



## Online Legal Counseling about Authentic Deeds by Notaries (Practices and Challenges in the Pandemic ERA)

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### **Abstract**

A Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in the Notary position law or based on other laws. One of the other powers granted directly by the law on the position of a Notary is the authority in terms of providing legal counseling in connection with the making of the deed, this is explicitly stated in Article 15 paragraph (2) letter e UUJN-P. The arrangement of legal counseling by a Notary is not regulated in detail. This can be seen from whether the legal counseling must be done in writing to provide certainty or whether the legal counseling is given orally to be more efficient and whether legal counseling carried out by a Notary must be done directly or can be done indirectly (online). The purpose of this study was to analyze online legal counseling conducted by a Notary based on Article 15 paragraph (2) letter e of the UUJN-P, to examine the practice of online legal counseling in connection with the making of an authentic deed by a Notary, as well as to analyze the obstacles faced by a Notary. Notaries related to online legal counseling. This research method is empirical juridical. The results of the research obtained are online legal counseling can be carried out by a Notary based on Article 15 paragraph (2) letter e UUJN. Because Article 15 paragraph (2) letter e UUJN does not limit the form of legal counseling conducted by a Notary, whether directly or indirectly. Some of the media used by Notaries in providing legal counseling online are Facebook, Instagram, websites, blogs, email, WhatsApp, and YouTube. The obstacles experienced by Notaries in providing legal counseling online are that the UUJN/UUJN-P itself still stipulates that facing still has to be done physically, has the potential to violate the area of office, can spread personal data of the parties, potentially violate the principle of secrecy of office.

**Keywords:** *Legal Counseling; Authentic Deed; Notary*

### **Background of Research**

A notary is a public official who is authorized to make an authentic deed and has other authorities as referred to the notary position law or based on other laws. For further explanation, it is contained in the explanation of the law on the position of a Notary in the third paragraph, it is explained that, "Notary is a public official who is authorized to make an authentic deed, as long as the making of an authentic deed is not specified or is not reserved for other public officials.

One of the other powers granted directly by the Law on the position of Notary is the authority in terms of providing legal counseling in connection with the making of the deed, this is explicitly stated in Article 15 paragraph (2) letter e of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary (hereinafter referred to as UUJN-P).

A grammatical interpretation of Article 15 paragraph (2) letter e UUJN-P, will provide an understanding that the authority of a Notary in providing legal counseling is only limited to actions, agreements, stipulations, and legal events as outlined in the form of a deed. In addition to this matter, the legal counseling provided by a Notary can be said to violate the provisions of Article 15 paragraph (2) letter e UUJN-P.

The regulation of legal counseling by a Notary is not regulated in detail. This can be seen from whether the legal counseling must be done in writing to provide certainty or whether the legal counseling is given orally to make it more efficient. So that the provision of legal counseling returns to the policy of the Notary concerned.

The main purpose of this legal counseling activity to make the public knows the law, aware about the law, and then obeys the law without coercion, but makes it a necessity. A person's understanding of the law varies and is highly dependent on what is known from his experience of law, but the public knows the function of law to serve the community.

With limited conditions in the pandemic era, the practice of legal actions electronically is taken as a way to make it easier for legal relations between legal subjects who have interests to be carried out properly. Legally, the implementation of legal actions electronically has been accepted in the national legal system as seen from the various rules that have recognized the existence of electronic information as legal evidence. The relevant laws and regulations in this regard can be seen in Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter called UU ITE), Law Number 25 of 2009 concerning Public Services (hereinafter referred to as the Public Service Law), Law Number 43 of 2009 concerning Archives (hereinafter referred to as the Archives Law), Law Number 30 of 2014 concerning Government Administration, and Law Number 7 of 2014 concerning Trade (hereinafter referred to as the Trade Law). Technically, the accountability of electronic systems can be seen in terms of security, reliability, and legal accountability. Formally, the electronic system should be operational and registered with the Ministry of Communication and Information.

Thus, showing the existence of a collective awareness of the need for government administration to continue to be able to carry out its public services optimally by utilizing the electronic system. However, ironically, there is one legal service that is relatively lagging behind, unable to reform itself to provide its services electronically, namely Notary. Even though in the current pandemic era, the public still needs alertness and dynamic function and role of a Notary.

The first question, the classic reason that becomes an obstacle is the view that in making a deed there is a norm of "must" be physically present for the client and "must" make a deed on paper as stated in UUJN. The second reason that adds to the concern of Notaries providing their services electronically is the exclusion of Notary deeds in the context of electronic documents as legal evidence as stipulated in Article 5 paragraph (4) of the ITE Law, so that electronically made deeds and legal counseling have the potential to cause legal problems in the future. both civilly, administratively, maybe even criminally. However, regarding the second question, if the Notary continues to provide his services by opening an office, the risk of spreading the corona virus increases and in the worst case it can endanger the Notary himself and his client.

The UUJN and UUJN-P explicitly do not state whether the legal counseling must be carried out face-to-face or can be done through other communication tools and technologies, such as through conversations on cellphones (phones), WhatsApp, Telegram, Facebook, Email, other means of communication, communication and other social media. Therefore, the authors are interested in conducting research with the title ONLINE LEGAL COUNSELING ABOUT AUTHENTIC DEEDS BY NOTARIES (PRACTICES AND CHALLENGES IN THE PANDEMIC ERA)

### ***Research Methods***

Research Method is a scientific activity related to analysis and construction which is carried out methodologically, systematically and consistently. Methodological means in accordance with a certain method or method, systematic is based on a system, while consistent means the absence of contradictory matters within a certain framework.

The problem approach to be used in this research is an empirical juridical-empirical sociological approach or an empirical sociological approach to law as law in action, described as an empirical social phenomenon. Thus, law is not only given meaning as an interweaving of values, official decisions, interwoven rules and norms, written positive law, but can also be given meaning as a teaching system about reality, regular and steady behavior, or law in the sense of an officer.

With an empirical sociological law approach, researchers will examine, discuss or examine Online Legal Explanation On Authentic Deeds By Notaries (Practices And Challenges In The Pandemic Era), researchers will directly observe the situation in the field by survey.

This research is analytical description, namely research that describes and explains a situation obtained through research in the field and then analyzed more deeply using relevant theories, in this case related to the registration of mortgage rights electronically.

### ***Research Result***

According to Hatta Isnaini Wahyuno Utomo, regarding the provision of legal counseling by a Notary to interested parties in connection with the making of an authentic deed which will be made more directed to advice to provide legal understanding regarding legal actions that will be poured into the deed. In this case, the Notary provides understanding to the parties regarding the provisions in the laws and regulations relating to legal actions that will be carried out by the parties. With the legal understanding provided by the Notary, it is hoped that legal certainty will be created in accordance with the provisions of the applicable laws and regulations and provide benefits for the parties. Although the legal understanding provided by the Notary is later accepted by the parties, in the end the legal understanding obtained by the parties from the Notary remains the information of the parties and is the full responsibility of the parties.

Legal counseling given by a notary must be based on confidence in the field controlled and within the limits of his ability. Legal expertise in the field must be in accordance with applicable laws and regulations. These laws and regulations are guidelines for what a notary can and cannot do in making a deed. This is one of the factors that distinguish a Notary's work from the work of other legal practitioners. The position of a Notary as an honorable position and has a very important role in society, of course, requires that whoever holds the position has qualified qualities both scientifically and in leadership.

Notaries who provide legal counseling are the same as providing legal advice because in providing legal counseling or legal advice, the Notary in this case provides a guide or explanation in the legal field that is being faced or needed by the appearers. Providing legal counseling by a Notary can

influence the parties in making choices to determine their legal actions.

Notaries in providing legal counseling online should continue to be supervised, so that Notaries do not violate the provisions of laws and regulations, especially Article 16 paragraph (1) letter a and Article 54 UUJN. Supervision of Notaries is carried out by the Notary Supervisory Board based on the law, as a reference and other laws and regulations as well as the Notary Code of Ethics. As a public official who is in charge of carrying out some of the state's power in the civil sector, a Notary must have the ability and legal expertise.

The purpose of notary supervision is to fulfill the requirements and carry out their duties in accordance with the provisions of the applicable legislation for the sake of securing the interests of the general public, while the main task of notary supervision is that all rights and authorities as well as obligations given to the notary in carrying out their duties as provided by the relevant basic regulations, are always carried out on a predetermined path not only by legal channels but also on the basis of moral and professional ethics in order to ensure protection and legal certainty for the community.

A Notary in providing legal counseling online to his clients has limitations that must be adhered to and upheld, namely:

1. Online legal counseling provided in connection with the making of the deed (Article 15 paragraph 2 letter e UUJN);
2. Online legal counseling is provided on the condition that the making of the deed in question is not exempted from other officials stipulated by law (Article 15 paragraph (1) in conjunction with Article 15 paragraph (2) letter e UUJN);
3. The online legal counseling provided must be in accordance with the applicable laws and regulations;
4. The online legal counseling provided does not violate the applicable laws and regulations;
5. In providing legal counseling online, a Notary must have a Pancasila spirit, obey the law, take an oath of office, as well as a Notary code of ethics;
6. In providing legal counseling online, Notaries are required to have professional behavior and uphold honor and dignity (Notary Code of Ethics);
7. Notaries must always improve their knowledge so that the legal counseling provided can always be "up to date" with the applicable provisions (Notary Code of Ethics);
8. In providing legal counseling online, a Notary must have moral integrity, which means to avoid something that is not good even though the reward for his services is high, the implementation of professional duties is aligned with social values, courtesy, and religion (Notary Code of Ethics)
9. In providing legal counseling online, a Notary must be honest, not only considering money, but also service, not distinguishing between people who can and cannot afford (Notary Code of Ethics);
10. In providing legal counseling online, Notaries must adhere to the professional code of ethics because it specifies all behaviors that must be possessed by a Notary (Notary Code of Ethics);
11. In providing legal counseling online, Notaries must be aware of the authorities, obligations, and prohibitions as regulated in the UUJN;
12. In providing legal counseling online, Notaries must work alone, full of responsibility and nottake sides;
13. In providing legal counseling online, Notaries are not allowed to collect or ask for honorariums from the client concerned (Notary Code of Ethics);
14. Provide legal counseling to people who need it as well as possible so that people are aware of their rights and obligations as citizens and members of the community.

Many notaries have done online legal counseling in practice, either using online communication media or social media. Some of the media used by Notaries in providing legal counseling online are

Facebook, Instagram, Website, Blog, Email, WhatsApp, and Youtube.

The obstacles experienced by Notaries in providing legal counseling online are that the UUJN/UUJN-P itself still stipulates that the face still has to be done physically, has the potential to violate the area of office, can spread personal data of the parties, has the potential to violate the principle of confidentiality of the position, and the parties potential for identity fraud.

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