



Reconstruction of Notary Responsibility Arrangements in the Preparation of Digital-Based Authentic Deeds to Ensure Legal Certainty in the Era of Technological Transformation

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ABSTRACT

This study aims to analyze and reconstruct the regulation of notary responsibilities in the creation of digitally authentic deeds to ensure legal certainty in the era of technological transformation. The Civil Code, Notary Law, and Electronic Information and Transactions Law were reviewed as part of the normative juridical research method, which takes a statutory and conceptual approach, and various related legal doctrines. The results indicated that the current legal construction remains conventional and formalistic, thus incapable of accommodating digitally based notarial practices. It creates a legal vacuum, disharmony of laws and regulations, and unclear boundaries of notary responsibilities in the digital space, which impacts legal uncertainty. Therefore, regulatory reconstruction is needed through a redefinition of the concept of electronically authentic deeds, a reformulation of notary authority in cyber notary practice, and an affirmation of notary legal responsibilities in electronic systems. Furthermore, harmonization of notary regulations and electronic transaction law, as well as the establishment of an integrated digital notary system, are strategic steps to achieve legal certainty and legal protection for all parties.

INTRODUCTION

Digital transformation has become an unavoidable global phenomenon that has fundamentally transformed various sectors of life, including the legal system and public services. The development of information technology has driven the digitalization of government administration, economic transactions, and legal services, shifting from conventional to electronic (Janowski, 2015; Schnoll, 2015). (Erwin, 2023) The concept of Society 5.0, which places humans at the center of technological integration, further emphasizes that the legal profession cannot be separated from digital adaptation. In this regard, law functions as a tool of social engineering, as stated by Roscoe Pound, who demands that the law be responsive to social dynamics and technological developments. (Hidayat, 2021) The state, through various regulations, such as Law Number 25 of 2009 concerning Public Services, has also directed the transformation of public services towards electronic systems to increase efficiency, transparency, and accountability. Therefore, the paradigm shift from conventional to digital services is no longer an option, but rather an inevitability that must be responded to normatively by the national legal system. (Utami, 2023)

In notarial practice, the demand for digitalization is growing in line with the growing public demand for fast, efficient, and widely accessible legal services without limitations of

time and space. Notaries serve a crucial role in guaranteeing legal certainty and protection for all parties because they are public authorities allowed to issue legitimate deeds, as stated in Article 1, number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notaries. (Bungdiana, 2023) However, in global practice, the concept of cyber notary has developed, enabling the electronic creation of deeds using digital technology, including electronic signatures and online identity verification. This phenomenon is exacerbated by the rise in digital-based cross-border transactions, which demand speed and flexibility in legal services. (Kinasih, 2024) Unfortunately, the development of these practical needs has not been fully matched by national regulations, creating a gap between *das sollen* and *das sein* in notarial practice in Indonesia.

Normatively, the concept of an authentic deed in Indonesian positive law still relies on a conventional, formalistic paradigm that prioritizes physical presence. According to Article 1868 of the Civil Code, an authentic deed is one that is prepared in a legally defined manner by or in front of an authorized public authority. (2020, Septianingsih) This clause is reaffirmed in Article 16, paragraph (1), letter m of the Notary Law, which mandates that a notary read the deed in front of the person named in it in front of at least two witnesses, so implying that the parties' physical attendance is required. Elements of a deed's authenticity include the official's authority, formal form, and strict preparation procedures. (Darusman, 2016) Thus, the current legal framework is still oriented toward face-to-face interaction, thus not adequately accommodating the development of digital technology in deed preparation.

Problems arise when the practice of deed preparation begins to intersect with digital technology, while the legal regulations do not yet provide a clear basis. To date, there are no explicit regulations regarding digital-based authentic deeds in Indonesian laws and regulations. On the other hand, According to Article 5 paragraphs (1) and (2), Law Number 11 of 2008 concerning Electronic Information and Transactions, as revised by Law Number 1 of 2024, acknowledges the presence of electronic documents and electronic signatures as legitimate legal proof. However, papers that are required by law to be made in the form of a notarial deed are specifically excluded by Article 5 paragraph (4) of the ITE Law, thus creating disharmony in norms between the ITE Law and the Notary Law (Nugroho, 2026; Savita et al., 2025). (Nurmawati, 2023) This conflict is exacerbated by the use of technologies such as video conferencing and electronic signatures, which have been used in practice, but there is no certainty regarding their validity and evidentiary power as authentic deeds. In addition, the risk of identity forgery, data leaks, and electronic system security further adds to the complexity of problems in digital notarial practice. (Fauziannor, 2025)

From a legal liability perspective, digitalization actually expands the potential risks faced by notaries. Notaries are not only civilly liable for losses suffered by the parties but can also be held criminally and administratively liable for violations in the preparation of deeds (Adjie, 2023; Khusna et al., 2025; Wardantik & Prawesthi, 2023). The prudential principle, which underpins the implementation of the notarial office, as reflected in Article 16 paragraph (1) letter a of the Notary Law, requires notaries to act carefully and meticulously in every deed they draw up. (Ramadhan, 2024) However, in the digital context, the line between liability and responsibility becomes increasingly blurred, particularly regarding the validity of the parties' identities, the legitimacy of electronic signatures, and the reliability of the technological systems used. The absence of clear operational standards regarding the preparation of digital

deeds and weak oversight mechanisms in cyberspace further demonstrate the existence of a legal vacuum that has the potential to give rise to legal uncertainty and even the criminalization of notaries. (Ghani, 2025)

The novelty of this research lies in its integrated analysis of notary responsibility reconstruction, combining the perspectives of legal certainty, technological adaptation, and professional ethics within a comprehensive normative framework. Unlike previous studies that have examined specific aspects of cyber notary or isolated provisions of relevant regulations, this research provides a systematic analysis of how regulatory harmonization, technological infrastructure development, and professional responsibility standards interact to produce effective legal protection. The study contributes to legal scholarship by developing a framework for analyzing notary responsibility reconstruction that balances legal certainty with technological innovation, offering practical recommendations for legal reform and policy development.

Based on these various problems, it is imperative to reconstruct notarial law to adapt to developments in digital technology. This reconstruction must include a redefinition of the concept of authentic deeds, a reformulation of notary authority in the digital space, and a proportional, technology-based regulation of legal responsibilities. Furthermore, harmonization of the Notary Law and the Electronic Information and Transactions (ITE) Law is needed to avoid ongoing normative conflicts. The experience of other countries that have implemented cyber notary law demonstrates that integrating technology into notarial practice is feasible and can enhance legal certainty. Therefore, this research is both urgent and original in formulating a reconstruction model for the regulation of notary responsibilities in the creation of digital-based authentic deeds to ensure legal certainty in the era of technological transformation, while simultaneously providing theoretical contributions to the development of notary law and practical contributions to legislators and legal practitioners in Indonesia.

METHOD

The study was normative juridical research that employs both a statutory and a conceptual approach to examine the legal standards guiding notaries' duties in creating digitally-based authentic deeds. The Civil Code, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public, Law Number 11 of 2008 concerning Information and Electronic Transactions and its implementing regulations, and other pertinent regulations are examined in order to apply the statutory approach, to identify the existence of disharmonious norms, legal vacuums, and unclear regulations related to digital-based authentic deeds.

Meanwhile, the conceptual approach analyzes various legal doctrines and concepts, such as the concept of authentic deeds, legal responsibility (liability and responsibility), the prudential principle, and legal theory as a tool of social engineering, which are obtained from legal literature, scientific journals, and expert opinions. The legal materials used consist of primary, secondary, and tertiary legal materials, which are analyzed qualitatively using systematic and argumentative interpretation techniques to produce a comprehensive legal construction in order to formulate a reconstruction of the regulation of notary responsibilities that is adaptive to the development of digital technology and can guarantee legal certainty.

RESULTS AND DISCUSSION

Legal Construction of Notary Responsibilities in the Preparation of Authentic Deeds Based on Indonesian Positive Law

Article 1868 of the Civil Code, which defines an authentic deed as a deed prepared by or before an authorized public official in a form prescribed by law, serves as the foundation for the legal construction of notary responsibilities in the preparation of authentic deeds in the Indonesian legal system. The authority of the public official, the form required by law, and legal procedures are the three primary components of authenticity that this clause highlights. As a public official in this situation, a notary, holds a central position in creating written evidence that has perfect evidentiary force (*volledig bewijs*) as recognized in civil procedural law. Therefore, every deed drawn up by a notary serves not only an administrative function but also has broad legal implications, thus necessitating legal responsibilities inherent in the notary's position. (Efrianto, 2024)

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notaries contains additional provisions for the power, duties, and prohibitions of notaries. Notaries are authorized by Article 15, paragraph (1) of the Notary Law to draft genuine deeds pertaining to any acts, agreements, and clauses that are mandated by law or that the parties wish to be included in an authentic deed. Meanwhile, Article 16 paragraph (1) regulates the obligations of notaries, including acting in a trustworthy, honest, thorough, independent, impartial, and safeguarding the interests of the parties. This provision demonstrates that the responsibilities of notaries are not merely formal but also substantive, as they concern the protection of the legal interests of the parties using their services. (Dewantara, 2024)

From a legal liability perspective, notaries can be held civilly liable if their actions cause the parties to suffer losses, as specified in Article 1365 of the Civil Code regarding unlawful acts. If a notary commits an error or negligence in drafting a deed that results in losses, they can be sued for compensation. Furthermore, administrative liability is regulated in the Notary Law through a supervisory mechanism by the Notary Supervisory Board, which can impose sanctions ranging from reprimands to dismissal. Under certain circumstances, notaries can also be held criminally liable if proven to have committed a crime, such as falsifying a deed, as stipulated in criminal law. (Lediana, 2023)

The prudential principle is the primary foundation for implementing notarial responsibilities, as reflected in Article 16, paragraph (1), letter a of the Notary Law, which requires notaries to act carefully and responsibly. This principle requires notaries to carefully verify the identity of the parties, the validity of the documents, and the material truth of the statements contained in the deed. While notarial law doctrine holds that notaries are not absolutely responsible for material truth, they are still required to ensure that there are no obvious indications of legal defects. Therefore, a notary's responsibility lies in a balance between formal truth and moral-professional obligations in ensuring the validity of the deed. (Pati, 2025)

On the other hand, the current legal framework remains highly formalistic and based on physical presence. It is mirrored in Article 16, paragraph (1), letter m of the Notary Law, which mandates that notaries read the deed to the parties in front of a minimum of two witnesses and

have the parties, witnesses, and notary all sign it at the same time. This provision indicates that the validity of an authentic deed is highly dependent on formal procedures that must be done face-to-face. Therefore, the notary's responsibility is also limited to this physical and procedural space, thus not yet accommodating the possibility of electronic execution.

This legal structure demonstrates that a notary's responsibility for creating authentic deeds remains within a conventional framework that has not yet adapted to technological developments. The limits of a notary's responsibilities are strictly defined by formal procedures stipulated in laws and regulations, thus providing legal certainty but also creating rigidity in the face of the dynamics of digitalization. Therefore, although the current legal system has provided a strong foundation for the implementation of notary duties, there is a need for development and adjustment so that the construction of notary responsibilities remains relevant and able to answer the challenges of technological developments in the modern era.

Problems and Disharmony in the Regulation of Notary Responsibilities in Digital-Based Authentic Deeds

The fundamental problem in regulating notary responsibilities in the creation of digitally-based authentic deeds stems from a legal vacuum in the Indonesian legal system. To date, there is no explicit provision in the Notary Law governing the creation of electronic authentic deeds. All existing legal structures are still designed for conventional, physical-based practices. This situation creates uncertainty for notaries in responding to the needs of an increasingly digitalized society, especially in empirical situations such as the COVID-19 pandemic, which has encouraged the use of long-distance communication technology in various services, including legal services. In practice, some notaries have begun using electronic media such as video conferencing to interact with parties, but this practice lacks clear legal legitimacy, potentially giving rise to future disputes.

This disharmony in norms is increasingly evident in the relationship between the Law Number 11 of 2008 concerning Electronic Information and Transactions and its modifications, as well as the Notary Law. On the one hand, electronic information and/or electronic documents are recognized as legitimate legal evidence in Article 5 paragraphs (1) and (2) of the ITE Law. However, this clause does not apply to documents that are required by law to be drafted in the form of a notarial deed, according to Article 5 paragraph (4) of the ITE Law. The provision creates a serious conflict of norms, because on the one hand, the law encourages the digitization of documents, but on the other hand, it maintains the exclusivity of conventional forms for notarial deeds. As a result, ambiguity arises as to whether an electronically prepared deed can be qualified as an authentic deed or merely a private deed.

Another empirical conflict arises from the clash between the principle of physical presence required in Article 16, paragraph (1), letter m of the Notary Law and the development of digital communication technologies such as video conferencing. In modern practice, long-distance interaction has become commonplace, even in high-value business transactions. However, existing legal provisions still require the parties to be physically present before a notary, the deed to be read in person, and the signing to be done simultaneously. It creates problems when the parties are in different locations or in circumstances that prevent them from being physically present. Empirically, this situation hinders the efficiency of legal services and is inconsistent with the needs of the rapidly evolving digital business environment.

The legitimacy and admissibility of digital deeds are the next concern. According to

Article 1870 of the Civil Code, original deeds have full and binding evidential authority under Indonesian evidentiary law. However, if a deed is created electronically without a clear legal basis, its authenticity becomes questionable. In judicial practice, there is the potential for such deeds to be viewed as mere evidence or even invalid. Furthermore, the use of electronic signatures, although recognized in the ITE Law, still faces implementation issues, such as certification standards, system reliability, and cross-jurisdictional recognition. It creates legal uncertainty for parties who rely on these deeds as the basis of their legal relationships.

In terms of risk, digitalization also opens up the potential for new technical and legal issues, such as identity fraud, misuse of personal data, and cyberattacks on electronic systems used to create deeds. In practice, notaries face difficulties in conducting electronic identity verification with the same level of certainty as in-person verification. It poses a serious problem because errors in identification can result in the invalidation of deeds or even give rise to legal disputes. Furthermore, the lack of standardized and integrated security standards in digital notarial systems further amplifies these vulnerabilities, placing notaries vulnerable to lawsuits.

The implication of all these problems is the expansion of notaries' responsibilities, which is not accompanied by clear legal regulations. In the digital space, notaries are not only responsible for the formal aspects of deed creation, but also for technical aspects such as system security, the validity of electronic signatures, and the validity of the parties' digital identities. However, this expansion of responsibilities is not accompanied by norms that provide clear boundaries regarding the extent of these responsibilities assigned to notaries. Consequently, legal uncertainty arises that can be detrimental not only to the parties but also to notaries as public officials. The situation indicates that the existing legal system is not fully prepared to accommodate digitalization in notarial practice, requiring comprehensive reform and reconstruction.

Reconstruction of Notary Responsibilities in the Preparation of Digitally-Based Authentic Deeds to Ensure Legal Certainty

Reconstruction of notary responsibilities in the preparation of digitally-based authentic deeds must begin with a conceptual redefinition of the meaning of an authentic deed itself. Currently, Article 1868 of the Civil Code defines an authentic deed as a physical document drawn up by or before a public official in a specific format. Therefore, concrete steps are needed in the form of normative changes through revisions to the Civil Code and strengthening the Notary Law by including a definition of an electronic authentic deed as a deed drawn up by or before a notary through an electronic system that meets security, authentication, and data integrity standards. The redefinition must be accompanied by an affirmation that the presence of the parties can be conducted electronically as long as it meets the principle of functional equivalence, so that it is no longer limited to physical presence.

The next concrete step is the reformulation of notary authority in cyber notary practice. In this regard, it is necessary to amend Article 15 of the Notary Law by extending the authority of notaries to create deeds electronically, conduct digital identity verification, and use certified electronic signatures. Furthermore, an integrated national digital notary system under state supervision is needed, allowing notaries to access population databases, biometric verification systems, and a legally recognized electronic signature infrastructure. A concrete implementation of this could include the development of an official e-notary system platform managed by the government in collaboration with notary organizations, so that cyber notary

practices do not occur sporadically without clear standards.

Furthermore, clarifying the boundaries and scope of notary responsibilities in electronic systems is crucial. The revised Notary Law needs to explicitly state that notary responsibilities for digital deeds include electronic identity verification, procedural validity, and compliance with system standards, but exclude technological system failures beyond the notary's control, provided the notary has met established operational standards. Thus, it is necessary to develop national standard operating procedures (SOPs) that govern the stages of digital deed creation, from identifying the parties, through virtual reading of the deed, to electronic signing. These SOPs must be binding and serve as a reference in determining whether or not a notary has committed any errors.

Harmonization between the Notary Law and the Electronic Information and Transactions Law is also a strategic step that must be implemented concretely through legislative revision. The provisions of Article 5 paragraph (4) of the ITE Law, which exclude notarial deeds from electronic documents, need to be reformulated by providing a limited exception for authentic deeds created through a certified electronic system. Furthermore, it is important to emphasize that certified electronic signatures have equal standing with manual signatures in digital notarial deeds. This harmonization will eliminate the conflicting norms that have been a source of legal uncertainty and provide a strong foundation for the recognition of authentic digital-based deeds in the Indonesian legal system.

To strengthen this, a comparative law approach can serve as a basis for formulating an ideal regulatory model. Several countries have adopted remote online notarization systems that allow notaries to verify and create deeds online under strict security standards. This practice demonstrates that the application of technology in notarial services is not only feasible but can also improve the efficiency and accessibility of legal services. Therefore, concrete steps that can be taken include adopting international principles such as the use of multi-factor authentication, electronic recording of notarial processes, and the obligation to store secure and integrated digital archives.

This regulatory reconstruction must be directed toward the creation of a comprehensive, adaptive, and legal certainty-oriented regulatory model. The government, together with the legislative body, needs to draft derivative regulations in the form of government regulations and ministerial regulations that technically govern the implementation of cyber notary services, including aspects of system security, personal data protection, and oversight mechanisms. Furthermore, it is necessary to increase the capacity of notaries through information technology training and specialized certification in digital notarial practices. With these concrete steps, the reconstruction of notary responsibilities will be not only normative but also implementable, thus addressing the challenges of the digital transformation era while ensuring legal certainty and protection for the public.

CONCLUSION

The conclusion of this study indicates that the legal framework for notary responsibilities in the preparation of authentic deeds in Indonesia still relies on a conventional, formalistic paradigm based on physical presence, as stipulated in Article 1868 of the Civil Code and the provisions of the Notary Law. The development of digitalization, which has given rise to cyber notary practices, has not been matched by adequate legal regulations, resulting in a legal

vacuum and disharmony with the Electronic Information and Transactions Law, particularly regarding the recognition of electronic documents and exceptions to notarial deeds. This situation has resulted in unclear validity of digitally authentic deeds, increased risk of notarial liability, and the potential for legal disputes that undermine the principle of legal certainty. Therefore, regulatory reconstruction is an unavoidable necessity to adapt the notarial legal system to the dynamics of technological transformation. Based on this, concrete steps are recommended in the form of legislative reform through revision of the Notary Law and harmonization with the Electronic Information and Transactions Law to accommodate digitally authentic deeds, including the recognition of certified electronic signatures and the electronic presence of parties. Furthermore, the government needs to develop an integrated national digital notary system, establish clear standard operating procedures, and strengthen oversight mechanisms in cyberspace. Furthermore, notaries also need to improve their competency in information technology to ensure the application of the precautionary principle in digital practices. Thus, updating notary law will not only provide legal certainty but also ensure legal protection for all parties and the relevance of the notary profession in the era of digital transformation.

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