

The Need for Online Jobs in Covid-19 Pandemic: A Case Study of Cyber Regulatory Arrangement for a Legal Job

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Abstract

The world is now facing a novel pandemic caused by Covid-19, prompting countries, including Indonesia to take steps to contain gushing numbers of Covid-19 cases. The pillar of Indonesia's response is enforcing a Large-Scale Social Restriction (LSSR) to minimize physical contacts in society, one of them through closing down schools and workplaces. Notary, as a member of society, is also obliged to maintain this social distancing policy and minimize meetings with clients physicaly. Such means is possible through Cyber Notary Concept, a concept where notaries do their jobs using various high technologies, including internet. Indonesian Regulation has mentioned this concept once in the Indoensian Notary Codes, but no further regulation follows to execute this concept. Author will be using the normative legal research method for this paper. This reasearch is aiming is to study the urgenciesof forming regulations regarding the practice of Cyber Notary to prop up the government in the attempt of surpressing the escalating numbers of those who are infected by the virus. Cyber Notary is one effective way to decrease physical contacts between notaries and their clients, because this kind of activities could be done with the technology of ellectronics, therefore following regulation is desperately needed.

Keywords

Covid-19, Cyber Notary, Technology, Urgency.

Introduction

Since March 2020, where the World Health Organization announced that Corona Virus Disease (COVID-19) is a global pandemic because it has infected at least one hundred and fourteen countries around the world. Countries are given a loud alarm to immediately take immediate action to tackle this virus that originated in Wuhan, China, which with these actions also affects various sectors of people's lives, including Indonesia. The necessity of implementing physical distancing to prevent the transmission and spread of this virus resulted in a significant decrease in community activities. Requires to do activities as much as possible only from home and avoid going out of the house, excluding only those jobs that are absolutely impossible to do from home.

Likewise with the work of a Notary. As a public official who is mandated by Law Number 30 of 2004 and has been amended by Law Number 2 of 2014 concerning the Position of Notary (hereinafter referred to as the Law on Notary Position) to produce authentic evidence, and other authorities as has been specified in Article 15 of the Law on Notary Positions. In Article 16 of the Law on the Position of a Notary, it is explained the various obligations of a Notary, which in letter m stipulates that the reading of the deed is obligatory by a Notary in front of the appearers in the presence of a minimum of 2 (two) witnesses, which in the explanation, the Notary is required to attend physically and face to face physically both with the appearers and witnesses to sign an authentic deed. This arrangement during a pandemic like this is a big obstacle for the practice of notaries in Indonesia (Yulia et al., 2020; Iryadi et al., 2021).

On the other hand, the world has also entered the era of the Industrial Revolution 4.0, which according to Angela Merkel, is a phenomenon of a comprehensive transformation in the industrial aspect by combining digital technology and the internet (Kornelius, 2013). The main element in the Industrial Revolution 4.0 is the so-called Internet of Things. (IoT). Industry 4.0 led by IoT has succeeded in changing the world community's view of how everything can be connected (Akmal, 2019). Now the industry has started to use the virtual world, in the form of data exchange and automation. This era forces the global community, including the state, in this case Indonesia as part of the global community to be able to quickly adapt to technological developments, including notaries. Referring to the background that has been described previously, there are several problems that can be formulated as of what is the current regulation regarding Cyber Notary in Indonesia, and what is the urgency of setting up a Cyber Notary during the Covid-19 pandemic.

Theoretical Framework

The use of electronic, information and communication technology in carrying out work by a notary or the concept of Cyber Notary itself was first heard and coined by the Committee of American Bar and Association in 1993. In essence, this concept explains that notaries in America are authorized to authenticate various documents related to electronic business transactions. After this initiation, however, it was not regulated in Indonesia until the issuance of Law Number 2 of 2014 which was an amendment to the previous Law on Notary Positions. In Article 15 which regulates the various powers of a notary, paragraph (3) states that notaries have other authorities regulated in the legislation. Furthermore, this other authority is explained in the explanation of Article 15 paragraph (3) that what is meant by other authorities here is one of them certifying transactions conducted electronically.

In the elucidation of Article 15 Paragraph (3) of the Law on Notary Positions, this is actually an opening for notaries to exercise their authority on an electronic basis or Cyber Notary. However, in the field, not many notaries dare to apply Cyber Notary in practice because of the lack of clarity on further regulations regarding the technical implementation so that notaries do not have a handle or legal umbrella if then the implementation of Cyber Notary causes problems. Notaries as public officials are born with the will by the rule of law with the aim of serving the community in terms of making evidence in written and authentic form about an event or a certain legal act. Based on this idea, a notary should have a passion to serve the community because its existence from the start is the will of the community (Nurita & Ayu, 2012). With the issuance of Presidential Decree No. 11 of 2020 and Presidential Decree No. 21 of 2020 concerning Large-Scale Social Restrictions which require the public to limit activities carried out outside the home in the hope of slowing and even breaking the chain of spread of COVID-19, the practice of notaries is also expected to take steps to participate in increasing physical space through the implementation of the Cyber Notary system.

To show the comparison and show the originality of the author's research, three previous studies will be briefly described with the similarity of the research problems conducted by the author. The first research was conducted by Putri & Budiono (2019) examining the conceptualization and opportunities of cyber notary in law, focusing their discussion on the concept of cyber notary in Indonesia and its application opportunities in the perspective of notary protocol storage and not in the perspective of making the deed. A second similar study was also conducted by Rossalina (2016) who conducted research on the validity of notary deeds using cyber notaries as authentic deeds whose discussion focused on the conflict of norms related to Cyber Notary arising between Article 15 paragraph (3) and

Article 16 paragraph (1) letter m of the Law. Notary Position Act, as well as the validity of electronic certification carried out by a notary. Another similar study was carried out by Syamsul Bahri examining the authority of a notary to certify electronic transactions in a cyber notary framework and showing the arrangements and responsibilities of the Indonesian Notary Association to the organizers of electronic certification.

From the explanation above, it can be seen that there is a dissimilarity between the writings and the writings that have been done previously by the researchers mentioned above, compared to the research conducted by the authors, which focuses more on the urgency of regulating Cyber Notary which is still unclear, especially during the pandemic. global Covid-19 which requires maintaining physical distance between each other.

Research Methods

The approach method in legal research that is carried out to review the problem is a normative juridical approach where the author examines various laws and regulations because normative juridical conceptualizes law as written norms and is poured into laws and regulations that are used as a benchmark for people to behave. nation and state life. In this case, the laws and regulations as legal material being studied are primary, secondary, and tertiary legal materials collected through the library study method or what is often referred to as Library Research. Primary legal materials include laws and regulations that are relevant and relevant to the issues studied, namely the Law on Notary Positions (UUJN), the Law on Information and Electronic Transactions (UU ITE), and so on. Then furthermore, to assist in explaining and analyzing as well as comparing primary legal materials, secondary legal materials such as the writings of experts in the form of journals and articles related to the issues discussed are also used. Meanwhile, judging from the techniques used to analyze the legal material, descriptive analytical techniques are used which will later thoroughly present the object studied in this study, namely, the urgency of implementing Cyber Notary practices in a period where all physical contact is avoided as much as possible in order to suppress the increase in the positive number of infected people. Covid-19. Furthermore, the explanation of the conclusions will be carried out using qualitative analytical techniques which aim to present a systematic analysis of the facts and phenomena studied. According to Miles and Huberman, qualitative data is data that is not in the form of numbers, but in the form of descriptions or events. The conclusion is a short answer regarding the results of research that has been carried out which only focuses on the scope of the question in the formulation of the problem.

Results: Current Cyber Notary Arrangements in Indonesia

Following the development of technology and the flow of globalization, in 2008, Law Number 11 of 2008 concerning Information and Electronic Transactions was promulgated, which was later amended by Law Number 19 of 2016 (hereinafter referred to as UU ITE), which the government hopes can improve its performance in serving the public. Pengundangan UU ITE ini salah satunya merupakan jawaban dari terbitnya laporan Ease of Doing Business or EODB (Ease of Doing Business) by the World Bank which basically requires the issuance of policies by countries in the world to facilitate the activities of entrepreneurs to do business.

The emergence of the ITE Law legalized electronic-based transactions and began to shift conventional systems into electronic systems. Until now, under the umbrella of this ITE Law, many electronic transactions have been carried out in the practice of e-commerce. It is no longer limited to electronic transactions, but has also spread to the fields of law and politics that utilize electronic information and communication technology in carrying out public services by the government which is generally known as e-Governance. One of the non-government public services is service by a notary whose existence has been desired by the community from the start to produce authentic evidence.

The concept and term Cyber Notary were first discovered in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN 2014). Article 15 regulates various kinds of authority of a notary. In paragraphs (1) and (2), the authority of a notary is clearly regulated, among others, to make an authentic deed, legalization, *waarmerking*, legalization, copy collation, and so on. Whereas in paragraph (3) it is stated that in addition to the authority set forth in paragraph (1) and paragraph (2), a notary also has other powers regulated by law. This sentence is then explained in the explanation that what is meant by this other authority is one of them certifying electronic transactions (Cyber Notary). This shows that the government is trying to provide legal certainty to electronic transaction actors to be able to carry out electronic transaction activities safely and their validity is guaranteed by the state through a Notary intermediary as the provider of electronic transaction certification (Widiasih, 2020).

The concept of Cyber Notary, according to Brian Amy Prastyo, has not yet held a binding definition. There are various interpretations of meaning with the same core, namely the concept in which a notary performs the function of his position by using and utilizing electronic technology, namely the internet. The author interprets this based on the

breakdown of the word Cyber Notary which consists of the words "cyberspace" which means cyberspace, and "notary" which means Notary. this has been regulated in Article 15 paragraph (3), there is still a vague meaning or what is called a vague norm that has not received a clear understanding from the explanation of the article (Diliyanto & Asikin, 2018). The granting of authority for electronic certification appears to be just a discourse, because the government does not regulate further implementing regulations regarding this matter.

In order to find out whether a "discourse" can really be realized in practice, and of course the "discourse" also does not contain overlapping norms with other existing regulations, it must be studied with critical legal theory. Therefore, further studies are needed regarding the certification of electronic transactions with other laws and regulations so that the arrangement of the Notary's authority to certify electronic transactions appears to be in harmony (Yusuf et al., 2015).

The definition or definition of electronic documents is contained in Article 1 paragraph (4) of the ITE Law, stating that "any electronic information that is created, transmitted, sent, received, stored in analog, digital, electromagnetic, optical or similar forms that can be seen, displayed and heard through a computer or electronic system but is not limited to writing, sound, images, maps, designs, photos or the like, letters, signs, numbers, access codes, or symbols that have meaning and can be understood by people who are able to understand them."

This electronic document then in accordance with Article 5 paragraphs (1), (2), and (3) of the ITE Law can be used as legal evidence. However, it should be noted that there are exceptions regulated in paragraph (4), namely letters which according to law are required to be made in writing in the form of a notarial deed or made by PPAT (Official Land Deed Maker). From the contents of this paragraph, it can be seen that the current ITE Law hinders the implementation of Cyber Notary practices in Indonesia. In the explanation, a letter which according to the law must be made in writing is one of the following: "...a letter used in the process of enforcing civil, criminal, and state administrative procedural law." While the main function of a notary is to produce authentic evidence that is perfect for use in court which is considered true as long as it can be proven otherwise. This shows that there is a clash of norms regarding Cyber Notary between the Law on Notary Positions and what is regulated in the ITE Law.

The Law on Notary Positions formulates a provision that the making of a deed must be carried out before and read by a notary. An authentic deed according to the definitions and

rules in the Law on Notary Position there are 4 (four) important elements in it as a formal requirement for a deed to be classified as an authentic deed, that is: Made by an authorized official, attended by the parties concerned, the parties are known or introduced to the notary, and attended by a minimum of 2 (two) witnesses. These four conditions are not alternative, but cumulative, which means that with the loss or non-fulfillment of one condition, a deed is defective and is no longer an authentic deed that has perfect evidentiary power.

Article 16 of the Law on Notary Positions regulates the obligations of a notary in carrying out his position. In Article 16 paragraph (1) letter m it is stated that a notary is obliged to read the deed to the parties in the presence of witnesses. It is even clearer in the explanation of the relevant articles and paragraphs; it is stated that a notary must be physically present and sign the deed in front of the witnesses. The word "physical" in the explanation of this paragraph clearly and unequivocally conveys the message that neither the making nor the signing of a notarial deed is possible without the physical presence of all parties face-to-face.

The implementation of the function of the notary's authority by utilizing technology, especially the internet, is also mentioned in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the PT Law). Article 76 of the Limited Liability Company Law stipulates that the location for the General Meeting of Shareholders (hereinafter referred to as the GMS) must be in the domicile of the Limited Company concerned. However, there is a waiver regarding the location of the GMS as regulated in Article 77 which states that the GMS can also be held through electronic media as long as it is possible for the GMS participants to hear and see each other directly and participate in the GMS. With this arrangement, it should be formally and legally the implementation of the GMS by teleconference can be accepted. The making of the deed of the minutes of the GMS by a notary produces a deed that is classified as a *relaas* deed because the Notary is present, witnesses, sees, and hears the things discussed and decided in the meeting. Problems arose with the GMS which was held by teleconference, meaning that the Notary and the meeting participants were not in the same place and location, so the resulting deed was feared to be defective and its validity was questioned (Seto, 2019).

The regulatory conflicts as described above have caused the Cyber Notary practice to not yet be implemented due to the concern of the parties concerned that the deed made and signed by a notary electronically has no legal validity as an authentic deed. Because there is ambiguity and even a legal vacuum in both the meaning and the implementing regulations, this Cyber Notary system has not been implemented effectively until now in practice.

The Urgency of Cyber Notary Regulations During the COVID-19 Global Pandemic

On March 11, 2020, COVID-19 was declared a pandemic by the WHO (World Health Organization) on the basis that this virus has spread to more than 114 countries in the world, including Indonesia. In Indonesia, the number of positive cases of COVID-19 continues to increase. According to an update that the author has seen on the official government page specifically regarding COVID-19, as of September 19, 2020 the number of positive cases of COVID-19 has touched the number of 244,676 cases spread throughout Indonesia, with the number of active cases of 57,796 cases, the number of recovered people being 177,327 people, with the death toll reaching 9,553 people.

In an effort to deal with COVID-19, the Indonesian government has issued a series of rules governing various matters related to handling COVID-19, starting from Large-Scale Social Restrictions (hereinafter abbreviated as PSBB), and rules to address problems in other sectors that are affected by this pandemic. In an effort to break the chain of transmission of COVID-19, Government Regulation Number 21 of 2020, Presidential Decree Number 7 of 2020 in conjunction with Presidential Decree Number 9 of 2020, Regulation of the Minister of Health Number 9 of 2020, which regulates PSBB, both on mechanism guidelines, has been issued. implementation, recording, reporting, coaching, and supervision.

The basic regulations regarding PSBB itself have been regulated in Law Number 6 of 2018 concerning Health Quarantine (hereinafter referred to as the Health Quarantine Law), which is then regulated in Government Regulation Number 21 of 2020, and subsequently issued by Minister of Health Regulation Number 9 of 2020 as the implementation of Article 15 paragraph (4) of the Health Quarantine Law. The definition of PSBB has been regulated in Article 1 number 11, namely: "... restrictions on certain activities of residents in an area suspected of being infected with a disease and/or contaminated in such a way as to prevent the possibility of spreading the disease or contamination."

The provisions of Article 59 paragraph (4) of the Health Quarantine Law stipulates that the PSBB at least includes holidays from schools and workplaces, restrictions on religious activities, and in public facilities and places. This arrangement also affects notaries and notary offices as workplaces. The implementation of the next Minister of Health Regulation is regulated by the respective Regions through Governor Regulations, Mayor Regulations, and Regent Regulations. There are areas that exclude Notary Offices and PPAT from having to close their workplaces related to PSBB, and some do not. But whatever it is, a Notary as a citizen should and should be obliged to comply with and participate in the implementation of health quarantine for the benefit of the larger community to slow down the spread of

COVID-19. This is in accordance with what is stated in Article 9 of the Health Quarantine Law which obliges everyone to obey and take part in the implementation of health quarantine.

For the sake of participating with the Indonesian government in this effort to limit physical distance, there is actually an alternative for a notary to still be able to carry out the functions of his position and communicate with clients without having to go through a physical meeting. The concept of a notary who utilizes technological sophistication to carry out his authority is known as the concept of cyber notary or e-notary.

The term Cyber Notary was first found in the legislation in Indonesia in the Elucidation of Article 15 paragraph (3) of the Notary Position Act which regulates the authorities of another notary regulated by laws and regulations. However, there are no further laws and regulations or implementing regulations for this Cyber Notary concept. The main function of the Cyber Notary in accordance with the explanation of Article 15 paragraph (3) of the Notary Position Act is to certify and authenticate electronic transactions. The definition of certification itself is an act as a Certification Authority owned by a notary as a third party, so that the parties can receive a digital certificate in the form of an electronic document (Matra 2012). This electronic document has the same position and parallel to the paper document. This can be seen in Article 6 of the ITE Law which states that as long as the information contained in the electronic document can be displayed, accessed, guaranteed its integrity and can be accounted for, then the electronic document is legal. The electronic document generated from an electronic transaction is then certified by a Notary so that it can become a valid evidence, which according to Article 1 number 18 of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions defines the certificate as an electronic certificate containing Electronic Signature and identity issued by the provider of electronic certification indicating the status of the legal subject of the parties in the Electronic Transaction (Syamsir & Yetniwati, 2019).

The use of electronic signatures has also been recognized for its strength and validity as stated in Article 11 of the ITE Law. It should be noted that what is meant by an electronic signature is not a wet signature which is then scanned and made into a soft file, but according to the ITE Law, electronic signatures can be made in various ways, including with a digital code that will specifically provide specific identification of the user. the sender (Wahyuni, 2010). Through a mechanism called public key cryptography, electronic signatures are created. The way public key cryptography works is by utilizing two different keys, namely the public key and the private key, which are mathematically related. The public key can be provided or accessed by anyone and used by other parties to

verify/validate the electronic signature that we create. In the Public Key Infrastructure, the public key is embedded in an electronic certificate issued/issued by the Certification Authority. Meanwhile, only the owner of the key can know and access the private key (Balai Sertifikasi Elektronik, 2020).

Based on the explanation above, it can be seen that the role and duty of a notary is only to ensure and guarantee the correctness of the electronic signature, identity, and status in the electronic certificate. This role is similar to the authority of a notary in the provisions of Article 15 paragraph (2) letter a of the Notary Position Act to legalize a document, namely to ratify a signature and guarantee the certainty of the hand of a letter made under the hand by registering it in a special book. Meanwhile, what is meant by a Cyber Notary that is needed during this pandemic is not only certifying electronic certificates, but the use of technology, especially the internet, in the practice of carrying out their duties, functions and authorities.

There are two perspectives of notaries using technology in carrying out their duties. The first perspective is regarding the storage of protocols, and the second is regarding the manufacture of evidence and other notary products. The use of technology within the scope of protocol storage has actually been applied to several web or electronic applications such as the portal of the Directorate General of General Legal Administration (AHU Online) to take care of matters relating to Limited Liability Companies, Foundations, Cooperatives, other Civil Partnerships, as well as places for report the will; and the Legal Entity Administration System (SABH) to manage Limited Partnerships and Firms (Dewi, 2015). Making this electronic transfer of protocol storage or notary data is not a copy that has binding legal force, but only as a back-up of data in the form of soft files.

Regarding the Cyber Notary principle in the process of making the deed, in fact the Law has alluded to the implementation of the GMS electronically using teleconferencing as long as it is possible for those present at the GMS to hear and see each other directly and participate in the GMS. The legal protection provided by the ITE Law for activities using internet media has accommodated the needs of e-commerce business players and the general public who use the internet to obtain legal certainty, with the recognition of electronic evidence and digital signatures as legal evidence in court (Dewi, 2016).

The making of the Minutes of the GMS with the Cyber Notary concept is currently running even though it is a little bit because the deed produced by the notary here is a relaas deed. The relaas deed or known as the official deed is a deed that contains a description of what was seen, heard and witnessed by the notary concerned himself at the request of the parties

for the actions seen, heard and witnessed by the notary stated in an authentic deed (Adjie 2009). So, the parties in the GMS are not required to put their signatures on the Minutes of Deed. It is different with the party deed. The partij deed contains the wishes and wishes of the parties appearing. The notary only pours the wishes and what is desired by the parties into a deed so that it can be used as a means of proof at a later date.

Thus, normatively, the opportunity for making deed of minutes of the GMS results by the PT Law and storing the Notary protocol in electronic form has opened up the possibility to make a deed by taking advantage of technological developments, but the main obstacle faced is the provisions in the Notary Law which requires the physical presence of the parties before a notary for the making and signing of a deed, so that it seems impossible for a notary to be able to work from home. The word Present physically, if broken down into present and physically. Present means there is or comes and physically means the physical body meets each other and looks at each other directly in the same place (Soeroso, 2010). Besides that, there is also a requirement for the authenticity of the deed in Article 1868 of the Civil Code (hereinafter referred to as the Civil Code) that must be fulfilled, namely that its form must be determined by the legislation, and its making by or in the presence of public officials who have the power to do so at the place where the deed was made (Subekti & Tjitrosudibio, 2009).

If a notary is desperate to make a deed electronically, which means it is done without physical presence, it will result in the imposition of civil sanctions on the notary concerned. This sanction can be in the form of reimbursement of costs, compensation, interest, and most importantly, the deed is no longer authentic, but only as an underhand deed (Adjie, 2013).

Apart from that, it should also be remembered that COVID-19 has had an impact on the state's economic and financial sectors. In September 2020, the Minister of State Finance, Sri Mulyani, stated that gross domestic product growth was minus 5.32% in the second quarter of 2020, and is estimated to still be minus 2.9% in the third quarter. This figure strengthens the signal that Indonesia will experience a period of recession. Notaries, as officials authorized to make deed of establishment of various legal entities and business entities, should also be able to make it easier for the community to establish legal entities and business entities as an effort to expedite the wheels of the Indonesian economy, especially due to the COVID-19 pandemic.

Seeing the constant and increasing number of positive cases of COVID-19, where the whole community is required to avoid and minimize all forms of physical meetings, like it or not,

like it or not, Indonesia must also catalyze the implementation of the practice of notary services in electronic transactions up to the implementation of notarial services. themselves electronically (Makarim, 2020). This effort can be started by improving and/or renewing the arrangements in the Law on Notary Positions, so that notaries have a clear legal umbrella in carrying out Cyber Notary practices in Indonesia.

Conclusion

Based on the description above, some conclusions can be drawn as follows: The term Cyber Notary can be found in the 2014 Notary Position Act, namely in Article 15, which contains various kinds of authority possessed by a notary. In Article 15 paragraph (3), it is stated that a notary has other powers granted by other laws and regulations. It is explained in the explanation that what is meant by other authority is one of them is "to certify electronic transactions (Cyber Notary)." However, later on, this very short mention raises many questions and different interpretations because there are no further regulations as implementing regulations that regulate the technical practice of Cyber Notary as referred to in the Elucidation of Article 15 paragraph (3) of the Notary Position Act.

At a time when the whole world was faced with the COVID-19 pandemic, various efforts were made to prevent the transmission of the virus, including Indonesia. The Indonesian Government's policy regarding preventing the spread of the virus is the implementation of Large-Scale Social Restrictions, including workplace holidays as an effort to minimize physical encounters between people. Notary work is a job that is actually possible to do remotely. However, until now, because the regulation is still unclear, the implementation of Cyber Notary has not been implemented. With the COVID-19 pandemic, it should be a stimulus for the importance of the practice of Cyber Notary in Indonesia. So those new arrangements and renewal of the Notary Position Act are needed as a legal umbrella.

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