

Legal Analysis of Notaries' Authority in Virtual Contract Meetings under Notary Law and ITE Law

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ABSTRACT

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The advancement of information technology has brought significant changes in various aspects of law, including notarial practices. One of the main challenges in the digital era is how notaries can adapt their services to technological advancements, especially in organizing virtual meetings for contract creation. Law Number 30 of 2004 concerning the Notary Position, as amended by Law Number 2 of 2014 (UUJN), still regulates the obligation of physical presence in the creation of authentic deeds, while Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law) has recognized the validity of electronic documents as legal evidence. This study aims to discuss the legal authority of notaries in conducting virtual meetings for contract creation, using a normative approach that emphasizes the analysis of regulations. The research findings show that there is a gap between the existing regulations, where the need for digitalization in notary services has not yet been fully accommodated in the current legal system. Therefore, legal reform is needed to provide legal certainty for notaries in facing the digital era, without neglecting the principle of authenticity of notarial deeds.

1. Introduction

Digital technology continues to develop rapidly and has a significant impact on various aspects of life, including the legal field (Pranajaya, 2024). The notary profession, which has played an important role in ensuring legal certainty through the creation of authentic deeds and documents, is no exception to this influence. Technological advancements have also driven various innovations in the field of conferencing technology (Dwi & Gede, 2021). This offers opportunities to improve the efficiency, accessibility, and flexibility of notarial services. One of the innovations that has begun to be implemented is the organization of virtual meetings for the creation of contracts or deeds. However, this practice raises legal questions, especially regarding the authority of notaries and the validity of documents created through this mechanism.

In Indonesia's legal system, the authority of notaries is strictly regulated by Law Number 30 of 2004 concerning the Position of Notary (UU Notary Position Law). This law requires the physical presence of the parties in the process of creating an authentic deed, as stated in Article 16 paragraph (1) letter m. However, to date, the Notary Position Law has not specifically regulated the mechanism of virtual meetings or the creation of authentic deeds electronically. On the other hand, Law Number 11 of 2008 Jo. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 on Information and Electronic Transactions (ITE Law) recognizes electronic documents and digital signatures as valid legal evidence. This lack of harmony raises a fundamental legal question: does the notary have the authority to organize virtual meetings for the creation of deeds, and can digitally-produced deeds be considered legally valid?

The main issue that arises is the lack of legal clarity regarding the authority of notaries in using digital technology, especially through virtual meetings to create deeds. Traditionally, notaries in Indonesia have relied on physical presence to ensure the identity of the parties, guarantee that their will is free from

pressure, and ensure the validity of documents. However, with the advent of digital technology, this mechanism is beginning to shift, although not accompanied by adequate legal adjustments.

This lack of clarity is influenced by several factors. First, the existing regulations have not fully adapted to technological advancements. The Notary Position Law, which was drafted before the digital era, did not anticipate the need for technology in notarial duties. On the other hand, the ITE Law has recognized electronic documents and digital signatures, but it focuses more on general electronic transactions and does not specifically regulate the notary profession. Second, notaries have traditionally adopted a conservative approach, prioritizing direct interaction to maintain the validity of documents. This makes the integration of digital mechanisms a challenge, especially in maintaining the essence and legal validity of the resulting documents. Third, the absence of clear implementing regulations regarding the use of technology in notarial processes further exacerbates legal uncertainty.

According to Kosasih (2024), many meetings are currently held virtually through Zoom, but the legal validity of such meetings remains debated. He added that notaries have not fully agreed on the validity of virtual meetings in legal events. Nevertheless, some notaries argue that virtual meetings can be legally valid if supported by evidence such as recordings, screenshots, and other documentation. This uncertainty is not just an academic issue but has real-world implications in practice. Many notaries face dilemmas when they need to meet the public's demand for more flexible and efficient services.

In some cases, notaries partner with advocates to ensure that notarial services, including virtual meetings, receive adequate legal protection. Advocates play an essential role in helping clients understand the steps that must be taken to ensure the validity of documents signed digitally or through remote meetings. For example, in the process of drafting or signing agreements that require notarial approval, advocates ensure that each step meets the formal requirements set by law. In the context of virtual meetings, advocates often advise clients to prepare adequate supporting evidence, such as video recordings, screenshots, and verifiable digital documents. This is done as a risk mitigation strategy in case the validity of the virtual meeting is questioned later.

Furthermore, advocates also play an important role if a dispute arises regarding documents or agreements legalized through virtual meetings. They must be able to present a solid legal argument to prove the validity of the process by referring to applicable regulations, including the ITE Law and notary practice guidelines. In such situations, collaboration between advocates and notaries becomes crucial to ensure that the document legalization process has been carried out according to the law, providing legal protection for the parties involved.

Ideally, the notary profession in Indonesia needs to embrace digital technology to provide more efficient services that align with the public's needs. This includes recognizing virtual meetings as a legitimate mechanism for creating deeds, as well as recognizing electronic documents as authentic documents with legal force. This research becomes more complex as it involves an in-depth analysis of two laws with different approaches. The Notary Position Law, with its traditional approach, emphasizes formalities, while the ITE Law, with its progressive approach, seeks to accommodate technological needs.

This research aims to address various issues by examining the legal aspects related to the authority of notaries in organizing virtual meetings for contract creation. Using a normative legal approach and analyzing regulations, this study is expected to provide a deeper understanding of how the Indonesian legal system can adapt to the development of digital technology without neglecting the legal validity and fundamental principles of the notary profession. Based on this background, the author intends to conduct a more in-depth study with the title 'Legal Analysis of Notaries' Authority in Virtual Contract Meetings Under Notary Law and ITE Law.'

2. Method

This study uses a normative research method that focuses on examining the applicable legal norms, particularly in the legislation related to notarial practices and the application of digital technology. This study includes an analysis of the Notary Position Law (UUJN), the Information and ITE Law, and other relevant legal regulations. The research also utilizes secondary legal materials, such as scientific journals, books, and tertiary legal materials in the form of legal dictionaries. Data collection techniques are carried out through document studies (library research), and a descriptive qualitative analysis method is used to examine and develop arguments regarding the role of notaries in digital services within the context of Indonesian law.

3. Results and Discussion

3.1. Notaries' Authority in Organizing Virtual Meetings

A deed is a document that contains events that serve as the basis for a right or obligation, created from the outset as a means of evidence, and signed to strengthen its validity (Larasati, 2023). In the Notary Position Law, specifically Article 16 paragraph (1) letter m, the creation of an authentic deed requires the physical presence of the parties so that the notary can read the content of the deed to the parties, with the presence of at least two (2) witnesses. This provision aims to ensure the verification of the identities of the parties involved, protection of their free will, and fulfillment of the principle of authenticity in the deed creation process. However, physical presence becomes a challenge in the digital era, where virtual interactions have begun to become the new norm. This situation creates a need to adjust notarial practices to the dynamic development of technology without disregarding the principles of legality and authenticity of deeds. In the digital era, a Notary as a public official is required to be critical, idealistic, and possess skills in problem-solving, communication, and creative adaptation (Nase & Alfiana, 2021). Although the Notary Position Law traditionally regulates the obligation for physical presence in deed creation, notaries still have the legal authority to organize virtual meetings, as long as the applicable legal procedures are adhered to.

This is in line with the provisions in Article 16 paragraph (1) letter m of the Notary Position Law, which requires physical presence as previously explained. The interpretation of this article has evolved along with technological advancements. Legal interpretation involves adjustments between the norms in the UUJN and the principles set out in other relevant regulations, such as the recognition of the validity of electronic documents and digital signatures. In this case, the ITE Law and/or its amendments, as well as its implementing regulations, namely Law Number 11 of 2008 Jo. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 Jo. Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions, provide a strong legal foundation for the recognition of electronic documents and digital signatures, allowing electronic documents produced through virtual meetings to have the same legal force as documents signed in person. ITE plays a crucial role in establishing a clear and structured legal foundation, particularly in regulating aspects of information and electronic transactions in cyberspace. Through this law, electronic evidence receives official recognition as valid evidence in court (Audrian, 2024).

Article 11 of the ITE Law recognizes the validity of electronic signatures on electronic documents, equivalent to physical documents or wet signatures, provided certain requirements are met. However, to date, the Notary Position Law has not explicitly regulated or recognized the conduct of virtual meetings or the creation of authentic deeds electronically. The provision in Article 16 paragraph (1) letter m still requires the physical presence of the parties, which raises debates about the validity of authentic deeds produced through virtual meetings.

In practice, even though there is no clear legal basis, some notaries have adopted technology to support the deed creation process, but only to the extent of holding virtual meetings while still issuing physical documents as authentic deeds with wet signatures. This is because some notaries doubt the legal validity of electronic authentic deeds, fearing that they could be contested in court.

This could create legal uncertainty regarding the authority of notaries in the context of adopting such technology, whether conducting virtual meetings with the parties or even issuing electronic authentic deeds. Based on the fact that the Notary Position Law does not explicitly regulate the allowance of virtual meetings with the parties and has not regulated that notaries can issue electronic authentic deeds, even though digital technology can support the notary's duties, the existing legal framework, if it does not accommodate virtual notarial practices, will lead to uncertainty regarding the validity of electronic deeds issued by notaries.

3.2. The Validity of Electronic Notary Deeds

The development of digital technology demands a shift in the notarial services landscape, including the potential to replace physical documents with electronically generated deeds. Electronic deeds not only offer efficiency but also provide opportunities to maintain the principles of authenticity and legal protection for the parties involved. In this context, the validity of electronic deeds lies not only in the existence of the document in digital format but also in the entire process, which includes the mechanism of its creation, the application of legally compliant electronic signatures, and the authentication carried out by the notary.

Furthermore, this validity is closely related to the notary's responsibility as the guardian of legal document integrity. In practice, notaries do not only serve as facilitators but also as supervisors, ensuring that all legal requirements, including the legal capacity of the parties, have been met. By fulfilling these fundamental elements, electronic deeds have the potential to possess the same legal force as conventional deeds, as long as their creation process remains in accordance with the principles set forth in legislation.

In law, every person/legal subject intending to make an agreement must have legal capacity to perform legal acts. This capacity is a mandatory requirement for the formation of an obligation originating from a contract, especially when the agreement is documented in the form of an authentic deed made by a notary. This is in accordance with the provisions of Article 1320 paragraph (2) of the Civil Code, which states: "capacity to create an obligation." A notary, as a public official authorized to create authentic deeds, is responsible for ensuring that the parties involved in the deed creation process meet the legal requirements, including legal capacity.

This aligns with the provisions of the Notary Position Law, which states that notaries must verify the identity, legal capacity, and consent of the parties before drafting and validating a deed, as outlined in Article 16 paragraph (1) letter a of the Notary Position Law. If one party is deemed legally incompetent, the deed may lose its validity and potentially lead to legal disputes. Thus, the validity of electronic notary deeds not only depends on the validity of the electronic document itself but also includes the deed creation procedure, including ensuring the legal capacity of the parties involved in creating the contract.

The agreement arises from the consensus among the parties, in accordance with the principle of consensualism. The will to agree can be expressed in various ways, such as in writing, verbally, or symbolically. In written form, this statement is usually documented in a letter or deed. If the parties agree to the content of the agreement, their signatures are affixed at the end as a form of approval (Putri & Wisnaeni, 2023). In the contract creation process, a signature serves as concrete evidence of the parties' intent or agreement with the content of the contract, making it legally valid. With a signature, the parties are bound by the terms of the agreement, in accordance with the principle of *pacta sunt servanda* (agreements are binding to the parties). A signature functions as a declaration of will from the signatory, stating that they want the written content to be legally considered as theirs (the signer) by affixing their signature below the document (Kie, 2007).

In general, a signature has several important functions, which are:

- a. As a symbol of the responsible legal subject's identity, showing that what is written or presented reflects that individual's characteristics and personality.
- b. As an identification tool that depicts an individual's identity, as each person has a distinct signature even if they share the same name.
- c. As authentication proof, confirming that the signed document has been read, acknowledged, and approved, marked by the inclusion of the name and signature.
- d. As an attribution tool, linking the signature with the document being signed.
- e. As a symbol of approval, indicating that the act of signing reflects consent or acceptance of the document's content.
- f. As legal proof, where the signed document can serve as evidence for parties who require it (Makarim, 2020).

Article 1875 of the Civil Code regulates a person's signature, stating:

A handwritten document, whose truth is acknowledged by the person it is presented to, or is considered legally authorized by them, creates full evidence like an authentic deed for those who sign it, their heirs, and those who acquire rights from them.

Therefore, it can be concluded that a signature originates from a declaration of intent that ensures the document's content is recognized and approved by the signatory, thus creating legally binding proof in accordance with Article 1875 of the Civil Code.

In the context of technological advancement, the concept of electronic signatures has emerged as a modern form of traditional signatures. According to Article 60 paragraph (1) of Government Regulation No. 71 of 2019 concerning Electronic System and Transaction Management (*Peraturan Pemerintah tentang Pengelolaan Sistem dan Transaksi Elektronik/PP PSTE*), an electronic signature functions as an authentication and verification tool for the signer's identity, as well as ensuring the integrity and authenticity of electronic

information. However, electronic signatures are also susceptible to misuse, such as being copied or duplicated. This presents a challenge in implementing electronic transaction systems.

To address potential misuse, effective mitigation steps are necessary. The best solution is to use certified electronic signatures through an Electronic Certificate Provider (*Penyelenggara Sertifikasi Elektronik/PSrE*), also known as a ‘digital signature.’ Specifically, Article 60 paragraph (2) of PP PSTE divides electronic signatures into two types: certified electronic signatures and uncertified electronic signatures. Certified electronic signatures are created using an electronic certificate issued by a PSrE recognized by the government. This certificate ensures the authenticity of the signer’s identity, the integrity of the signed data, and provides legal recognition as outlined in Article 60 paragraph (4) of PP PSTE. This type of electronic signature/digital signature has stronger evidentiary value in legal disputes due to the rigorous technical and operational standards it adheres to.

On the other hand, uncertified electronic signatures are those not supported by an official electronic certificate from a PSrE. While they can still be used in electronic transactions, these signatures have limitations because the authenticity of the signer’s identity and the security level depend on the technology or method used, such as manually scanned signatures. To provide a clearer understanding, here are the main differences between certified and uncertified electronic signatures:

Aspect	Certified Electronic Signature	Uncertified Electronic Signature
Issuer	PSrE recognized by the government	No need for PSrE
Authenticity of Identity	Guaranteed by an electronic certificate	Depends on the method and technology used
Legal Strength	Legally recognized as valid	Depends on the agreement of the parties
Security Level	High (with encryption and advanced technology)	Varies
Usage	Important transactions, such as official contracts and legal documents	Simple or informal transactions

A Certified Electronic Signature must be issued by a PSrE in Indonesia, recognized and validated based on the standards set by the Ministry of Communication and Information, now changed to the Ministry of Communication and Digital. According to Article 1, number 5, of the Regulation of the Ministry of Communication and Information No. 11 of 2018 on the Implementation of Electronic Certification, PSrE is a legal entity that functions as a trusted party to issue and audit Electronic Certificates.

Under Article 52, letter b, of the Electronic System and Transaction Regulation (PP PSTE), PSrE has the authority to create, verify, and validate electronic signatures and other services using electronic certificates. The electronic certificate is an electronic document issued by PSrE to authenticate and verify the identity of the certificate holder. It functions as a digital identity marker that links identity data with specific cryptographic keys, used to ensure the authenticity and integrity of electronic communication or documents. This is regulated under Article 1, number 4 of the ITE Law and the Regulation of the Ministry of Communication and Information No. 11 of 2018.

Therefore, the use of digital signatures provides not only stronger legal protection but also enhances trust in electronic transactions. In addition, digital signatures enable more accurate identity verification because they involve electronic certificates issued by PSrE. This certificate serves as trusted electronic proof of identity, minimizing the risks of forgery or misuse. This is briefly outlined in Article 4, letter b, of PP PSTE, which emphasizes that the PSrE must consider the protection of electronic information authenticity in implementing the Electronic System.

Thus, the implementation of digital signatures is highly recommended, especially in important transactions or those involving sensitive data, such as in the creation of contracts between parties that are made electronically by a notary via virtual meetings. This can improve efficiency and security in the contract creation process. With the electronic certificate issued by PSrE, the authenticity and validity of the information in the document can be assured, as regulated by applicable laws. Therefore, an

electronically authenticated notarial deed using a digital signature can be held accountable, in line with technological advancements and changes in applicable legal dynamics.

To prevent potential misuse of electronic signatures, education and public awareness enhancement are also crucial. Users of electronic signatures need to be educated about the risks that might occur and the measures they can take to protect personal data, such as using strong authentication methods and choosing trusted PSrEs. In the context of implementing uncertified electronic signatures, the risk of misuse, such as copying or duplication by irresponsible parties, requires serious attention. With adequate regulation, clear technical standards, effective supervision, and increased public awareness, it is hoped that digital signatures can be securely and reliably adopted and become a pillar in the advancement of the electronic transaction system in Indonesia.

In Indonesia, there are at least 10 recognized PSrEs by Kominfo/Komdigi. These PSrEs include: (a) *PT Solusi Net Internusa*, (b) *PT Solusi Identitas Global Net*, (c) *PT Privy Identitas Digital*, (d) *PT Indonesia Digital Identity (VIDA)*, (e) *PT Tilaka Nusa Teknologi*, (f) *Perusahaan Umum Percetakan Uang Republik Indonesia (PERURI)*, (g) *PT Digital Tanda Tangan Asli*, (h) *PT Djelas Tanda Tangan Bersama*, and (i) *Balai Sertifikasi Elektronik Badan Siber dan Sandi Negara (BSSN)*. These providers play a crucial role in offering certification services that support the legal and safe application of digital signatures in Indonesia.

Certified electronic signatures, or digital signatures, are considered legally valid according to the provisions in Article 11, paragraph (1) of the ITE Law if they meet several requirements, including:

- a. The creation data of the electronic signature is related only to the signer;
- b. The creation data of the electronic signature during the signing process is solely under the control of the signer;
- c. Any changes to the electronic signature after the signing time can be detected;
- d. Any changes to the electronic information related to the electronic signature after the signing time can be detected;
- e. There is a specific method used to identify the signer; and
- f. There is a specific method to show that the signer has given consent to the related electronic information.

The next step is to understand the digital signature verification process. Verification is carried out to ensure that the digital signature on an electronic document is genuine and valid. This process is crucial to ensure that the signature has not been forged or misused by anyone other than the authorized owner. Therefore, it is important for all parties involved in electronic transactions to understand the digital signature verification process, as this is directly related to the validity and security of the electronic contract. According to Article 46, paragraph (1) of PP PSTE, electronic transactions can be carried out based on electronic contracts or other contractual forms as an agreement between the parties.

It is important to note that in the creation of an electronic contract, it can be considered valid if:

- (1) there is an agreement between the parties, (2) it is made by a legally competent subject or authorized representative in accordance with legal provisions, (3) there is a specific subject matter, and (4) the object of the transaction does not violate laws, decency, or public order (Article 46, paragraph (2) of PP PSTE).

This provision is similar to Article 1320 of the Civil Code.

Referring to the provisions above, an electronic contract involving a notary, such as in property transactions, loan agreements, lease agreements, or other agreements, is valid if it meets the requirements set out in Article 46, paragraph (2) of PP PSTE and Article 1320 of the Civil Code. Generally, such transactions require notarial authentication to be legally recognized. The notary is responsible for ensuring that the parties involved in the agreement truly understand the content of the agreement and conduct the transaction in good faith.

The author believes that the process of creating electronic contracts by notaries through virtual meetings should still be based on the principles and legal provisions in place to ensure the validity and authentication of the documents. In this context, I propose that the first stage involves preparing and identifying the parties involved, where the parties contact the notary to explain the agreement needs, including the type of contract to be created, the subject of the agreement, the rights and obligations of

each party, and the necessary supporting documents, while ensuring that the parties are legally competent or have the authority to represent a legal entity in accordance with applicable regulations.

Next, in the process of collecting and verifying documents, the parties submit relevant documents, such as property certificates or company documents, digitally. These documents are then examined by the notary for authenticity, either through an electronic system integrated with official databases or by manual methods, such as direct checks with relevant authorities if needed. I also believe that the next step, which is drafting the contract, should be done carefully, where the notary drafts the document based on the information provided by the parties. The draft is then sent for review and approval before moving on to the virtual meeting, where the notary discusses the contract in detail, ensuring the parties understand the entire contract, and providing an opportunity for revisions if necessary.

In the electronic signing stage, the parties sign the contract using a digital signature facilitated by an official service provider. The notary, in their capacity, not only provides a digital signature as an authentication proof but also ensures that the process complies with applicable legal provisions, including verifying the parties' identities and the validity of the digital signature in accordance with the ITE Law. After signing, the validated contract is stored in an electronic system that complies with the relevant laws and data protection regulations, as set out in PP 71/2019 on the Implementation of Electronic Systems and Transactions. Copies of the document are then provided to the parties as official records.

The use of digital signatures is one way to ensure the authenticity or validity of electronic evidence, such as documents or digital information. A digital signature itself is electronic information that is embedded in electronic data, serving as the identity of the signer while also indicating their status as a legal subject (Wahyuni, 2022).

In principle, a digital signature is used to ensure the integrity of the message, meaning it guarantees that the message sender is truly the authorized party responsible for the message. Unlike regular signatures, which are used as an acknowledgment and acceptance of the content of a message or document, digital signatures are applied through data systems involving encryption. This system is intended to ensure data authenticity and prevent data modification (Partodiharjo, 2009). With the ITE Law, digital signatures are recognized as having the same legal power as conventional signatures, as long as certain requirements are met, such as using a valid electronic certificate and being supported by reliable security technology. The ITE Law provides a strong legal foundation for recognizing the validity of electronic documents and electronic signatures (digital signatures). In this case, a digital signature not only serves to confirm the identity of its creator but also functions as a guarantee that the document's contents remain intact and unchanged after being signed. This provision is an important basis for ensuring that electronically created notarial deeds produced via virtual meetings have the same legal validity as conventionally created documents.

4. Conclusion

Digital signatures have become a strategic legal instrument in the digital era, especially in the creation and ratification of electronic contracts. Regulations in Indonesia, such as the ITE Law and its implementing regulations, have provided a strong legal foundation for their use, particularly when certified by a PSrE recognized by the government. Unlike conventional signatures, digital signatures based on asymmetric cryptography can guarantee the validity, integrity, and authentication of documents, thus providing stronger legal protection in electronic transactions. In practice, the role of advocates becomes crucial when providing legal assistance regarding the validity of electronically authenticated notarial deeds. Advocates play a role in ensuring that the use of this technology remains within the boundaries of applicable law and in helping clients face potential disputes due to inconsistent legal interpretations. However, in the context of notaries, the use of digital signatures must be accompanied by clear regulations to ensure they have valid legal force. Although technology can support the duties of notaries, without a legal framework that accommodates virtual notarial practices, uncertainty may arise regarding the validity of electronic deeds issued. Therefore, harmonization between technology and regulation is necessary to ensure legal certainty, reduce the risk of disputes, and promote efficiency in Indonesia's legal and business systems.

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