



## Strengthening the Principle of Prudence for Notaries in the Preparation of Digital-Based Deeds as an Effort to Renew Notarial Law

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### ABSTRACT

This study is purposed to analyze and formulate the strengthening of the notary's prudential principles in the creation of digital-based agreement deeds as part of the reform of notarial law in Indonesia. By examining Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014 concerning Amendments to the UUJN, the Civil Code, and Law Number 11 of 2008 concerning Information and Electronic Transactions in conjunction with Law Number 19 of 2016 concerning Amendments to the ITE Law, the research method used normative juridical with a statutory approach and a conceptual approach, along with relevant legal doctrines and literature. The results of the study indicate that the application of the notary's prudential principles in the creation of digital deeds still faces various problems, including inconsistencies in norms between the UUJN and the ITE Law, obstacles to online identity verification, the risk of data falsification, and the unclear legal status of digital deeds which have implications for the potential loss of the authentic nature of the deed. This situation has increased the risk of legal liability for notaries and disrupted legal certainty and protection for the parties. Therefore, legal reform is needed through regulatory harmonization, recognition of the cyber notary concept, and the development of technology-based standard operating procedures that include digital identity verification, the use of certified electronic signatures, and the recording of the deed-making process

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### INTRODUCTION

The development of information technology has driven a fundamental transformation in the legal system, including in notarial services, which have been synonymous with conventional procedures based on physical presence (Segara, 2025). The digitalization of public and private services has given rise to the concept of e-notary and electronic deeds as a form of adaptation to the need for efficiency and speed in modern legal transactions. This paradigm shift demands adjustments in legal practices that are no longer limited to physical space, but also include digital spaces that are flexible and cross-border (Irfan, 2025). However, the Indonesian legal system still faces challenges in accommodating digital-based notarial practices, because the existing legal framework has not been fully designed to anticipate these changes (Khan, 2025; Khan & Ahmed, 2025). According to Article 5 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 19 of 2016 concerning Amendments to the ITE Law, electronic documents are recognized as

evidence in this context, is an important starting point, but is not sufficient to address the complexity of digital notarial practices as a whole (Sucia, 2024).

According to Law Number 30 of 2004 concerning the Position of Notary Public, as amended by Law Number 2 of 2014 concerning Amendments to the UUJN, specifically Article 1 number 1 and Article 15 paragraph (1), notaries are public officials with the authority to draft authentic deeds under Indonesian law. Article 1868 of the Civil Code recognizes the full evidentiary force of authentic deeds prepared by notaries. Notaries are crucial in guaranteeing the parties' protection and legal certainty (Faulina, 2022). In the context of drawing up a deed of agreement, a notary serves not only as a recorder of the parties' wishes but also as a guardian of the legality and validity of a legal act. Therefore, in the digital era, the role of notaries has become increasingly crucial, as they must be able to bridge the needs of electronic transactions with the formal and strict principles of notarial law (Farahianie, 2024).

The prudential principle, which mandates that notaries verify the formal and material accuracy of each deed they draft, is one of the core tenets of notarial practice. The UUJN's Article 16 paragraph (1) letters a and m, which mandate that notaries operate honestly, completely, independently, and impartially and read the deed in front of the parties, represent this idea. Furthermore, notaries are also required to carefully verify the identity, legal capacity, and intentions of the parties to prevent legal defects in the deed (Amanda, 2022). In digital practice, implementing the prudential principle faces serious challenges, primarily due to the limited ability to directly verify the parties. If this principle is not implemented properly, the resulting deed has the potential to lose its authenticity and result in legal consequences in the form of civil, administrative, and even criminal liability for notaries (Azzahra, 2025).

The development of digital-based agreement deeds further reinforces the urgency of legal reform in the notarial field (Herliyani et al., 2025). The use of electronic signatures, electronic systems, and online communication in the deed-making process has become an inevitable practice. The Electronic Transactions and Transactions (ITE) Law, through Article 11, recognizes electronic signatures as valid instruments provided they meet certain requirements, thus opening up opportunities for the digitization of deeds. (Melati, 2025) However, there are fundamental differences between conventional and digital deeds, particularly regarding physical presence, the verification process, and document storage. Conventional deeds emphasize the direct presence of the parties before a notary, while digital deeds potentially disregard this element, raising questions about their validity and evidentiary power (Zulfikar, 2025).

The problematic practice of digital deeds by notaries is further evident in the lack of explicit regulations regarding cyber notaries in the UUJN (Efendi & Sesung, 2025). The provision of Article 16 paragraph (1) letter m of the UUJN, which requires the reading of the deed in the presence of the parties, demonstrates the principle of physical presence, which is difficult to accommodate in digital practice. This creates a conflict of norms between the UUJN and the ITE Law and creates a legal vacuum regarding the procedures for creating electronic deeds. Empirically, notaries face obstacles in conducting online identity verification, which has the potential to open up opportunities for data falsification and identity misuse (Nugroho, 2026). Furthermore, the unclear legal status of digital deeds creates the risk of rejection as evidence in court, thus impacting legal certainty and legal protection for the parties (Theixar, 2021).

The urgency of this research is reinforced by the increasing risks faced by notaries in digital practice, including the risk of identity fraud, data falsification, and legal liability. Empirically, there have been many cases of identity misuse and signature forgery in digital transactions, which indicate the vulnerability of the current legal system in protecting the parties and notaries. The unclear legal status of digital deeds also has the potential to cause rejection as evidence in court, impacting the legal certainty and protection of the parties. This research is also urgent because legal uncertainty in digital notarial practice can reduce public trust in the notary profession and hinder the development of digital transactions in Indonesia. Therefore, legal reform is needed to address these problems, including harmonizing regulations, recognizing the concept of cyber notary, and developing standard operating procedures based on technology. This reform is essential to create a legal framework that is adaptive and capable of answering the challenges of the digital era without sacrificing the fundamental principles of notarial law.

This situation indicates a gap between legal norms and digital notarial practices, resulting in increased legal risks and notarial liability. Notaries may face civil lawsuits due to formal or material defects in the deed, administrative sanctions, and potential violations of the professional code of ethics. From a legal certainty perspective, regulatory ambiguity creates multiple interpretations of the validity of digital deeds, while from a justice perspective, there is an imbalance in protection for parties in electronic transactions. Therefore, strengthening the principle of prudence for notaries is necessary through legal reforms that include reformulating the UUJN (National Law on Notary Public Provisions), harmonizing it with the ITE Law, and developing standard operating procedures that adapt to technology. Academically, this research is significant because it offers a novel approach to formulating a model for strengthening the principle of prudence for notaries in the preparation of digital deeds, to ensure legal certainty, legal protection, and justice in notarial practice in the era of digital transformation.

## **METHOD**

The study of legal norms found in laws and regulations, doctrines, and legal principles pertinent to the issue under investigation is the main focus of this normative juridical research technique. Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014 concerning Amendments to the UUJN, the Civil Code, and Law Number 11 of 2008 concerning Information and Electronic Transactions in conjunction with Law Number 19 of 2016 concerning Amendments to the ITE Law and its implementing regulations are just a few of the legal provisions that are systematically examined in the statutory approach. In the meantime, legal ideas like the notarial prudence principle, deed authenticity, legal certainty, legal protection, and the idea of a cyber notary are studied and analyzed from the standpoint of notarial law reform using the conceptual approach. The legal materials utilized include secondary legal materials in the form of literature and primary legal materials in the form of laws and regulations, scientific journals, and expert opinions, and tertiary legal materials as supporting materials. All of these legal materials were analyzed qualitatively using legal interpretation and legal argumentation methods to identify normative gaps, disharmonies, and the need for legal reform to strengthen the principle of prudence for notaries in the preparation of digital-based agreements.

## **RESULTS AND DISCUSSION**

### **Legal Construction of the Notary's Principle of Prudence in Drafting Deeds of Agreement**

The legal construction of the notary's principle of prudence in drafting a deed of agreement is the main foundation of the notarial legal system in Indonesia, founded on the standards outlined in Law Number 2 of 2014 concerning Amendments to the UUJN and Law Number 30 of 2004 concerning the Office of Notaries. In this context, notaries are specifically required under Article 16, paragraph (1) letter a to act honestly, completely, independently, impartially, and to protect the interests of the parties participating in legal activities. The notary's role as a public official entails both a legal and an ethical obligation to uphold the prudence principle. Therefore, this principle serves as the normative basis for every notarial action, particularly in drafting a deed of agreement, which has broad legal consequences for the parties (Andrianto, 2023).

According to Article 15 paragraph (1) of the UUJN, which stipulates that a notary is permitted to generate authentic deeds about all acts, agreements, and determinations required by law, a notary has the authority to create authentic deeds as a public official. According to Article 1868 of the Civil Code, "an authentic deed is a deed created by or before a public authority authorized to do so, in a form stipulated by law," thus authentic deeds have entire evidentiary power. Therefore, the principle of prudence is an essential element determining the validity and evidentiary force of a deed, as any negligence in its application can result in the deed being degraded to a private deed or even rendered null and void (Andrianto, 2023).

The principle of prudence in notarial practice is realized through the notary's obligation to ensure the formal and material truth of the deeds they create. Formal truth encompasses the validity of the parties' identities, their authority to act, and the conformity of the deed-making procedures to statutory provisions. It is consistent with Article 16 paragraph (1) letter m of the UUJN, which mandates that a notary read the deed in front of the parties in the presence of witnesses to make sure the parties have comprehended and approved of its contents. According to Article 1320 of the Civil Code, the notary must make sure that the agreement does not violate the law, morals, or public order. In the meantime, material truth pertains to the parties' will as expressed in the deed. As a result, the prudence principle acts as a safeguard to guarantee the legitimacy of the deed's procedures and content (Novena, 2025).

The legal obligations of notaries are likewise intimately tied to the prudential concept. The notary may be subject to administrative sanctions under Article 85 of the UUJN and civil liability under Article 1365 of the Civil Code for unlawful conduct if they violate the responsibilities outlined in the UUJN. In fact, if it is established that a notary willfully committed an illegal act, they may also be prosecuted under specific conditions. As a result, using the prudence principle is both a professional requirement and a way for notaries to be protected legally while doing their obligations (Abidin, 2024).

In legal principles, the principle of prudence for notaries is a manifestation of the principles of legal certainty and legal protection. Legal certainty is reflected in the notary's obligation to strictly follow established procedures, so that the resulting deed has clear legal status and can be relied upon as evidence. It aligns with the principle of the rule of law as mandated in Article 1, paragraph (3) of the 1945 Constitution and the guarantee of legal certainty in Article 28D, paragraph (1) of the 1945 Constitution. Meanwhile, legal protection is realized through the notary's role in ensuring that the rights and obligations of the parties are

clearly stated and do not disadvantage either party. Thus, the principle of prudence serves as an instrument to maintain a balance of interests between the parties in an agreement (Agatha, 2026).

However, in its application, the principle of notarial prudence still faces various normative limitations, particularly in the face of technological developments and modern legal practices. Provisions in the UUJN, which emphasize the physical presence of the parties and conventional procedures, often do not align with the needs of increasingly digital transactions. It poses challenges in maintaining prudential standards without hindering the efficiency of legal services. Therefore, progressive interpretations and legal reforms are needed to accommodate these developments without compromising the essence of the precautionary principle. Thus, the legal framework for the precautionary principle for notaries must continue to evolve to remain relevant and ensure the validity and reliability of deeds produced in various contexts, including in the digital era.

### **Problems Implementing the Notary's Principle of Prudence in Digital-Based Deed Preparation**

The practical problems of implementing the notary's principle of prudence in digital-based deed preparation demonstrate a clear discrepancy between applicable legal norms and the needs of modern transactions. Deeds must be read aloud in front of the parties, according to Law Number 30 of 2004 concerning the Office of Notaries, as amended by Law Number 2 of 2014 concerning Amendments to the UUJN, notably Article 16 paragraph (1) letter m. However, in practice, the need for efficiency and technological developments has encouraged the emergence of online deed preparation via video conference or electronic document exchange. Empirically, notaries face a dilemma between adhering to the formal provisions of the UUJN or adapting to the needs of a digital society. This discrepancy often results in ongoing practices that fall within a legal gray area, potentially giving rise to issues regarding the validity of deeds.

The most concrete problem in practice is the difficulty of online identity verification of the parties. In conventional procedures, notaries can directly verify the authenticity of identities through physical presence, inspection of original documents, and direct observation of the parties. However, in the digital context, verification is often carried out solely through electronic document copies, scans, or even screenshots, which are highly susceptible to manipulation. Empirically, there have been many cases regarding the use of fake identities or identities borrowed by other parties in digital transactions. The situation contradicts the notary's obligation to ensure formal authenticity as stipulated in Article 16, paragraph (1), letter a of the UUJN, potentially creating legal defects in the deeds they produce.

Furthermore, the risk of data falsification and identity misuse is increasingly high in digital deed practices. The absence of a biometric verification mechanism or integrated digital identity system makes it difficult for notaries to ensure that transacting parties are truly the legal subjects concerned. In some practices, notaries rely solely on online communications or documents sent via email or messaging apps, without adequate authentication processes. It opens the opportunity for fraud that can be detrimental to the parties. The principle of prudence

requires notaries to thoroughly verify the identities and intentions of the parties, thus demonstrating a gap between normative standards and field practice.

Another significant problem is the unclear legal status of digital deeds in the Indonesian legal system. Article 5 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions, in conjunction with Law Number 19 of 2016 about Amendments to the ITE Law, acknowledges electronic documents as legitimate legal evidence, whereas Article 11 acknowledges electronic signatures, these regulations do not specifically define notarial deeds as authentic deeds in digital form. Consequently, uncertainty arises as to whether deeds made without a physical presence and using only electronic media can still be qualified as authentic deeds as referred to in Article 1868 of the Civil Code. Empirically, this has the potential to cause digital deeds to be rejected as complete evidence in court and considered merely private deeds.

A further implication of this situation is the increased risk of legal liability for notaries. If a digitally created deed is found to contain formal or material defects, the notary can be sued under Article 1365 of the Civil Code, subject to administrative sanctions in accordance with the UJUN (National Notary Law), and even face potential criminal consequences if there is an element of intent or gross negligence. Empirically, notaries are in a vulnerable position because they must bear the legal risks of practices that lack a clear regulatory basis. Furthermore, this lack of clarity also impacts parties who use notary services, as they lack legal certainty regarding the deeds they create.

All of these problems lead to the disruption of legal certainty and legal protection in digital notarial practices. The inconsistency between the UJUN and the ITE Law creates disharmony in norms that lead to multiple interpretations in the application of the law. From an empirical perspective, this is evident in differences in practice among notaries, inconsistent procedures, and doubts about the use of digital deeds as evidence. This condition contradicts the principle of legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution, and reduces the level of public trust in the notary profession. Therefore, the problem of implementing the principle of prudence in digital deeds is not only a technical issue, but is a systemic problem that requires comprehensive legal reform.

### **Legal Reconstruction and Update to Strengthen the Principle of Prudence for Notaries in Digital-Based Agreements**

Reconstruction and update of the law to strengthen the principle of prudence for notaries in the preparation of digital-based agreements must begin with the harmonization of the currently fragmented normative framework between Law Number 30 of 2004 concerning the Office of Notaries, as amended by Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 2 of 2014 concerning Amendments to the UJUN (National Notary Law), and Law Number 19 of 2016 concerning Amendments to the ITE Law. Specifically, a reformulation of the norms in the UJUN is needed to explicitly recognize the concept of cyber notary, including a redefinition of the presence of the parties, which is no longer solely physical but can also be conducted electronically through a verified system. A concrete action that can be taken is to amend Article 16, paragraph (1), letter m of the UJUN by adding a clause that accommodates the presence of secure and documented electronic

communication technology-based services, so that it no longer creates conflicts between norms and digital transaction practices.

Strengthening the principle of prudence must be realized through the establishment of national standard operating procedures that bind all notaries in the creation of digital deeds. The concrete step requires the development of implementing regulations in the form of a Regulation of the Minister of Law and Human Rights or a Regulation of the Notary Organization that details the stages of digital deed creation, from party identification and verification to document storage. The SOP must integrate the principle of prudence with technology so that every step in the deed creation process can be traced and legally accounted for. With uniform standards, digital notarial practices will no longer be sporadic but will have clear procedural certainty.

Regarding identity verification, legal reforms must adopt reliable digital identification technology. A concrete action that can be implemented is the mandatory use of a biometric-based verification system connected to the national population database, such as integration with electronic population data. Furthermore, notaries should be required to use electronic Know Your Customer (e-KYC) services to ensure the authenticity of the parties' identities. This step will strengthen the implementation of the precautionary principle in terms of formal veracity while minimizing the risk of identity fraud, which has been a major problem in digital transactions.

Another essential component of this legal reform is the use of certified electronic signatures. Even though electronic signatures are recognized under Article 11 of the ITE Law, specific action is required, such as requiring the use of certified electronic signatures from approved electronic certification providers. Furthermore, the deed creation process must be accompanied by an audio-visual recording, which is an integral part of the digital deed minutes, so it can be used as an additional verification tool in the event of a dispute. This recording also serves to ensure that the deed reading and approval process continues to take place, even if conducted online.

Strengthening the oversight mechanism is also a crucial element in this legal reform. Concrete action that needs to be taken is the establishment of a digital-based oversight system that allows relevant authorities to audit the deed creation process in real time. Furthermore, it is necessary to implement mandatory electronic reporting for every digitally executed deed, allowing for more effective oversight of notaries' compliance with the principle of prudence. This oversight must also be accompanied by strict sanctions for violating notaries, in order to maintain professional integrity and public trust.

This legal reconstruction and reform must be directed toward creating a notarial system that adapts to technological developments without compromising basic legal principles. A concrete, strategic action is to encourage the development of comprehensive regulations on digital notaries that integrate all aspects, from notary authority and deed-making procedures to evidentiary mechanisms in court. By strengthening the principle of prudence through technology, it is hoped that notaries will continue to be able to fulfill their role as guardians of legal certainty and legal protection for all parties, while simultaneously increasing the legitimacy and public trust in notarial practice in the digital era.

## CONCLUSION

The conclusion of this study indicates that the principle of notarial prudence is the primary foundation for ensuring the validity and evidentiary power of agreements. However, the practice of digital-based deed creation still faces various fundamental problems, both normative and empirical. The inconsistency between Law Number 11 of 2008 concerning Electronic Information and Transactions in conjunction with Law Number 19 of 2016 concerning Amendments to the ITE Law and Law Number 30 of 2004 concerning the Office of Notaries, as amended by Law Number 2 of 2014 concerning Amendments to the UUJN (National Notary Law), shows that the current legal framework is unable to fully accommodate digital notarial practices. Empirical problems identified include obstacles to online identity verification, the risk of data falsification, the unclear legal status of digital deeds, and the potential loss of authenticity. This situation increases the risk of notary legal liability and disrupts legal certainty and protection for the parties, thus demonstrating the urgent need for legal reforms that adapt to technological developments. One suggestion that can be put forward is the need for legal reconstruction through harmonization and reformulation of notary regulations that explicitly accommodate the concept of cyber notary, including adjustments to provisions regarding the presence of parties and deed-making procedures. Furthermore, it is necessary to develop national standard operating procedures that regulate in detail the creation of digital-based deeds, including the use of technology-based identity verification systems, certified electronic signatures, and recording of the deed-making process. Strengthening the capacity of notaries through technology and digital forensics training is also crucial to support the implementation of the precautionary principle. Furthermore, it is necessary to establish an effective digital-based oversight system and enforce strict sanctions to maintain the integrity of the notary profession. More broadly, updating Law Number 30 of 2004 concerning the Office of Notaries is a strategic step to address the dynamics of legal practice in the digital era, so that notaries can continue to conduct their role professionally in ensuring legal certainty and protection.

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