

MEASURING THE ELECTRONIC NOTARY DEED IN THE FRAMEWORK OF HALAL PRINCIPLES ACCORDING TO ISLAMIC LAW IN THE COVID-19 PANDEMIC ERA

TIUR

ABSTRACT

As a state of law, everything aspect life public regulated and guaranteed by law. Including in Thing ownership something thing. Ownership soil guaranteed by deed authentic made by a Notary. Making deed during the pandemic moment this no could walk with good. This thing because by juridical condition making deed Notary Public according to Article 28 Regelemet op het Notary-ambt in Indonesia (Ordinance of January 11, 1860) and Article 16 paragraph (1) letter m of the Law Number 30 of 2004 Jo. Constitution Number 2 of 2014 About Position Notary of the parties must present, while during PPKM when this every party prohibited for meet with reason prevent deployment Covid 19. Writing this use method normative. As for the update on writing this is existence discussion harmonization Among Settings condition the presence of the parties in making deed authentic with implementation in the community. Based on study yanga there is found reality that need will protection law to right owned by will something thing no move main really high. That thing make deed Notary Public Becomes something need alone for society. one _ condition absolute in making something deed authentic is presence of the parties. Condition the poured in Article 28 Regelemet op het Notary-ambt in Indonesia (Ordinance of January 11, 1860) and Article 16 paragraph (1) letter m of the Law Number 30 of 2004 Jo. Constitution Number 2 of 2014 About Position Notary. The entry of the Covid-19 virus in this country Becomes something problem happy self for implementation condition that. advice from existing studies _ is need wish set more carry on related implementation from Article 28 Regelemet op het Notary-ambt in Indonesia (Ordinance of January 11, 1860) and Article 16 paragraph (1) letter m of the Law Number 30 of 2004 Jo. Constitution Number 2 of 2014 About Position Notary Public through digital media. Arrangement formulation provision the could in the form of regulation government related implementation making deed Notary Public by electronic.

Keywords : *Deed _ Notary Public Electronics, Halal, Covid-19*

A. PRELIMINARY

Indonesia was born as a state of law, view this by assertive could found in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The concept of the State of Indonesia as a legal state this then give consequence that deed every circles society is governed by applicable law. ¹

Life economy in development no could release position urgent will law, importance position law the because law capable protect right every party in activity economy mature this. Protection law need-ed in activity development economy could seen in Thing protection right belong to.

Right owned by will something thing by assertive guaranteed in Article 28G paragraph (1) of the

1945 Constitution of the Republic of Indonesia . Meanwhile related right owned by on soil guarantee will existence protection law could seen in Article 16 of the Law Number 5 of 1960 concerning Basic Rules agrarian President Republic of Indonesia which reads :

- (1) rights on soil as intended _ in Article 4 paragraph (1) is :
 - a. right belongs to ,
 - b. right business ,
 - c. right building use ,
 - d. right wear ,
 - e. right rent ,
 - f. right open land ,
 - g. right pick up results forest ,
 - h. other rights that are not including in rights the above will _ set with Constitution as well as inherent rights _ temporary as mentioned _ in Article 53.
- (2) rights over water and space space as intended _ in Article 4 paragraph (3) is :
 - a. right use -water,
 - b. right maintenance and capture fish ,
 - c. right To use room space .

Guarantee will protection right owned by realized through making something deed authentic . position urgent something deed authentic based on function deed authentic that . Deed authentic has 2 (two) functions urgent that is deed as a formal function that has meaning that something deed law will Becomes more complete when made _ something deed . Function tool proof that is deed as tool proof where made deed by the parties who are bound in something the agreement is intended for later proof _ day .²

The presence of the 4.0 industrialization era and progress technology information and communication on its development has bring fundamental change _ in life people around the world, no except in Indonesia.³ Change the has fundamentally _ change culture the former society conducted with method traditional through utilization facilities that have not digital based , when this Thing the has change , everything activity life public has conducted half in cyberspace . one _ proof will Thing the could seen in bureaucracy making deed through means progress technology information and communication .⁴

Deed first authentic _ made manually , adult this has metamorphosis Becomes deed which electronics in every Step making until its validity has many involve digital ⁵technology .

Existing progress _ then create problem law new , that is problem validity from deed authentic electronically made by a Notary . Validity one deed _ must more formerly read by a notary in front of two witnesses and the appearers or the party who wants make deed authentic . This thing set in Article 28 *Regelemt op het Notary-ambt in Indonesia (Ordinance 11 January 1860)*. Provision this too then accommodated in Article 16 paragraph (1) letter m of the Law Number 30 of 2004 Jo. Constitution Number 2 of 2014 About Position Notary .⁶

2 Sudikno Mertokusumo , *Knowing the Law of a Introduction* , Liberty, Yogyakarta, 1999, p . 121-122.

3 Edi Setiadi , Influence Globalization To Substance and Law Enforcement , *Legal Syiar* , Volume XVIII No. 4, 2002, p . 446.

4 Yudha Prio Kuspratomo , Lailatul Nur Hasanah , and Sri Endah Wahyuningsih , Making Implementation Deed Electronically Based on Law of Notary, *Journal Deed* , Volume 6 Issue 4, December 2019, p . 693-695.

5 Adrian Raka Wiranata , Analysis Making Deed Notary Public by Electronics , *Al Qodiri : Journal of Education, Social and Religion Accredited Kemenristekdikti No. 85/M/KPT/2020 Vol 19 No 1 April 2021*, page . 413-416.

6 Kadek Setiadewi and I Made Hendra Wijaya, Legality Deed Notary Public Cyber Notary Based As Deed Authentic , *Journal Legal Commu-*

The terms above require existence presence Among Notary Public as office general maker deed and the parties who wish to make deed authentic . Making deed authentic electronic often no attended by the physical of the parties who want to make deed authentic . Absence face in making deed authentic when refers to both Article above _ clear will result in deed authentic the questionable . ⁷This thing Becomes the more complicated because regarding deed authentic made by Notary _ not yet there is the settings good in Constitution Number 19 of 2016 concerning Information and Transactions Electronic as well as in Constitution Number 30 of 2004 Jo. Constitution Number 2 of 2014 About Position Notary . state thereby clear result in problem disloyalty in Thing all problem related deed electronic Notary , ok in Thing solution problem law akat if in the future day deed electronic Notary Public contain various problem even in Thing protection of the parties who guarantee protection right through deed electronic Notary Public that . So that need wish studied more in related urgency Settings deed electronic Notaries in the current digital era this .

B. METHOD

Method used _ in writing this is method normative . Normative Legal Research is study the law carried out with method researching ingredient References or secondary data .⁸

C. ORIGINALITY

Article this almost have similarity with article journal owned by Andi Suci Wahyuni . Holy Andi's article Wahyuni more many discuss regarding obstacle problem manufacture and enforcement from deed authentic Notary in the pandemic era moment this . Articles compiled by the author also discuss more in related role certainty law from making deed Notary Public by electronics .

D. DISCUSSION

1. Existence Deed Electronic Notary Public In National Land Law

Related with definition deed authentic is set in Article 1868 of the Civil Code . Temporary definition deed Notary Public explained in Article 1 Paragraph (7) Law Number 30 of 2004 Jo. Constitution Number 2 of 2014 About Position Notary . Article 1868 of the Civil Code state that “ a “ deed authentic is something deed made _ in specified shape _ law by or before _ office authorized public _ for it's in place deed that made .”

Article 1 Paragraph (7) Law Number 30 of 2004 Jo. Constitution Number 2 of 2014 About Position Notary Public state that “ Deed “ The next notary called Deed is deed authentic made by or in front of Notary Public according to prescribed forms and procedures _ in Constitution this .”

Making deed Notary Public in progress require the party who wants make deed for present in reading deed by a notary . ⁹This thing in accordance with Article 28 *Regelemet op het Notary-ambt in Indonesia (Ordinance 11 January 1860)* which states : that :

Notary Public must read deed before the appearers and witnesses . __ When a face or more no understand language used _ in deed that , then deed that will translated by a notary , and if Notary Public no capable for that , will translated by a translator . Quick after that , deed the must signed by all face , except if determined that they no could affix sign his hands or unable to for it ; in Thing this , description them and the reason hindrance that must called

nication (JKH) Ganesha University of Education , Vol. 6 No. 1, February 2020, p . 128-129.

⁹ Agus Budiarto , Shinta Pangesti , Debora Pasaribu , and Stephanie Faustina, *Barcoding Digital Signature Authencity As Evidence of Case Criminal Law Reflection Journal _ Legal Studies , Volume 5 Number 2, April 2021, p . 256-258.*

by assertive in deed . (Notes 23, 25, 29; Criminal Code . 932, 939.) In Thing a face or more only have interest in part certain or join Act only in part from deed that , then only part that only read in front of him , so far need translated and signed by him or by them and mention by assertive reading , receiving and signing in! on part that . Besides that , the witnesses must sign deed , except those called _ in article 24; also by a notary , and in Thing mean in paragraph 2 article this , by the translator . If it happens violation to one or more provision chapter this , deed that only have strength as letter below _ hand , if signed by the presenters . (KUHPerd . 1869, 1874 etc.). Hal reading , translation and signatories the must mentioned by firm in part Closing that , with threat punishment fine of 25 guilders.

similar idea is also recognized by Article 16 paragraph (1) letter m of the Law Number 30 of 2004 Jo. Constitution Number 2 of 2014 About Position Notary stating : _

In operate position , Notary must read Deed in front of face with attended by at least 2 (two) witnesses , or 4 (four) witnesses special for making Deed will below _ hand , and signed at the time it is also by the appearers , witnesses , and notaries .

Various above stipulation _ showing existence must presence Notary , the parties and also witnesses . Not arranged provision regarding *teleconference* as alternative new regarding presence Notary , ¹⁰parties and witnesses _ in making something deed authentic has result in happening collision related Settings presence from notary , parties and witnesses in making something deed authentic .

2. Urgency Arrangement Deed Electronic Notary In The Covid-19 Pandemic Era And Certainty The law

Since spreading case the spread of Covid-19 in Indonesia, the country has enforce various policy by the government center and region related solution in dealing with the Covid-19 virus. This thing showed among others with appeal *physical distancing* , *social distancing* and enforcement Restrictions Social Scale Large (called PSBB) for push deployment movement of this virus .¹¹

Based on the terms related restrictions activity public To use prevent Covid-19 required by the government the so policies that have been enforced the Becomes beginning change various arrangement interaction and life social people in various regions in Indonesia that the Covid-19 outbreak has spread.

Enforcement rule *physical distancing* in PSBB also provides limitation even termination temporary implementation duties and positions office general namely , Notary and PPAT. On the other hand there is policy the a little many cause various uncertainty law and space empty law _ to action the law that should be carried out by interested parties .¹²

10 Habib Adjie , Concept Notary Public Mayantara Face Challenge Global Competition , *Respublica Legal Journal* , Vol. 16, No. 2 of 2017, p . 202-205.

11 <https://www.kemendiknas.go.id/pemcepatan-social-large-scale> , Enforcement Restrictions Social Scale Large , Retrieved July 12 , 2021.

12 <https://jateng.sindonews.com/berita/24784/1/dilarangberhadapan-stop-akta-notarisppat> , Dilarang face to face , stop deed Notary / PPAT, accessed on 12 July 2021.

state thereby clear give problem separately , including in Thing validity deed authentic Notary . Provision regulation legislation that regulates making deed authentic good that there is in Constitution Republic of Indonesia Number 2 of 2014 Regarding Changes to the Law Number 30 of 2004 concerning Position Notary Public nor Regulation Government Republic of Indonesia Number 24 Year 2016 Regarding Changes to Peratumn Government Number 37 of 1998 concerning Regulation Position office Maker Land Deed _ assertive put forward condition existence stare the face and presence of the parties who wish to with notary .¹³

Provision as meant could seen in Article 1868 *Burgelijk Wetboek* (next called BW) or the Civil Code which states that : that something deed called deed authentic when fulfil conditions , that is form deed determined in regulation legislation , made by or in front of office authorized public and place _ making deed is an area of authority office that . Presence the physical of the parties in front of Notary Public nor office maker deed authentic is something inevitability if faced with provision government about PSBB.¹⁴

Effort government in resolve This *Corona* then develop Becomes Enforcement Restrictions Community Activities or PPKM. The application of PPKM when this has reach level 4 (four). This thing in accordance with Instruction of the Minister of Home Affairs Number 27 of 2021 concerning Enforcement Restrictions Community Activities Level 2, Level 3, and Level 4 in the Java and Bali ¹⁵Region . The implementation of the PPKM also provides impact in the form of no effective and intense interaction between party with Notary Public in Thing making deed . So that clear that Settings deed Notary Public electronic by specific set with clear . Remember various type condition operational law civil law in this country only related with field transaction electronic only . state thereby clear result in uncertainty law in making deed Notary during the pandemic moment this , if use theory from Hans Nawiasky , problem disharmony law this could seen with not harmony Among mandate Article 28H of the 1945 Constitution of the Republic of Indonesia as *staatsgrundgesetz*¹⁶ with implementation Article 28 *Regelemt op het Notary-ambt in Indonesia (Ordinance of January 11 , 1860)* and Article 16 paragraph (1) letter m of the Law Number 30 of 2004 Jo. Constitution Number 2 of 2014 About Position Notary in the current pandemic era this , situation this by automatically also contradicts with the mandate of Pancasila and the Fourth Paragraph Opening The 1945 Constitution of the Republic of Indonesia as the Fundamental norms of the state or *staatsfundamentalnorm* .¹⁷

In development in agreement sharia , because the halal is known with term destination contract / *maudhu*“ ul aqd which means for what something contract done (al -maqshad al ashli alladzi sharia al aqd min ajlih) by someone with other people in skeleton doing something muamalah Among human , and who determines consequence law from something contract is al mysyarri (which establishes shari’a) i.e. Allah himself . Well in the terms “ lawful cause “ in agreement conventional as

13 *Loc, cit.*

14 *Loc, cit.*

15 <https://national.kompas.com/read/2021/08/03/08005681/berlaku-to-9-agustus-ini-List-Territory-ppkm-level-4-di-island-jawa-bali?page=all> , apply Until August 9 , this is the list of PPKM Level 4 Areas on the Island Java -Bali, Accessed on 12 July 2021.

16 Sofia Appendix , Nothing Minister of Internal Affairs Regulation Hierarchy Regulation National Legislation and Its Implication To setting Regulation In National Legal System , *Journal Pakuan Law Review*, Volume 07, Number 01, January-June 2021, p . 116-118.

17 Isnawati , Implementation Hierarchy Regulation Legislation according to Constitution Number 12 of 2011 in Indonesia Currently This , *Journal responsive* , Vol 7 No 2 (2019) , p . 69-70.

well as “ goal “ contract “ in “ agreement sharia , both you’re welcome give emphasis urgent about what is meant with contents from condition the that is discuss about destination existence something agreement .¹⁸

Various explanation above _ showing that deed notary made _ by electronics that have various weaknesses and potential harmful holder deed could result in the injury principle lawful deed according to islam . So that various type the agreement that has been poured in _ deed could said no legitimate according to Islam.

E. CLOSING

Need will protection law to right owned by will something thing no move main really high . That thing make deed Notary Public Becomes something need alone for society . one _ condition absolute in making something deed authentic is presence of the parties . Condition the poured in Article 28 *Regelemet op het Notary-ambt in Indonesia (Ordinance of January 11 , 1860)* and Article 16 paragraph (1) letter m of the Law Number 30 of 2004 Jo. Constitution Number 2 of 2014 About Position Notary . The entry of the Covid-19 virus in this country Becomes something problem happy self for implementation condition that .

F. SUGGESTION

Need wish set more carry on related implementation from Article 28 *Regelemet op het Notary-ambt in Indonesia (Ordinance of January 11 , 1860)* and Article 16 paragraph (1) letter m of the Law Number 30 of 2004 Jo. Constitution Number 2 of 2014 About Position Notary Public through digital media. Arrangement formulation provision the could in the form of regulation government related implementation making deed Notary Public by electronic .

G. IMPLICATION OF THE STUDY

by theoretical writing this expected capable give something update thinking that implementation from law should capable follow development technology as well as state something society . Through use related digital technology making deed Notary . Temporary by practical study in writing this expected Becomes base beginning for study law in making law about deed Notary Public mature this is not again conducted by conventional However has far follow development technology especially in the era of covi 19 when this . state thereby clear could hurt halal principle of deed electronic Notary Public according to Islam.

18 Tri Wahyu Surya Lestari and Lukman Santoso , Comparison Condition The Validity of “ Halal Causes “ in Agreement Conventional And Sharia Agreement , *Journal Legal Thought and Islamic Law, YUDISI A*, Vol. 8, No. 2, December 2017, pp . 282-286.

BIBLIOGRAPHY

A. Journal

- Adrian Raka Wiranata , Analysis Making Deed Notary Public by Electronics , *Al Qodiri : Journal of Education, Social and Religion Accredited Kemenristekdikti No. 85/M/KPT/2020 Vol 19 No 1 April 2021*
- Edi Setiadi , Influence Globalization To Substance and Law Enforcement , *Legal Syiar* , Volume XVIII No. 4, 2002
- Habib Adjie , Concept Notary Public Mayantara Face Challenge Global Competition , *Respublica Legal Journal* , Vol. 16, No. 2 Year 2017
- Isnawati , Implementation Hierarchy Regulation Legislation according to Constitution Number 12 of 2011 in Indonesia Currently This , *Journal responsive* , Vol 7 No 2, 2019
- Jeffery Alexander Ch. Likadja , Interpreting “State Law (*Law Through State*)” in Frame “State of Law (*Rechtstaat*)”, *Hasasmuddin Law Review*, Vol. 1, No. 1, April 2015
- Kadek Setiadewi and I Made Hendra Wijaya, Legality Deed Notary Public Cyber Notary Based As Deed Authentic , *Journal Legal Communication (JKH) Ganessa University of Education* , Vol. 6 No. 1, February 2020
- Lyta Berthalina Sihombing , Signature Validity _ Electronic In Deed Notary , *Journal of Education and development* , South Tapanuli Education Institute , Vol.8 No.1 Edition February 2020
- Sofia Appendix , Nothing Minister of Internal Affairs Regulation Hierarchy Regulation National Legislation and Its Implication To setting Regulation In National Legal System , *Journal Pakuan Law Review*, Volume 07, Number 01, January-June 2021
- Yudha Prio Kuspratomo , Lailatul Nur Hasanah , and Sri Endah Wahyuningsih , Making Implementation Deed Electronically Based on Law of Notary, *Journal Deed* , Volume 6 Issue 4, December 2019

B. Book

Sudikno Mertokusumo , 1999, *Knowing the Law of a Introduction* , Liberty, Yogyakarta,

Soerjono Soekanto & Sri Mamudji , 2003, *Normative Legal Research : Something Overview In short* , PT. King of Grafindo Persada , Jakarta

C. Internet

<https://www.kemenkopmk.go.id/pemcepatan-social-large-scale> , Enforcement Restrictions Social Scale Large , Accessed July 12 , 2021

<https://jateng.sindonews.com/berita/24784/1/dilarangberhadapan-stop-akta-notarisppat> , Dilarang face to face , stop deed Notary / PPAT, accessed on 12 July 2021

<https://national.kompas.com/read/2021/08/03/08005681/berlaku-to-9-agustus-ini-List-Territory-ppkm-level-4-di-island-jawa-bali?page=all> , apply Until August 9 , this is the list of PPKM Level 4 Areas on the Island Java -Bali, Accessed on 12 July 2021

D. Regulation legislation

the 1945 Constitution of the Republic of Indonesia ;

Civil Code ; __

Constitution Number 2 of 2014 About Position Notary .