

# Principle of Due Diligence in The Electronic Performance of Notarial Duties

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## Abstract:

Law Number 2 of 2014 amending Law Number 30 of 2004 concerning the Notarial Position (hereinafter “UUJN”) establishes that a notary is a public officer authorized to draft authentic deeds and exercise other powers as regulated by law. The concept of a “Cyber Notary” represents a modern development in the notarial profession, referring to the performance of notarial duties using digital information and communication technology. Article 5(1) of the Electronic Information and Transactions Law (UU ITE) stipulates that “Electronic Information and/or Electronic Documents and/or their printouts constitute valid legal evidence,” thus recognizing that electronically created deeds or notarial documents distributed via digital platforms are admissible legal proof. Due diligence for notaries in the context of electronic execution includes verifying the identity of parties through certified digital platforms; employing certified electronic signatures issued by state-recognized providers; ensuring network security, document encryption, and personal data protection; maintaining legally compliant and auditable digital archives; and preserving the authenticity and integrity of the deeds created. However, the absence of clear regulations governing electronic notarial mechanisms has resulted in normative conflicts particularly between Article 16(1)(m) of UUJN, which requires the deed to be read “in the presence of” the parties and witnesses, and Article 11 of UU ITE, which grants electronic signatures the same legal effect as conventional ones. The due diligence principle must therefore be applied rigorously in electronic notarial practice to ensure compliance with legal boundaries and maintain the validity of deeds. Without fulfilling formal requirements such as the physical presence of the parties before the notary and public reading of the deed there is a risk that an electronically executed deed would not be recognized as authentic and may be downgraded to a private document, thus undermining legal certainty. Since the norms in UUJN and UU ITE remain unsynchronized, full legal certainty, as defined by scholar Sudikno, has not yet been achieved.

**Keywords:** Due Diligence Principle; Cyber Notary; Electronic Deed

## 1. Introduction:

The 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution, particularly in the context of human rights protection and legal certainty. Article 28F of the 1945 Constitution guarantees the right of

every person to communicate and obtain information, as well as to seek, possess, store, process, and convey information through all available channels. Article 28D paragraph (1) of the 1945 Constitution affirms that every person

has the right to recognition, guarantee, protection, and fair legal certainty.(Embang, T. F., & Sudiarti, E. 2023). Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions, hereinafter referred to as the EIT Law, in Article 5 paragraph (1) states that electronic information and/or electronic documents and their printouts constitute valid legal evidence. Furthermore, Article 11 of the EIT Law also stipulates that electronic signatures have valid legal force provided they meet the requirements prescribed by law.

Cyber Notary is a modern concept in the notarial profession that refers to the execution of notarial duties and authorities by utilizing digital-based information and communication technology. In this system, notaries can provide legal services, such as the creation of authentic deeds, provision of legal consultation, and document authentication, through secure electronic platforms that comply with applicable laws and regulations.

Threats to information security have become a crucial issue. The electronic execution of notarial duties involves confidential and sensitive data, such as personal data, contractual documents, and corporate information. Therefore, the protection of such data becomes a top priority to prevent misuse, data breaches, or cyber attacks. To date, legal regulations regarding the electronic execution of notarial duties in Indonesia have been governed by several regulations, including the Notary Law and the EIT Law, Law Number 27 of 2022 concerning Personal Data Protection, hereinafter referred to as the PDP Law, and Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, hereinafter referred to as Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. (Prameswari, A., Amalia, F. N., Utami, W. D., & Samosir, T. 2025).

The principle of prudence becomes extremely important for notaries who perform notarial duties

electronically because existing regulations such as Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning the Notarial Profession, Law Number 27 of 2022 concerning Personal Data Protection, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (EIT Law), and Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions have not yet provided detailed technical guidance on digital security, which causes normative ambiguity in the electronic execution of notarial duties.

Taking into consideration various aspects of both conventional and electronic notarial practice, it can be concluded that both have important roles in supporting trusted legal services. The conventional system remains relevant in maintaining formality and established legal traditions, while the electronic system represents an innovation that addresses the needs for efficiency and accessibility in the digital era. What is most important is how both can operate in tandem while upholding the principle of prudence, legal validity, and protection of the rights of the parties. Moving forward, appropriate adaptation to technology will be key for the notarial profession in maintaining integrity and public trust.

Based on the aforementioned considerations, the principle of prudence is required in the electronic execution of notarial duties, therefore the author intends to conduct research entitled "THE PRINCIPLE OF PRUDENCE IN THE EXECUTION OF NOTARIAL DUTIES THROUGH ELECTRONIC MEANS".

## **2. Theoretical Perspectives:**

R. Subekti and R. Tjitrosudibio state that a Notary is a public official who is granted authority by law to create certain documents or deeds necessary to ensure legal certainty. Although notaries practice independently and are not civil servants paid by the state, they are public officials. Notaries cannot practice arbitrarily. They are appointed by the government (in this case, the Minister of Law and

Human Rights) after fulfilling strict requirements (education, experience, age, etc.). This appointment is accompanied by a binding oath of office. As public officials, notaries are given authority and trust by the state to perform part of public functions. The documents they create have different legal weight from documents created by ordinary individuals.

The principle of prudence is a legal principle that requires a person or institution to act with full awareness, diligence, and to consider all risks before making certain legal decisions or taking legal actions. This principle aims to prevent potential losses, ensure legal certainty, and maintain trust in a legal system. (Warsito, H., & Adriansyah, H. 2022).

Cyber Notary refers to a notary who utilizes digital technology to perform their duties, which include the creation of deeds, document authentication, electronic signature validation, and the provision of other notarial services related to legal transactions conducted through digital platforms or internet networks.

The theory of legal certainty is a fundamental principle in legal science that emphasizes that law must be clear, stable, logical, consistent, and enforceable so as to provide protection and justice for society. Law is a collection of rules or norms in communal life, the entirety of regulations concerning conduct that applies in communal life, the implementation of which can be enforced through sanctions. (Sudikno Mertokusumo dalam H. Salim Hs, 2021).

Information security theory constitutes the main foundation in the electronic execution of notarial duties. This theory focuses on four basic principles of information security, namely confidentiality, integrity, authenticity, and non-repudiation.

Utilitarian theory is a concept in legal philosophy that focuses on the outcomes or benefits obtained from a rule or legal action for society at large. This theory was developed by Jeremy Bentham and John Stuart Mill, who emphasized that a law or policy is considered good if it can provide the

greatest benefit for the greatest number of people (Afdhali, D. R., & Syahuri, T. 2023).

Legal preference theory is a set of rules or principles used to resolve conflicts of legal norms, namely when two or more legal rules that apply simultaneously regulate the same matter but contradict each other. This normative conflict can cause legal uncertainty, therefore a mechanism is needed to determine which norm should take precedence or be declared applicable.

### 3. Methodology:

In this legal research, this type of research falls under the category of normative legal research, which is research conducted by examining library materials as sources of legal materials or also referred to as library research. The problem approach in this research employs a descriptive analytical problem approach because this approach enables the researcher to describe and analyze the legal provisions governing information security in the electronic execution of notarial duties in Indonesia, which is conducted through a statutory approach, comparative law approach, and conceptual approach. Primary legal source materials are legal materials used that are binding in nature, particularly focused on legislation applicable in Indonesia, namely as follows: The 1945 Constitution of the Republic of Indonesia; Law Number 30 of 2004 concerning the Notarial Profession as amended by Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning the Notarial Profession; Law Number 27 of 2022 concerning Personal Data Protection; Government Regulation (PP) Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions; Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions; Civil Code. The method of legal material collection used in this research is through document study and note-taking, namely by making notes in the form of both direct and indirect quotations obtained from books or readings related to the issues being discussed, statutory regulations. In legal research, one of the

most important aspects is the processing and analysis of legal materials obtained from library studies. Library study is a data collection method that utilizes written sources such as books, journals, articles, statutes, court decisions, and various other legal documents to obtain information relevant to the research topic. This research analyzes the existence of normative ambiguity in Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning the Notarial Profession. This is done through descriptive analytical legal interpretation. This method not only describes or depicts existing legal materials, but also provides in-depth interpretation of such data, as well as drawing conclusions relevant to the legal issues being discussed. In the context of legal research, the main purpose of using this method is to provide a clear picture of the legal problems being discussed, interpret data logically and arrange it in the form of structured and easily understood sentences.

#### 4. Findings:

##### 4.1. The Regulation Of The Principle Of Prudence In The Electronic Execution Of Notarial Duties

The regulation regarding the electronic execution of notarial duties has not yet been detailed in the Notary Law, which tends to be oriented towards physical practice. Article 16 paragraph (1) of the Notary Law, specifically letter m, requires notaries to read and sign deeds in the presence of the parties and witnesses directly. This provision has not yet accommodated online practice or the use of electronic systems as means of duty execution.

Meanwhile, the EIT Law through Article 11 provides recognition of legally valid electronic documents and signatures, thus creating a paradigm shift in legal transactions and communication. However, such provisions are general in nature and do not specifically regulate how the principle of prudence should be implemented by public officials such as notaries.

In such circumstances, notaries must take the

initiative to interpret the principle of prudence progressively while remaining responsible. Some forms of the principle of prudence in the context of electronic execution of notarial duties include :

1. Conducting digital identity verification of parties through certified platforms;
2. Using certified electronic signatures from providers recognized by the state;
3. Ensuring network security, document encryption, and personal data protection;
4. Storing legitimate digital archives that can be audited in accordance with legal standards. (Damayanti, R. 2024).

Thus, the regulation of the principle of prudence in electronic systems is an urgent necessity so that the execution of notarial office can continue to operate in accordance with the times, without sacrificing the values of legality, accountability, and legal protection for society. Harmonization between the Notary Law and the EIT Law as well as strengthening of technical regulations constitute important steps to ensure that digital transformation in the notarial profession remains within the corridors of law and ethics.

Furthermore, if the normative conflict between Article 16 of the Notary Law and Article 11 of the EIT Law is analyzed from the perspective of legal preference theory, Article 16 paragraph (1) letter m of the Notary Law, which requires notaries to read and sign deeds physically in the presence of parties and witnesses, conflicts with Article 11 of the EIT Law, which recognizes the validity of electronic documents and signatures, constituting an example of normative conflict between regulations of equal status (horizontal conflict).

Legal preference theory is used to determine which norm should be prioritized for implementation, by considering the following legal principles : (Makarim, E. 2011)

1. Lex specialis derogat legi generalis (specific rules override general rules)

The Notary Law is a specific regulation that directly governs notarial duties and procedures, including the creation of authentic deeds. Meanwhile, the EIT Law is general in nature,

regulating the validity of electronic documents and signatures in various contexts (not specifically for the notarial profession). Under this principle, Article 16 of the Notary Law takes priority because it specifically regulates notarial office and procedures, although such norm has not yet accommodated digital practice.

2. *Lex posterior derogat legi priori* (newer regulations override older ones)

The EIT Law was first enacted in 2008 and last updated in 2016, while the Notary Law was revised through Law Number 2 of 2014. Under this principle, it could be said that the Notary Law is the newer regulation, thus having higher preferential force; however, this is relative and depends on the context of norm application.

In this normative conflict, legal preference theory leads to the necessity of prioritizing Article 16 of the Notary Law as *lex specialis*, but also demands progressive legal adjustment through harmonization, rather than absolute rejection of other norms, namely the EIT Law. The principle of prudence serves as a navigational tool for notaries to avoid missteps in applying technology, while awaiting legal norm updates that are more adaptive to digitalization.

#### **4.2. legal Consequences in the Execution of Notarial Duties Electronically**

"The Notary Position Act (UUJN), particularly Article 16 paragraph (1) letter m, requires a notary to read the deed aloud in the presence of the appearing parties, and such reading must be conducted with physical presence. When the execution is carried out online or by using electronic signatures without physical presence, then:"

1. "Such deed may be considered formally defective."
2. "The notary may be subject to administrative sanctions and even criminal penalties if deemed to have violated the provisions of their office."

The Electronic Information and Transactions Law (ITE Law), particularly Article 11, recognizes the validity of electronic documents and electronic

signatures as legitimate legal evidence. However, in notarial practice, electronic documents are not yet fully recognized as authentic deeds unless amendments or implementing regulations are made to harmonize with the Notary Position Act (UUJN). The normative conflict between the UUJN and the ITE Law creates legal uncertainty, which may undermine public trust in electronic deeds executed by notaries.

In practice, this situation may give rise to legal disputes and the risk of deeds being annulled by the courts. Furthermore, notaries may be held ethically and legally accountable if found to have violated the formal requirements of their office. This ambiguity highlights a normative conflict between the UUJN and the ITE Law, which has legal implications for both notaries and parties relying on electronic notarial services.

Therefore, a revision or implementing regulation of the Notary Position Act (UUJN) is necessary to provide legal certainty for notaries in the digital era, while also protecting users of notarial services from legal risks.

From the perspective of the theory of utility (utilitarianism), particularly in the legal context, the legal consequences of performing notarial duties electronically indicate that a legal system which lacks synchronization or clear support for digital practices has yet to fully realize the value of legal utility in an optimal manner.

According to the theory of utility proposed by Jeremy Bentham, law should be created to achieve "the greatest happiness for the greatest number," or to maximize benefits for society. In this context, the electronic execution of notarial duties can in fact provide convenience, efficiency, accessibility, and flexibility in legal services—particularly in the digital era and post-pandemic period. However, in the absence of legal certainty and supporting regulations, doubts, concerns, and potential legal disputes arise, which may harm the parties involved, including the notary.

From the utilitarian perspective, this situation highlights the need for legal reformulation that is adaptive to technological advancements and

capable of ensuring security, utility, and ease in public legal services provided by notaries. Therefore, the harmonization of the Notary Position Act (UUJN) with the Electronic Information and Transactions Law (ITE Law), along with the drafting of implementing regulations regarding digital notaries, is essential to ensure that the law is not only just and certain, but also truly beneficial to society at large.

### Conclusion:

1. The precautionary principle applied by notaries involves verifying the identity of the appearing parties digitally through certified platforms; using certified electronic signatures issued by state-recognized certification authorities; ensuring network security, document encryption, and protection of personal data; maintaining legally valid and auditable digital archives in accordance with applicable legal standards; and preserving the authenticity of the executed deed. The absence of clear regulations regarding electronic notarial mechanisms has resulted in potential normative conflicts, particularly between Article 16 paragraph (1) of the Notary Position Act (UUJN) and Article 11 of the Electronic Information and Transactions Law (ITE Law). Therefore, the precautionary principle must be applied more rigorously in the performance of electronic notarial duties to ensure that notaries do not violate existing legal boundaries and continue to uphold the legal validity of the deeds they execute.
2. The legal consequence of a deed executed through an electronic process is the risk of it not being recognized as an authentic deed, due to the failure to fulfill formal requirements such as the physical presence of the appearing parties and the reading of the deed by the notary. The norms contained in the Notary Position Act (UUJN) and the Electronic Information and Transactions Law (ITE Law) have not yet been harmonized, thus legal certainty as emphasized by Sudikno has not been fully achieved.

### Limitations

The focus and objective of this research are centered more deeply on the precautionary principle in the execution of notarial duties electronically. This study offers a unique and significant contribution by filling a knowledge gap in this specific area of notarial practice.

### Disclaimer (Artificial Intelligence)

The author(s) hereby declare that the relevant references were used during the writing or editing of this manuscript. In accordance with responsible research and publication practices, full transparency is provided below regarding the use of these references. This includes the name, version, and model of the reference used.

### Competing Interests

Authors have declared that no competing interests exist.

### References:

1. Afdhali, D. R., & Syahuri, T. 2023. Idealitas penegakkan hukum ditinjau dari perspektif teori tujuan hukum. *Collegium Studiosum Journal*, 6(2), 555-561
2. Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, 2022, Sinar Grafika, Jakarta
3. Damayanti, R. 2024. Tinjauan Yuridis terhadap Hak dan Kewajiban Notaris dalam Era Digitalisasi: Analisis Undang-Undang Jabatan Notaris Nomor 2 Tahun 2014 dan Regulasi Tambahan. *Jurnal Interpretasi Hukum*, 5(3).
4. Embang, T. F., & Sudiarti, E. 2023. Analisis Yuridis Penyimpanan Minuta Akta Notaris Secara Elektronik. *UNES Law Review*, 6(1).
5. Makarim, E. 2011. Modernisasi Hukum Notaris Masa Depan: Kajian Hukum Terhadap Kemungkinan Cyber Notary di Indonesia. *Jurnal Hukum dan Pembangunan*, 41(3)
6. Prameswari, A., Amalia, F. N., Utami, W.

- D., & Samosir, T. (2025). Tantangan Hukum dan Peluang Penerapan Cyber Notaris di Era Transformasi Digital. *Journal of Mandalika Literature*, 6(2).
7. Saputra, L. A., Akbar, F. M., Cahyaningtias, F., Ningrum, M. P., & Fauzi, A. 2023. Ancaman Keamanan Pada Sistem Informasi Manajemen Perusahaan. *Jurnal Pendidikan Siber Nusantara*, 1(2).
8. Sudikno Mertokusumo dalam H. Salim Hs, 2021, *Perkembangan Teori Dalam Ilmu Hukum*, PT. Rajagrafindo Persada, Jakarta
9. Warsito, H., & Adriansyah, H. 2022. Prinsip Kehati-Hatian Dalam Membuat Akta Oleh Notaris. *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 11(1), 24-33