa permasalahan dalam penerapan cyber notary saat era Pandemi Covid 19. Oleh karena itu, pasca Pandemi Covid 19 semakin diperlukan adanya peraturan khusus yang mengatur terkait cyber notary. Hal tersebut dikarenakan UU Jabatan Notaris yang selama ini menjadi dasar hukum pelaksanaan cyber notary justru memiliki beberapa pasal dan ketentuan yang menghambat penerapan cyber notary.

REFERENCES

Alwajdi, M, F. (2020). Urgensi Pengaturan Cyber Notary Dalam Mendukung Kemudahan Berusaha Di Indonesia. *Jurnal Rechtsvinding*, 9(2), 257-274.

- Amanda, T, D, R., & Rizkianti, W. (2021). Urgensi Penerapan Sistem Cyber Notary Ditengah Pandemi Covid 19. *Yurispruden*, 4(2), 144 – 159.
- Benny. (2015). Penerapan Konsep Cyber Notary Di Indonesia Ditinjau Dari Undang-Undang Nomor 2 Tahun 2014. *Premise Law Journal*, 5,1-12.
- Benny,B. (2015). Penerapan Konsep Cyber Notary Di Indonesia Ditinjau Dari Undang-Undang Nomor 2 Tahun 2014. *Premise Law Journal*, 5.
- Chastra, D, F. (2021). Kepastian Hukum Cyber Notary Dalam Kaidah Pembuatan Akta Autentik Oleh Notaris Berdasarkan Undang-Undang Jabatan Notaris. *Indonesian Notary*, 3(2), 248-267.
- Faulina, J., Barkatullah,A, H., & Gozali, D, S. (2022). Kedudukan Hukum Akta Notaris Yang Menerapkan Konsep Cyber Notary Di Masa Pandemi Covid-19 Di Indonesia. *Notary Law Journal*, 1(3).
- Firmansyah, Y., & Kardina, F. (2020). Pengaruh New Normal Ditengah Pandemi Covid-19 terhadap Pengelolaan Sekolah Dan Peserta Didik. *Jurnal Buana Ilmu*, 4 (2), 99-112. Doi: <https://doi.org/10.36805/Bi.V4i2.1107>.
- <https://Covid19.Go.Id/>, Accessed On 14 January 2023.
- Kennedy, P, S, J., Harya, T, W., Tampubolon, E., & Fakhriansyah, M. (2020). Analisis Strategi Lockdown Atau Pembatasan Sosial Dalam Menghambat Penyebaran Covid-19. *Journal Image*. 9(1), 48-64. Doi: <https://doi.org/10.17509/Image.V9i1.24189>.
- Kie, T, T. (2007). *Studi Notariat & Serba Serbi Praktek Notaris*. Jakarta: Pt Ichtiar Baru Van Hoeve.
- Komalasari, R. (2020). Manfaat Teknologi Informasi Dan Komunikasidi Masa Pandemi Covid 19. *Tematik - Jurnal Teknologi Informasi Dan Komunikasi*. 7 (1). Doi: <https://doi.org/10.38204/Tematik.V7i1.369>.
- Kresna, A., & Ahyar, J. (2020). Pengaruh Physical Distancing Dan Social Distancing Terhadap Kesehatan Dalam Pendekatan Linguistik. *Jurnal Syntax Transformation*, 1(4), 14-19. Doi: <https://doi.org/10.46799/%25j.Vol1.Iss4.42>.
- Kurniawan, M, B. (2021). Politik Hukum Pemerintah Dalam Penanganan Pandemi Covid-19 ditinjau Dari Perspektif Hak Asasi Atas Kesehatan. *Jurnal Ham*, 12(1), 37-56. Doi: <http://dx.doi.org/10.30641/>

- Ham.2021.12.37-56.
- Makarim, E. (2013). *Notaris Dan Transaksi Elektronik, Kajian Hukum Tentang Cybernotary Atau Electronic Notary*. Jakarta: Rajawali Pers.
- Nola, L, F. (2011). Peluang Penerapan Cyber Notary Dalam Peraturan Perundang-Undangan Di Indonesia. *Negara Hukum*. 2(1).
- Pangesti, S. (2020). The Regulatory Concept Of Cyber Notary In Indonesia. *Rechtsidee*, 7.
- Rosadi, S, D., & Pratama, G, G. (2018). Perlindungan Privasi Dan Data Pribadi Dalam Era Ekonomi Digital Di Indonesia, 4 (1), 88-110. Doi: 10.25123/Vej.2916.
- Salsabila, U, H., Lestari, W, M., Habibah, R., Oqyandaresta, & Yulianingsih, D. (2020). Pemanfaatan Teknologi Media Pembelajaran Di Masa Pandemi Covid-19. *Trapsila: Jurnal Pendidikan Dasar*, 2(2), 1-13. Doi: [Http://Dx.Doi.Org/10.30742/Tpd.V2i2.1070](http://Dx.Doi.Org/10.30742/Tpd.V2i2.1070).
- Saragi, U, E., & Wiryomartani, W. (2021). Penerapan Cyber Notary Dalam Pembuatan Akta Notariil tanpa Berhadapan Secara Fisik Di Saat Pandemi Covid 19 (Studi Kasus Pembuatan Akta Oleh Notaris R Pada Tahun 2021). *Palar (Pakuan Law Review)*, 08(1), 60-74.
- Setiadewi, K., & Wijaya, I, M, H. (2020). Legalitas Akta Notaris Berbasis Cyber Notary Sebagai Akta Otentik. *Jurnal Komunikasi Hukum (Jkh) Universitas Pendidikan Ganesha*, 6(1), 126-134.
- Siahaan, M. (2020). Dampak Pandemi Covid-19 Terhadap Duniapendidikan. *Jurnal Kajian Ilmiah (Jki) Edisi Khusus*, (1), 173 – 80. Doi: [Https://Doi.Org/10.31599/Jki.V1i1.265](https://Doi.Org/10.31599/Jki.V1i1.265).
- Soleh, M, F. (2020). Penimbunan Alat Pelindung Diri Pada Masa Pandemi Covid-19: Kajian Hukum Pidana Bidang Perlindungan Konsumen. *Undang: Jurnal Hukum*, 3(1), 1-31. Doi: 10.22437/Ujh.3.1.1-31.
- Wijaya, H. (2021). *Problematika Hukum Pelaksanaan Cyber Notary Dalam Masa Pandemi Covid-19*. Proceeding Of Conference On Law And Social Studies, 1-12.
- Wicaksana, R, H., Munandar, A, I., Samputra, P, L. (2020). Studi Kebijakan Perlindungan Data Pribadi Dengan Narrative Policy Framework: Kasus Serangan Siber Selama Pandemi Covid-19. *Jurnal Iptek-Kom (Jurnal Ilmu Pengetahuan Dan Teknologi Komunikasi)*, 22(2), 143–158. Doi: [Http://Dx.Doi.Org/10.33164/Iptekom.22.2.2020.143-158](http://Dx.Doi.Org/10.33164/Iptekom.22.2.2020.143-158).