

Making Of Notary Deeds in An Emergency Period in Indonesia

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Abstract

A notarial deed is authentic, so its manufacture must meet formal requirements such as Article 16 paragraph (1) letter m UUJN. This study aimed to determine whether the provisions of Article 16 paragraph (1) letter m of the UUJN can be fulfilled during an emergency such as the Covid-19 pandemic and whether the making of a notary deed can be done electronically. To discuss these problems, normative legal research is used, namely research on secondary data in the form of primary, secondary, and tertiary legal materials. The legal materials were collected through a literature study, then processed and analyzed descriptively and qualitatively. The study results show that the provisions of Article 16 paragraph (1) letter m UUJN must be fulfilled even in emergency conditions such as the Covid-19 pandemic because it involves the authenticity of the notary deed. Then, a notarial deed cannot be done electronically because the normative juridical UUJN does not regulate this problem.

Keywords deed, notary, emergency

INTRODUCTION

Indonesia is a constitutional state based on Pancasila and the 1945 constitution. The principle of the rule of law is to guarantee legal certainty, order, and protection for every citizen. To achieve this goal, authentic written evidence regarding legal actions or events made before or by a competent official is needed.

A notary is one of the officials authorized to make authentic deeds. According to the JN Law, a notary is an official authorized to do original deeds. Meanwhile, Article 1867 of the Civil Code mentions the term actual act. Then Article 1686 of the Civil Code determines the limits of an actual action in terms of its elements, namely: made by or before a public official who swims in the form specified by law.¹

The authentic deed is a deed made by or before an authorized official based on the provisions of the law.² Based on this understanding, there are 2 (two) types of authentic deeds, namely:

- a. Official deed is a deed made by an official.
- b. Party deed is a deed made in the presence of officials.

Referring to the provisions of Article 165 HIR/ Article 285 RBq/ Article 1870 of the Civil Code, the parties conclude that an authentic deed is a binding and perfect evidence. Critical means that what is included in an act must be trusted by the judge; that is, it must be considered something true as long as it is not proven untrue. While the perfect meaning,

¹ Habib Adjie. 2013. *Kebatalan dan Pembatalan Akta Notaris*. Bandung : PT. Refika Aditama, hlm. 6.

² Riduan Syahrani. 2013. *Materi Dasar Hukum Acara Perdata*. Bandung : PT. Citra Aditya Bakti, hlm. 92.



namely an authentic deed, is sufficient to establish an event or right without the need for proof with other evidence.³

The provisions of Article 1868 of the Civil Code have determined the formal requirements of an authentic deed. With this provision, a notarial deed as an original deed must comply with the provisions of Article 1868 of the Civil Code. Concerning these formal requirements, Article 16 paragraph (1) letter M UUJN stipulates that in carrying out his position, a notary is obliged to read the deed before the appeared, attended by 2 (two) witnesses or 4 (four) witnesses for making a will deed under the hand, signed by the apparel, witness, and notary. In the elucidation of the article, it is stated that the notary must be physically present and sign the deed before the appearers and witnesses.

The provisions of Article 16 paragraph (1) letter m UUJN is a process of doing a notarial deed conventionally and can be implemented under conditions of everyday state life. What if the country's living conditions are not typical, such as the Covid-19 Pandemic (Corona Virus in Sea 19), which has hit most countries worldwide, including Indonesia? WHO (World Health Organization), as a world health organization, established a global pandemic status against Covid-19, which significantly impacts all people's activities worldwide, not recognized by Indonesia.

The Indonesian government has declared the spread of Covid-19 as a national disaster through Presidential Decree Number 12 of 2020. Then to prevent and overcome the distance of Covid-19, the Indonesian government issued several policies, namely the Enforcement of Large-Scale Social Restrictions (PSBB), Social Distancing, Physical Distancing, and Work From Home (WFH). Several of these policies significantly impact public service activities and non-public services, including in the notary sector.

Article 16 paragraph (1) letter m UUJN has determined the physical presence of a notary, appearers, and witnesses when making a notary deed. With the implementation of PSBB, Social Distancing, Physical Distancing, and Work From Home (WFH), these provisions face obstacles in their performance. In this matter, on the one hand, the public needs legal certainty regarding the legal actions they are carrying out. Still, on the other hand, the process of doing a notarial deed is faced with government policies to prevent the spread of Covid-19.

With advances in information and communication technology, specific actions can be performed online and do not have to be carried out face-to-face or in a physical meeting. Based on this, can a notarial deed be made online? At the same time, Article 16 paragraph (1) letter m UUJN determines formal requirements: the physical presence of a notary, appearers, and witnesses.

A notarial deed as an authentic deed has the strength of physical, formal, and material proof. If these three evidentiary powers are fulfilled, then a notarial deed as an original deed is the perfect proof. The strength of this proof can be obtained if the making of a mortals deed fulfills the formal requirements, including Article 16 paragraph (1) letter m UUJN. Can a notarial deed be done online not as stipulated by Article 16 paragraph (1) letter m UUJN and this issue needs to be regulated in the law?

³ Ibid

The problem of making notarial deeds online needs attention in connection with an event that has a significant impact on human life activities, such as the Covid-19 pandemic, which until now has not been entirely overcome by the Indonesian state. This is also intended to anticipate the possibility of other events occurring in the future, for example, as it was reported that a more dangerous virus than Covid-19 would emerge, namely the micron virus. Therefore, from a normative juridical perspective, legal politics is needed from the state regarding whether or not regulation of this problem is necessary for the sake of legal certainty.

METHODS

Types of Research

This study uses a type of normative legal research. Soerjono Soekanto said that normative legal research or library law research is "legal research that examines library materials (secondary data).⁴ Meanwhile, according to Mukti Fajar ND and Yulianto Achmad that normative legal research is "legal research that places law as a system of norms. What is meant by a system of standards regarding principles, norms, or rules of Legislation, Court Decisions, Agreements, and Doctrine."⁵ Based on this understanding, what is meant by normative legal research in this study is an examination of the making of notarial deeds during the Covid-19 pandemic in terms of the legal norms contained in Article 16 paragraph (1) letter m UUJN.

Research Approach

This research uses the statutory approach (Statute Approach) and concept approach (Concept Approach). The Statute Approach is used to study and analyze laws relevant to the subject matter in this research.⁶ The concept approach (Concept Approach) is based on the views and teachings that have developed in the science of law. Based on these views and instructions, ideas will be found that give birth to legal notions, legal concepts, and legal principles related to the issues at hand.⁷

Sources of Legal Materials

The legal materials used in this study consist of the following:

1. Primary Legal Materials, namely legal materials that are auto-relative in nature, meaning they have authority. Primary legal materials include the Civil Code and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

⁴ Soerjono Soekanto dan Sri Mamuji. 2010. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta : Raja Grafindo Persada, hlm. 14.

⁵ Mukti Fajar ND dan Yulianto Achmad. 2010. *Dualisme Penelitian Hukum Normatif dan Hukum Empiris*. Yogyakarta : Pustaka Pelajar, hlm. 34.

⁶ Peter Mahmud Marzuki. 2009. *Penelitian Hukum*. Jakarta : Kencana, hlm. 93.

⁷ Ibid



2. Secondary Legal Materials are supplementary legal materials in the form of legal books, legal journals, articles, and others relevant to the subject matter.
3. Willing to revoke the lawsuit if it is fulfilled, it is stated before a notary.
4. Tertiary Legal Materials, namely legal materials that can explain primary and secondary legal materials in the form of legal dictionaries.

Techniques for Collection and Processing of Legal Materials

The legal materials used in this research were collected through library research, which is a research by examining and reviewing laws, regulations, and literature relevant to the subject matter. Then the legal materials that have been collected are processed through stages, namely coding, editing, reconstructing, and systematizing based on the subject matter identified from the problem statement (systematizing).

Analysis of Legal Materials

The legal materials that have been processed are then analyzed qualitatively, namely data analysis that does not use numbers but provides a description in words of the research results, and a discussion is carried out. Then a conclusion is drawn to answer the main problem under study.

RESULTS AND DISCUSSION

Existence of Formal Requirements for Making Notary Deeds During an Emergency

The existence of a notary in Indonesia has been regulated in Law Number 50 of 2004 concerning the Office of a Notary as amended by Law Number 2 of 2014. Article 1, paragraph 1 UUJN stipulates that a notary is a public official authorized to make authentic deeds and other authorities.

Notaries, as the government, appoints public officials, and the government, as an organ of the state, appoints notaries not only for the benefit of the notary himself but also for the benefit of the wider community. The services provided by a notary are related to issues of trust between the parties, meaning that the state places great faith in the notary.

In the elucidation of the UUJN, it is stated that the notary has a vital role in doing an authentic deed which has an action required by law and regulation, but also because it is desired by interested parties to ensure their rights and obligations in particular, and society in general for certainty, order and legal protection. Therefore, the need for notary services in modern society is something that must be addressed.

As public officials authorized to do authentic deeds, notaries can be burdened with responsibility for their actions. The scope of responsibility of the notary includes the material truth of the act he made⁸; what is meant by material fact is the actual truth, the essential truth, and the absolute truth of the deed drawn up by a notary.

⁸ R.A. Emma Nurita. 2012. *Cyber Notary Pemahaman Awal Dalam Konsep Pemikiran*. Bandung: PT. Refika Aditama, hlm. 1.

Notary, as a position, certainly has its own authority.

Based on UUJN, the power of a notary can be interpreted as a general authority of a notary, particular jurisdiction of a notary, and administration of a notary, which will be determined later based on the laws that regulate it.⁹ The unique powers of a notary include Article 16 paragraph (1) letter m UUJN, which reads the deed before the appeared in the presence of at least 2 (two) witnesses or 4 (four) special witnesses for making a will under the hand and signed at that time by the witnesses and the notary.

The provisions of Article 16 paragraph (1) letter m UUJN mentioned above are formal requirements in doing a notarial deed that is authentic. With these provisions, the preparation, which includes the reading and signing of the notarial act, is carried out face-to-face (offline) between the notary, appearers, and witnesses.

According to Article 1 number 7 UUJN that a notary deed is an authentic deed made by or before a notary containing the forms and procedures stipulated in this law. Meanwhile, what is meant by an original deed containing Article 285 RBq is "an act drawn up by or in the presence of an official who is authorized to do so, is complete evidence between the parties from the heirs and those who receive rights from him regarding what is stated therein, and even as a mere notification, but the latter was only notified that was directly related to the subject matter of the deed."¹⁰

Based on the provisions of Article 285 RBq that an authentic deed is a deed made by or before a notary. This provision is then implemented in Article 16 paragraph (1) letter m UUJN, namely the reading and signing of the notary deed by a notary is carried out in the presence of appearers and witnesses. The provisions of Article 16 paragraph (1) letter m UUJN can be implemented in normal and stable state conditions. But what if the shape of a country is in an emergency, such as the Covid-19 pandemic, which has hit almost all countries in the world, including Indonesia? In this condition, every country has taken various forms of policy to prevent and overcome the spread of Covid-19 to protect and save its citizens. In principle, the various forms of policies adopted by a country impact service activity, both government and non-government.

The beginning of 2020 was a difficult challenge for most countries in the world, and Indonesia was no exception. This was caused by the spread of an outbreak of a dangerous disease that was disturbing the community, later called covid-19 (Corona Virus Disease 2019). The spread of the epidemic, which is geographically widespread, has resulted in the World Health Organization (WHO) as the world health authority establishing a global pandemic status against COVID-19. The determination of this pandemic status has a significant impact on all community activities around the world.

The Government of Indonesia, through Presidential Decree Number 12 of 2020 concerning the Stipulation of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19), has determined the spread of Covid-19 as a national disaster which, of

⁹ M. Luthfain Hadi Darus. 2017. *Hukum Notariat dan Tanggung Jawab Jabatan Notaris*. Yogyakarta: UII Press, hlm. 24.

¹⁰ G. H. S. Lumban Tobing. 1999. *Peraturan Jabatan Notaris*. Jakarta: Erlangga, hlm. 42.



course, has significant implications for the administration of the state and society in Indonesia. Then the Government of Indonesia issued Laws and Regulations aimed at minimizing the risk of the spread of Covid-19, such as Presidential Decree Number 11 of 2020 concerning the establishment of a Covid-19 public health emergency, Government Regulation Number 21 of 2020 concerning Large-Scale Social Eradication in the context of accelerating the handling of Covid -19, as well as Regulation of the Minister of Health Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the framework of accelerating the handling of the coronavirus disease 19 (covid-19).

These rules require the implementation of social and physical distancing for all community activities, including but not limited to studying, working, and running a commercial business. The performance of Large-Scale Social Restrictions (PSBB) is carried out by Regency/City and Province areas taking into account the increase in the number of Covid-19 cases, the rapid spread of issues, and the occurrence of local transmission in the area.

The various forms of the policies mentioned above certainly impact service activities to the community; notary services are no exception. The existence of legal services provided by notaries has a vital role in fulfilling the community's need for legal certainty, order, and protection for the legal actions committed by them. Under these emergency conditions, can the process of doing a notarial deed as stipulated in Article 16 paragraph (1) letter m UUJN be implemented?

The provisions of Article 16 paragraph (1) letter m of the UUJN contain norms that require the physical presence of the client and the obligation to draw up a deed on paper. However, with advances in information technology, notaries can provide their services electronically in doing notarial acts. A notary deed made electronically is an electronic document as legal evidence as stipulated in Article 5 paragraph (4) of Law Number 11 of 2008 concerning Information and Electronic Transactions, which was last amended by Law Number 19 of 2016 (UU ITE). However, this provision determines an exception to:

1. Letters, according to the law, must be made in written form;
2. According to the law, letters, and documents must be drawn up in the form of a notarial deed or a deed drawn up by the official who did the act.

Based on these provisions, a notary deed cannot be done electronically because a notary deed is an exception to the entry into force of Article 16 paragraph (1) letter m UUJN. If the notarial act is done electronically, it has the potential to cause legal problems in the future, both civil, administrative, and criminal.¹¹ But on the other hand, if the making of a notary deed follows the provisions of Article 16 paragraph (1) letter m UUJN, then the risk of spreading disease containers increases, and in the worst case it can endanger the notary himself and his client.¹²

From a normative juridical point of view, the existence of formal requirements for doing a notarial deed as specified in Article 16 paragraph (1) letter m UUJN is not ruled out; for example, a notary deed is made electronically but must be carried out by a notary. This

¹¹ *Ibid*, hlm. 185.

¹² *Ibid*,.

is based on two reasons. Namely, UUJN does not determine the permissibility of doing notarial deeds electronically. The notarial deed that is made electronically no longer serves as an authentic deed but as a deed under the hand. Because the authenticity of an act depends on fulfilling the specified formal requirements as stipulated in Article 285 RBq and Article 16 paragraph (1) letter m UUJN.

Based on the above analysis, it can be stated that the provisions of Article 16 paragraph (1) letter m UUJN must be fulfilled by a notary in the process of doing a notarial deed, both the country is operating normally, and the country is facing an emergency such as Covid-19. If the formal requirements are not met, the notarial deed will no longer have the status of an authentic act, which has completed and perfect evidentiary power, but rather as an underhanded deed.

The Urgency of Arrangements for Making Notary Deeds Electronically in an Emergency Period

One thing that cannot be denied is that legal regulations are always behind the development of society. In this case, it can occur due to legal ambiguity and legal vacuum. Legal obscurity occurs when there is a legal norm, but it is still being determined whether it can be applied to the events that occur, resulting in various interpretations. Then a legal vacuum occurs if no legal regulations apply to legal affairs, so the presence of legal rules is needed.

Legal services in the notary sector, such as doing electronic notarial deeds, are not regulated in UUJN, resulting in a legal vacuum. With these conditions, is it urgent or not the presence of legal rules that form the basis for a notary to do a notarial deed during an emergency, and this concerns legal practice?

According to Mahfud MD, legal politics is a legal policy or official policy line regarding law that will be enforced either by making new laws or replacing old rules to achieve state goals. Then according to Sunaryati Hartono that legal politics cannot be separated from the social and traditional reality that exists in our country, and on the other hand, as a member of the world community, Indonesian legal politics cannot be separated from reality and international legal politics.¹³ Furthermore, according to Abdul Hakim Garuda Nusantara, legal politics is a legal policy or legal policy that is to be implemented or implemented nationally by a particular country's government which includes:

1. Consistent implementation of existing legal provisions;
2. Legal development with the core of updating existing laws and making new laws;
3. Affirmation of the functions of law enforcement agencies and guidance for their members;
4. Increased public legal awareness includes the perceptions of policy-making elites.¹⁴

¹³ F. G. Sunaryati Hartono. 1999. *Politik Hukum Menuju Satu Sistem Hukum Nasional*. Bandung : Alumni, hlm.1.

¹⁴ Abdul Hakim Garuda Nusantara. 2000. *Politik Hukum Indonesia*. Jakarta : Yayasan LBHI, hlm. 10.



Based on some of the above understandings, legal politics is a government's legal policy about the law that will be enforced, either by making new laws or replacing old rules to overcome societal and legal problems.

As has been stated that Article 16 paragraph (1) letter m UUJN determines the necessity of the physical presence of a notary, appearers, and witnesses at the time of drawing up and signing the notarial deed. This provision is a formal requirement that must be met by a notarial act to have the status of an authentic deed. If this provision is not met, then the notarial deed shall have the level of the private deed.

The provisions of Article 16 paragraph (1) letter m UUJN can be implemented if the country's conditions are normal and stable; however, in the event of an emergency that hits the country, such as the Covid-19 pandemic. Under these conditions, the government has issued various policies that have implications for services, such as the implementation of PSBB, Social Distancing, Physical Distancing, and WFH, which aim to prevent the transmission of the Covid-19 pandemic, so whether these provisions can be implemented by a notary in the process of making a notary deed.

During the Covid-19 pandemic, in principle, making notarial deeds could be done electronically, but from a normative juridical perspective, UUJN did not regulate this matter. Based on the political concept of law and bearing in mind that legal services in the notary sector have an essential role in fulfilling the community's need for legal certainty, order, and protection for their legal actions, it is pretty urgent to have arrangements for making notarial deeds in an emergency period electronically. The existence of regulations on these issues and providing guarantees of legal certainty is also intended to anticipate emergencies such as the Covid-19 pandemic. Moreover, based on reports from the mass media, all countries worldwide, including Indonesia, are expecting the transmission of the micron virus.

Based on the analysis above, it is pretty urgent to have arrangements regarding the making of notarial deeds during emergencies such as the Covid-19 pandemic and others. In this case, the notarial deed can be done electronically so that service activities in the field of notary law run as they should.

CONCLUSION

1. The existence of the formal requirements for doing a notarial deed as stipulated in Article 16 paragraph (1) letter m must be fulfilled even in an emergency, such as the Covid-19 pandemic, because this concerns the authenticity of the notary deed.
2. The making of a notarial deed in a normative juridical manner cannot be done electronically or online because the UUJN needs to provide the regulations.
3. As a notary organization, the Indonesian Notary Association (INI) needs to formulate a notarial deed during an emergency in the context of smooth notarial services.
4. There needs to be regulation regarding the making of notarial deeds electronically in the UUJN during an emergency so that the public's need for notary legal services can be fulfilled and for the sake of legal certainty.

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