

Paradigm Shift Regarding The Meaning of Appearing Before a Notary in The Cyber Notary Context

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Abstract. *Paradigm shift can refer to a fundamental change in the form of perspective, mindset, or conceptual framework used to understand, explain, or solve a problem. The essence of cyber notary itself can be interpreted as a notary who carries out his duties or authority based on information technology, this is not only the legality of using a cell phone for communication between a notary and his client but also relates to the duties and functions of a notary, especially in making deeds. This study uses a normative legal research method. The approach methods in this study are the statutory approach, the conceptual approach, and the theoretical approach. The data sources used in this study are secondary data sources, while the data analysis used is prescriptive data analysis. The results of this study are First, regarding the paradigm shift regarding the meaning of appearing before a notary in the context of cyber notary, it cannot be described in detail and in detail how the shift takes place because the Notary Law, the Civil Code itself has not regulated the existence of digital face-to-face in the concept of cyber notary, so it can only be described roughly regarding the use of video teleconferences such as zoom, cameras, cell phones, CCTV but it is emphasized that the parties must remain present. Second, regarding legal certainty regarding deeds made in the cyber notary concept, it can be seen that there is no legal certainty because the Notary Law does not regulate notaries working as cyber notaries.*

Keywords: *Cyber Notary; Facing Digitally; Paradigm Shift.*

1. Introduction

The pace of development and legal development cannot be separated from the development of society and the development of science and technology. The existence of technology can be felt through digitization, digitalization and digital

transformation. Digitization itself is the process of transferring information from analog or print to digital, while digitalization is a continuation of digitization where if digitization only focuses on converting data to digital form, digitalization emphasizes the follow-up or utilization of digital information.¹Digitization and digitalization are a series that can be called a digital transformation. Digital transformation refers to the process of changing routines, workflows, and business models significantly along with technological developments. The development of technology and information affects people's lives globally where this era introduces the virtual world of cyber space with the presence of an interconnected network (internet) that uses paperless communication.

The massive and rapid rate of technological and communication developments has influenced human life patterns in all aspects.²In addition to influencing economic, socio-cultural and educational aspects, the development of information technology also influences the laws and culture that apply in a country. Rapidly developing and changing technology demands the need for progressive legal regulations.³Progressive law means that law is not autonomous or understood functionally and is in an interdependent relationship with other areas in society. Law is interpreted as part of an orderly life system, so that it changes every time people need it and makes it a much broader subject of human social life.⁴

In line with the development of technology, information and telecommunications, the human need for dynamic and progressive law is a logical consequence that must be considered by all groups, so that the law will not be an obstacle in the development of society, but the law should also develop along with the development of the times and society. The aftermath of changes in patterns in people's lives globally must also be balanced with legal developments. Changes in legal regulations to balance the changes that are present in people's life patterns are actually to create a legal umbrella that can protect and provide clarity and guarantee legal certainty.

The development of law will make it act as a protection that has a function to fill the legal vacuum regarding problems that arise in the process of pattern

¹Primacom, June 15, 2023, "The Difference Between Digitization, Digitalization, and Digital Transformation", Primacom.

² Widianti, F. D, 2022. "The impact of globalization in Indonesia." JISP (Journal of Public Sector Innovation), Volume 2 Number 1, pp. 73-95.

³Dian CitaSari, Wahyudin Purba, & Mufarizuddin Hasibuan, 2019, "Educational innovation through digital transformation." Journal of Yayasan Kita Menulis, Volume 2 Number 1, pp. 17-25.

⁴June 2019Ridwan & Ahmad Sodik Sudrajat, 2020, State administrative law and public service policy. Nuansa Cendekia, Bandung, page 47.

development in various fields. This digitalization era has entered an era where a society is oriented towards information.⁵Based on this, the makers of legislation should make legal breakthroughs to meet the needs of the community, especially notaries in this digital era where there is a clear discrepancy (gap) between law and technology, so that many information technology experts try to explain how important the role of law is in the development and application of technology in this information era, where this is a necessary and important condition or element (*conditio sine qua non*).

The presence of rapidly developing information technology and its existence changing the essence of people's lives is also recognized as helping human work in various fields, including in the field of notary. Notaries as one of the legal professions that are directly related to people's lives and with all their demands must be able to innovate in order to utilize technology optimally to carry out their profession which in the future can be done anywhere without space and time limits. The essence of the development of information and communication technology is to support all community activities carried out by both private and government institutions.

Notaries as officials who are closely related to public services for the legal interests of society, corporations and government should also adapt to the development of technology and communication that touches people's lives. Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries states that "Notaries are public officials who are authorized to make authentic deeds and have other authorities as referred to in this law or based on other laws." As a public official, a notary has so far carried out his profession and position using conventional (traditional) methods in serving the public interest, namely that the person appearing must be present before the notary when making deeds or making other letters whose authority has been determined in Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2014 concerning the Position of Notary (State Gazette of the Republic of Indonesia 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491) hereinafter referred to as UUJN-P.

The development of technology and communication should be able to make notary services that have so far maintained and used conventional methods with manual procedures, become digitalized or transformed with an electronic system where in Indonesia itself electronic-based notary services are known as cyber notaries. The idea of cyber notaries is one form of technological existence initiated by the millennial generation that requires legal renewal, as stated by Roscou Pound "Law as a tool of social engineering" or law as a tool for social

⁵EddyArmy, 2020, *Electronic Evidence in Judicial Practice*. Sinar Grafika, Jakarta, page 55

renewal. The concept of cyber notary allows notaries as public officials who provide public services to advance thinking and abilities in the field of using and utilizing information and communication technology as optimally as possible and responsibly and can utilize technology and information and electronic transactions to increase the effectiveness and efficiency of public services.

The essence of cyber notary itself can be interpreted as a notary who carries out his duties or authority based on information technology, this is not only the legality of using a cellphone for communication between a notary and his client but also relates to the duties and functions of a notary, especially in making deeds. Article 1 number 7 of the UUJN-P explains that a notarial deed is an authentic deed whose form and procedure for making it must be in accordance with the law and made before a notary. Then it is also stated in Article 16 Paragraph (1) letter m of the UUJN-P which regulates that a notary is required to read the deed in front of the parties who must be witnessed by at least two witnesses, especially in making a will under hand must be witnessed by 4 (four) witnesses. Thus, it can be seen that notary services so far still maintain and use conventional methods with procedures that are still manual.

Based on the provisions that have been regulated in UUJN-P, things that need to be adjusted to the conditions and situations or demands of the times include the authority of a notary as a public official, the obligations of a notary, the concept of physical confrontation, the jurisdiction of the notary's office, signing of deeds, affixing fingerprints, use of stamps and the authenticity of digital deeds. Thus, there are elements in the application of authentic deeds electronically, namely (1) digital confrontation (2) digital signature (3) e-stamp (4) digital stamp and (5) digital fingerprint. Although the concept of cyber notary is a demand of the times, in practice it still raises debate among many experts such as the concept of digital confrontation which is known to shift the paradigm of the meaning of confrontation before a notary such as how the implementation of digital confrontation will be and its consequences for the legality of the deed and the jurisdiction of the notary's office area. Based on the above, the author is interested in conducting research with the title Paradigm Shift regarding the Meaning of Appearing Before a Notary in the Cyber Notary Context.

2. Research Methods

The type of research used in this thesis is normative legal research or doctrinal legal research.⁶ Normative legal research is legal research that places law as a building of a system of norms, where the system of norms in question is regarding the principles, norms, rules of laws, court decisions, agreements and

⁶Djuaeka, D., and Devi Rahayu, 2019, Textbook of Legal Research Methods. Scopindo, Surabaya, page 18.

doctrines.⁷The approach method in this thesis, the researcher uses three approach methods, namely the Statute Approach and the Conceptual Approach and the Theoretical Approach. The types and sources in this study are secondary data sources where secondary data sources are data sources obtained from literature reviews, literature or library materials. The data collection method in this study uses data collection techniques with literature studies on various legal materials such as primary, secondary and non-legal materials.⁸The data analysis method in this study is prescriptive data analysis which is intended to provide arguments for the results of the research that has been conducted.

3. Results and Discussion

3.1. Paradigm Shift regarding the Meaning of Appearing Before a Notary in the Cyber Notary Context

According to the author, the authority held by a notary in providing services with the cyber notary concept in providing services with the cyber notary concept can be seen in the notary's authority contained in Article 15 Paragraph (3) of the UUJN-P. The article explains that "in addition to the authority as referred to in paragraph (1) and paragraph (2), a notary has the authority as in the laws and regulations." Based on the explanation of the article, what is meant by "other authority regulated in the laws and regulations", namely one of them in providing services using the cyber notary concept. According to the author, a notary can provide services to the public using the cyber notary concept, but not all services provided can be carried out with the cyber notary concept.

In providing notarial services with the concept of cyber notary, the author divides it into three stages, namely, first before making an authentic deed. Second, when making an authentic deed and third, after making an authentic deed. This is done because the main task and authority of a notary is to make an authentic deed regarding certain legal acts. The division of these stages makes it easier to understand the things that a notary can do in providing services using the concept of cyber notary.

First, in the stage before making an authentic deed there are notarial services that can be done with the concept of cyber notary, namely legal consultation and sending the files needed in making an authentic deed. The purpose of legal consultation is so that the notary understands the problems and needs desired by the parties. The notary can propose clauses in the agreement that can

⁷Mukti Fajar and Yulianto Achmad, 2010, *Dualism in Normative Legal Research & Empirical*, Student Library, Yogyakarta, p. 34.

⁸Muhammad, A, 2004, *Law and Legal Research*. Citra Aditya Bakti, Bandung, p.

protect the interests of the client.⁹Currently, legal consultations provided by notaries can be done by the parties coming directly to the notary, sending messages via messaging applications, and also consulting via telephone or teleconference with the notary.

Second, in authentic deed making stage, the use of the cyber notary concept can be done when the parties are present before the notary and also when signing the authentic deed. The purpose of using the cyber notary concept when the parties are present before the notary and also when signing the authentic deed, is not with the intention that the parties or parties do not need to be present before the notary when signing the authentic deed, but with the intention that it is evidence if a problem occurs in the future. In this case, the parties are still required to be present before the notary when signing the deed in accordance with the provisions of the Notary Law, the Amendment to the Notary Law and also the Notary Code of Ethics. The parties are also required to be present before the notary, when the notary reads the authentic deed to the parties. The reading of the deed by the notary is a requirement of the authenticity of a deed and is an obligation of the notary as regulated in the UUJN.¹⁰

Third, in the stage after the creation of an authentic deed, where in this stage, there are services that can be provided by a Notary which are carried out with an electronic system, namely by registering an authentic deed made by a notary with the authorized agency. The purpose of registering an authentic deed made by a notary with the agency is to obtain a decision letter and also so that the registered legal act binds the parties. One example of registering an authentic deed is the registration of the establishment or change of a PT and also the registration of a fiduciary guarantee.

ShiftThe paradigm of the meaning of appearing before a notary in the concept of cyber notary occurs because of the idea that all authentic deeds are made electronically. In fact, if we look at the explanation above, not all cyber notary concepts can be applied in the provision of services carried out by notaries, especially when the parties appear, when the parties hear the reading of the deed from the notary and also when the authentic deed is signed by the parties. This is in accordance with what is meant in the Principle of *Tabellionis Officium Fideliter Exercebo* which means that notaries must work traditionally. This principle can also be interpreted that notaries must make letters or deeds

⁹Endra Mayendra, 2022. "The Role of Notaries and Legal Consultants in Business Disputes Through Alternative Dispute Resolution", *Journal of Law and Notary*, No. 2, Vol. 6, p. 961.

¹⁰Kerina Maulidya Putri, Ichsan Anwary and Diana Haiti, 2022. "Notary's Obligation to Read and Sign Deeds in Front of All Parties Jointly." *Notary Law Journal*, No. 2, Vol. 1, p. 159.

in real terms, not through electronic media such as the internet, audio visual, video conference or using electronic signatures. This principle requires notaries to always come, see and hear in every deed making and signed by the notary himself, the parties, and witnesses at the place where the deed was read by the notary.

Legally, the paradigm shift regarding appearing before a notary in the context of cyber notary cannot be implemented because basically an authentic deed is based on Article 1868 of the Civil Code. An authentic deed must meet the requirements in Article 1868 of the Civil Code, its nature is cumulative or must cover everything.¹¹Based on the explanation, it can be interpreted that an authentic deed is made in the form determined by law and must be made before a public official who has the authority to do so. Therefore, if the deed is a notary product, the deed must be made in accordance with UUJN, UUJN-P and the Notary Code of Ethics and must be made before a notary. Therefore, the application of cyber notary shows a lack of synchronization or is contrary to the implementation of the duties and obligations of a notary based on the Notary Law.¹²

3.2. Legal Certainty of Authentic Deeds Made in Digital Face-to-Face Concept.

Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) mandates that Indonesia is a state based on law. The concept of a state based on law can basically be grouped into three concepts, namely the concept of *rechtsstaat* which developed in Continental European countries, the concept of rule of law which developed and was applied in Anglo-Saxon countries and socialist legality which developed and was applied in communist countries.¹³The concept of this state was previously only included in the Explanation of the 1945 Constitution, but in the fourth amendment in 2002, a clear statement of Indonesia as a state of law was included in the Body of the 1945 Constitution. The concept of a state of law primarily emphasizes that the most important thing in a state is law. Law is the supreme commander in the life of the nation, state and society.

Notaries play a very important role in encouraging the realization of legal

¹¹Putra Arya, Aju Putrijanti, and Mujiono Hafidh, 2021. "Synchronization of Article 1868 of the Civil Code in Supporting the Implementation of the Cyber Notary Concept in Indonesia", *Jurnal Notarius*, No. 2, Vol. 14, p. 612.

¹²Apriandy Iskandar Dalimunthe, Achmad Fitrian and Mardi Candra, 2023. "Synchronization of Article 1868 of the Civil Code in Supporting the Implementation of the Cyber Notary Concept in Indonesia" *Journal of Innovation Research and Knowledge (JIRK)*, No. 3, Vol. 3, p. 708.

¹³Ias Muhlashin, 2021. "Legal State, Democracy and Law Enforcement in Indonesia", *Al-Qadau Journal*, No. 1, Vol.8, p. 88.

certainty and protection for the community. This is due to the strategic authority that notaries have in the realm of civil law, namely proving and defending a right. Given the importance of the notary profession, the role, function and existence of notaries are regulated in laws and regulations, which are not only intended for legal certainty, but also legal protection for notaries in carrying out their duties and responsibilities. Legal certainty itself requires that the law can function as a regulation that must be obeyed, of course not only regarding how the regulation is implemented, but also how the norms or material contained in the regulation contain basic legal principles.¹⁴The regulation regarding the position of notary is stated in Law Number 30 of 2004 concerning the Position of Notary in conjunction with Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

The strength of the authentic deed material evidence is a certainty that the parties not only appear and explain to the notary but also prove that they have also done as stated in the deed material. The Indonesian evidence system uses a tool where written evidence is used as primary or main evidence as stated by law.¹⁵The evidentiary force of a notarial deed according to Articles 1870, 1871, and 1875 of the Civil Code provides perfect and binding proof of the truth contained in the deed for the parties concerned, heirs and recipients of rights, with the exception of cases where what is stated in the deed is merely a statement or has no direct relationship to the deed.

Based on Gustav Radbruch's theory of the purpose of law, one of the purposes of law can be said to be part of an effort to realize justice.¹⁶The real form of legal certainty is the implementation or enforcement of the law against an action regardless of who does it. With the existence of legal certainty against an action regardless of who does it. With the existence of legal certainty, everyone can estimate what will be experienced if they do certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination. Based on the Theory of Legal Purpose, the meaning of the notary's authority over cyber notaries, which was originally unknown whether the act was allowed or not allowed to be carried out due to the existence of a legal vacuum (*rechts vacuum*), becomes clear in its limitations, namely that it

¹⁴Siti Halilah and Mhd. Fakhurrahman Arif, 2021. "Principles of Legal Certainty According to Experts", *Journal of Constitutional Law*, No. 2, Vol. 4, p. 57.

¹⁵Komang Ayuk Septianingsih, Nyoman Putu Budiarta and Anak Agung Sagung Laksmi Dewi, 2020. "The Strength of Authentic Deed Evidence in Proving Civil Cases" *Journal of Legal Analogy*, No. 3, Vol. 2, p. 337.

¹⁶M. Muslih, 2017. "Indonesian Legal State in the Perspective of Gustav Radbruch's Legal Theory (Three Basic Legal Values)", *Jurnal Legalitas*, No. 1, Vol. 4, p. 141.

applies in a limited manner to electronic transaction certification.

4. Conclusion

The paradigm shift in the meaning of appearing before a notary in the context of cyber notary can only be seen in a rough picture, namely through the use of video teleconference, related to the details of how the shift cannot be analyzed due to the absence of a legal umbrella that concretely regulates the concept of cyber notary and how it will be implemented. The use of this cyber notary concept in the world of notary work is still limited to the use of mobile phones, cameras or CCTV in notary work activities where the parties or parties must still be physically present before the notary to be able to consult, listen to what is in their interests. Regarding the legal certainty regarding the deed made in the concept of appearing digitally, it can be said that it does not have legal certainty or the deed made through this concept is degraded to a private deed. The legal basis itself is Article 1868 which requires that the making of an authentic deed must be before a public official, if one of the requirements as referred to is not met, then the deed in question only has the power of proof as a private deed.

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