

Indonesian Notary: Change or Good Bye- A Comparative Analysis with Singapore and USA

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Abstract

This study evaluates existing notarial regulations in Indonesia and identifies area that necessitate to be reformed. To gain insights, this study use a comparative analysis with notarial systems of Singapore and USA. The examination of both legal jurisdictions provide valuable perspectives on how the role of technology in modernizing notarial practice in Indonesia can evolve to meet contemporary needs. The integration of block chain, electronic signature, electronic contract and other developments in Singapore and USA demonstrates the potential for streamlining processes and enhancing security in notarial transactions. The contrast with the traditional pen-and-paper approach underscores the urgency for embracing technological innovations in notarial practice in Indonesia can be accommodated within a unified legal frame work. Provides a comprehensive overview of the challenge and opportunities for Indonesian government to amend Indonesia Notary Act in facing new world to the future of Indonesian notaries system for adapting the evolution of the notary's profession in Indonesia.

Keywords: notary, legal deed, technology, electronic.

I. Introduction

According to the history, notary profession occupied a special position in ancient kingdom thousand years before Christ such Egypt and Babylonia (Harris, Freddy, 2017). The notary profession is considered one of the most respected professions and is strictly regulated in the legal system of various countries including Indonesia. The world recognize two types of notaries (Tan et al., 2023), namely Latin notaries (civil law) and Anglo Saxon Notaries (common law) (Adjie, Habib, 2020).

Notaries in Indonesia originate from the continental (latin) civil law system of Italy, France and Netherlands, then entered Indonesia (Catur, 2023) at the beginning of the seventeenth century with the existence of the Vereenigde Oost Indische Compagnie (VOC) with the appointment of Melchior Kerchem,

secretary of the College van Schepenen as the first notary in Indonesia (Tobing, 1996). First regulation is Notary Position Regulations (Staadsblaad 1860 No. 3 Reglement of het Notary-ambt in Indonesia) which came into effect on July 1, 1860. Then, Indonesia legally have his own notary regulation based on Pancasila and the 1945 Constitution namely Notary Law No. 30 of 2004 and amended by Law No 2 of 2014. The paragraph IV Preamble 1945 Constitution mandates the function of law must develop in accordance of society development which include various aspect of life that require certainty, order

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and legal protection based on truth and justice (Muin, 2023). Indonesia country as a state law guarantee (Undang-Undang Dasar, 1945) certainty, order and legal protection for every citizen (Undang Undang Republik Indonesia Tentang Jabatan Notaris, n.d.). The guarantee in society require evidences which determine person's rights and obligations as the legal subject.

Article 1866 of the Civil Code mention the evidences as proven are written authentic deed, witness, allegations, confessions and oaths. Generally, the society require written authentic deed as prove of any actions, determinations and legal events they carry out in order to have the strongest and fullest legal force of evidence as regulated in Article 1868 of the Civil Code. The society needs someone whose information can be trusted and reliable, whose signature and stamp (seal) provide guarantees and strong evidence, someone who is expert and impartial and a legal advisor who is beyond reproach (onkreukbaar or unimpeachable) (Kie, 2011).

Therefore, the existence of a notary is required by legal regulations to provide the public with authentic written evidences. Beside that, there is underhand deed use by society to make a contract or s transaction (Agustini et al., 2021).

The world has changed fast with the use of digital technology in the era of the industrial revolution now enter Society 5.0., so called era hyper connected society. The era hyper connected society means a society in which people and people, people and objects, things and things, online and offline (Passarelli & Angeluci, 2017), one to one, one to many and many to many are connected using digital technology (Chung, Seungwha(Andy), Sunju Park, 2017). The society 5.0. where social life is focused on the assistance of robot, internet networks and artificial intelligence (AI) to solve social problem which integrated in cyber space and physic (Mardiya, n.d.). This era has created a business world that seem borderless trade and the rapid digitalization caused communication and obtaining information among people easier and faster. Indirect communication and physical contact less as common matter and habit. It place human in the midst of a flow of technological change faster and also threat humans' life. Technological developments, both directly and indirectly have implications for the legal existence of a country (Krammer, 2015).

The presence of information technology will make things easier and provide legal certainty for the society. The internet, social media, cloud computing and other innovation have changed the way of human interaction, communication and work. This change also has juridical and no juridical problem (Krismen, 2014). Potential risks such as fraud, sending fake documents or information data leaks are problem for people use legal services and notaries (Maengkom, 2021).

Indonesian government issued Information and Electronic Transaction Law Number 11 of 2008 and amended with Law Number 19 of 2016 concerning Information and electronic transactions (Winarsasi et al., 2023) use electronic documents with networking by computer based information system (UU No 19 Tahun 2016 Tentang Perubahan Undang Undang No 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, n.d.).

Indonesian notary Law only recognize notary with the main authority to make legal authentic deed. The law and related legislations have not accommodated electronic deeds to support the professionalism of notaries in carrying out their positions in the era connected society. A notary is a public official who has the most authority to make various kinds of deeds and in the connection with statutory regulations, unless the authority to make the deed has been given to another official. Passing so many era, Indonesian notary still maintain the traditional/conventional concept pen and paper approach using physical attending, wet signature, fingerprint use wet ink and keep hard paper and legal documents as their Notary's protocols/ journals.

Indonesian notarial law has not changed even though there are so many cyber technology adopted by notaries in their practice nowadays. For example digital bank for keeping

notary products to set up company, change and liquidation. Government service such as paying taxes and validation and certification of payment land taxes, permit Single Online Submission (OSS), legalization, checking, register, application which must followed by a notary.

Drawing inspiration from the experiences of Singapore and the USA, renowned for their advanced legal frameworks, this study will seek valuable insights into how these jurisdictions have successfully navigated the complexities of notarial practices. Singapore's efficient and technologically driven legal system, coupled with the multifaceted notarial landscape of the USA, offers a comparative lens through which Indonesia can envision potential reforms.

As we embark on this journey of analysis and introspection, the role of technology in modernizing notarial practices will be a recurring theme. From block chain to electronic signatures, the integration of technological advancements in Singapore and the USA serves as a beacon, emphasizing the transformative potential that technology holds for notarial transactions.

The fact Indonesian notaries practice is at a critical juncture, beckoning the need for a through examination of its regulations, operational dynamics, and overall relevance in a rapidly evolving legal environment. Therefore, the researcher is interested to research with title " Indonesian Notary, Change or Good Bye- A Comparative Analysis with Singapore and USA", ventures into the heart of the matter, contemplating whether the traditional notarial practices that have long been embedded in the country's legal framework are due for a transformative overhaul or, perhaps, an eventual farewell.

II. Methodology

The nature this research used is pure legal juridical research by reviewing and analyzing legal materials in the form of notary regulations in order to solve legal issues in this article. The data used in this research namely primary data, the secondary data are consisted of primary legal materials in the form of laws/legislations and secondary legal materials in the form of books, scientific law literature, online materials and other library materials research with conceptual approach, statute approach and comparative approach. The collected legal materials then qualitative analyzed to describe the legal issue and answer research purposes.

III. Discussion

Notaries in Indonesia originate from the continental (latin) civil law system of Italy, France and Netherlands, then entered Indonesia at the beginning of the seventeenth century with the existence of the Vereenigde Oost Indische Conpagnie (VOC) with the appointment of Melchior Kerchem, secretary of the College van Schepenen as the first notary in Indonesia. First regulation is Notary Position Regulations (Staatsblaad 1860 No. 3 Reglement of het Notary-ambt in Indonesia) which came into effect on July 1, 1860. Then, Indonesia legally have his own notary regulation based on Pancasila and the 1945 Constitution namely Notary Law No. 30 of 2004 and last amended by Law No 2 of 2014.

Indonesia, as the fourth largest country using the internet in the world, the society demand professional, fast and efficient legal services that are based on high competence (skills) and integrity (Santiadi, 2019). Social and technological changes in the era of hyper connected society have brought a number of new challenges for notary professionals. Globalization, increased mobility and large transaction scales have changed the dynamic of notary's work. At the same time, the change of sophisticated information technology has changed the way of legal transactions and documentation conducted. The

electronic transaction, electronic document, electronic signature, block chain technology, electronic contracts, smart contract, have emerged as potential solutions to secure and verify legal transaction.

Electronic transaction is a legal transaction use computer, computer network and or with other electronic media. Electronic transaction will done by signed the electronic contract or smart contract as electronic document and signed it by using electronic signature and it is legal as Indonesian have adopted electronic evidences as one of valid evidence beside rule stated in article 1866 Civil Code. The definition of an electronic contract is an agreement between the parties made through an electronic system as stated in article 1 number 17 of Law Number 19 of 2016 concerning Amendment Law number 11 of 2008 Electronic Information and Transactions.

Nick Szabo first introduced a smart contract which is a programmed or set of code that work based on conditions that have been agreed and determined by stake holder who agree to run an digital system mechanism. A collection of code is stored and processed in a distributed ledger system (distributed ledger technology /DLT) computer which is programed to run automatically according to predetermined conditions. Block chain is a collections of various record processed by a group of computers that do not contain an entity or a whole. A collection of blocks or records of data is secured and linked using cryptographic principles (Salem Balobaid et al., 2023).

Article 1 Notary Law No. 2 of 2014 adopt 3 types of notaries namely notary, temporary official notary and substitute notary. Notary is a public official who have authority to make legal authentic deed and other authorities as stipulated in the notary law and other law (Aisyiah & Wisnuwardhani, 2022). Temporary notary is the one who temporary replaced as a notary's function who passed away while replacement notary is the one appointed temporary as a notary to replace a notary who is on leave, sick, or temporary could not conduct as a notary. Article 1868 Civil Code state authentic deed is a written deed made by the public official and article 1 paragraph 7 Law No 2 of 2014 clearly stated notary deed is a authentic deed made by or before notary accordance shape and procedure of Notary Law. The main authority of the notary to make written legal authentic where the form and shape has been ruled and accordance to regulation and requested by the interested parties to stated it in legal authentic deed as stipulated in article 15 paragraph (1). This authority make a significant different rule between Indonesian notaries who adopt civil law with notary who adopt common law.

According to article 15 paragraph (2), notary have authority to legalize the signature and stated the fix date of underhand letter by registered it in a special book, file underhand letters by register it in a special book, make copy of original underhand letters as written and described from the original, certified true copy, give legal advice concerning making deed, making land deeds, making auction minute deeds. Singaporean Notaries who adopt common law have similarity in authority for legalize the signature, stated the fix date of underhand letter, make copy of original underhand document as written and described, certified true copy documents. Comparing the fact, Indonesian Notary Law not purely adopt civil law but have mixed with common law system i.e. legalize the signature and stated the fix date of underhand letter by registered it in a special book, file underhand letters by register it in a special book, make copy of original underhand document as written and described, certified true copy. These authorities similar to Notary common law.

In the era hyper connected society, fast development of technology and information has accelerate and efficiency in administration, archive and sending data. Article 1868 Civil Code as the core for Indonesian Notary Law and the existence of notary does not meet the need of society in the era hyper connected society who wants everything make it simple, fast and effective but legal certainty keep maintained (Erspamer et al., 2022).

Article 5 paragraph (4) figure b Law No. 11 of 2008 give explanation in making deed could be an electronic deed or an authentic deed. Law of Information and Technology has accepted electronic documents, electronic signature as valid evidence even the electronic documents is product of underhand letter. On this situation, without physical contact, different location and wet signature, using technology facilities, people could make legal transaction and it is valid as evidence according to Indonesian Law.

Different with legal authentic deed, there are some obligations must followed and keep maintained by the notary such as the written deed in hard paper, deed must read before the parties, the form and shape of deeds are accordance article 38 of Notary Law 2 of 2014, all wet signed using pen before notary.

According to Article 1320 Civil Code, the contract is valid as far as the parties fulfill the condition of agreement, proficiency, certainty matter and legal cause. As far as contract electronic have fulfilled condition stated in article 1320 civil code and principle contract law, they are valid and accepted as legal evidence.

So, people and society are provided two options when they want to make contract for valid evidences and they will choose to fined simple and efficient way if the weight of legal validity are the same.

As far as making a contract, we notice the principle law contract such as

1. The principle of freedom of contract where this principle give freedom to the parties in making contract. This principle is very common and every country adopt this principle.
2. The principle of consensus where this principle mention contract exist due to agreed and deal between the parties.
3. The principle of good faith where this principle reveal any party who want to make contract have good faith, be honest and rational to run the contract.
4. The principle of binding contract where this principle stated every contract made by the parties are legal binding as law.

There is no big problem anymore to the society to get and use electronic contract as option for them to replace written authentic deed if they though the traditional way are not efficient and effective anymore for them doing legal transaction. Facing the era of hyper connected society using technology and information, there are 3 type of notaries namely (Nasr et al., 2023):

1. Conventional Notary is a notary/notaries who have authority to make notary deed by law where the parties physical attending directly before notary, the deed make and print in hard paper dan signed using pen as wet signature.
2. Remote Online Notary is a notary/notaries who have the authority make notary deed by law where the parties do not attend physically before notary but using technology audio visual/video where all could see each other by online (HS, 2023).
3. Electronic Notary or usually shorten called E-Notary is a notary/notaries who have authority to make and legalize electronic notary deed where the parties come physically before electronic notary, sign the document use electronic signature and use electronic stamp/ seal.

The similarity between conventional notary and electronic notary i.e. the parties physically face the notary directly. The difference for conventional notary, the parties use wet signature, using pen and paper while for electronic notary use electronic signature and use electronic stamp/seal. The different between electronic notary with remote online notary is on the proceeding of sign the deed. For signing electronic notary deed, the parties physically attend before electronic notary directly while signing notary deed using remote online notary use audio visual/video where among the parties could see and listen

each other. The similarity both using electronic signature. The summary among similarity and differences as follow :

Type Notary/Notaries	Conventional/ Traditional	Electronic notary / E-Notary	Remote Online Notary
Deed	Using paper	Electronic	Electronic
Signature	Wet signature	Electronic	Electronic
Attending	Physically attend directly	Physically attend	Using Media electronic
Stamp/seal	Wet stamp/seal	Electronic stamp/seal	Electronic stamp/seal

This option is opened and adopted when the world faced pandemic Covid 19 in the year 2019 until 2022 where get deep bad impact to the world not only health, but economic, tourism and education as well as notary's service. Because to make notary's deed, the parties and the witnesses should physically attend before notary directly. In this situation, most of notary choose to close their activities for public service for a while. This solution is not a good option and be anticipated seriously by Indonesian government.

UN Convention on The Use of E Communication in International Contract made regulation to overcome the law barrier concerning electronic communication toward international contract in trading . It stated a communication or contract is legal and valid by its appearance. This convention do not give any condition whether the communication should made and proven in a special format. Written condition from the electronic communication could be fulfilled as far as the communication could be accessed and use as a guidance. UNCITRAL state electronic information as well electronic contract could not avoidable law. Europe Union have applied for his member to guarantee their law system allowed making contract in electronic facility. The same with Singapore country. Singapore's streamlined and technologically advanced legal framework stands out as a model for efficiency. The adoption of electronic signatures, blockchain technology, and a robust digital infrastructure has significantly enhanced the notarial process. Meanwhile, the diverse notarial practices within the United States offer insights into accommodating a range of approaches within a unified legal framework (Decorte et al., 2017). Learning from these jurisdictions can inform a strategic and tailored approach to reform within the Indonesian context.

The Role of Technology:

Regulation in Indonesian do not adopt notary authentic deed made in electronic deed or remote online notarization, (Alkatiri et al., 2023) while in other countries such as USA, Italy and other countries have made regulations who give way to notary proceed electronic deed as well as Remote Online Notarization (RON). In USA, RON is ruled in the chapter 5A The Model Electronic Notarization Act 2017.

The practical challenges faced by notaries and clients necessitate a shift towards embracing technology. Electronic signatures, blockchain, and other technological innovations, as witnessed in jurisdictions like Singapore and the USA, can significantly improve efficiency and transparency in notarial transactions. Training programs and capacity-building initiatives should be initiated to equip notaries with the skills needed to navigate a more digitally integrated landscape.

Learning from Comparative Jurisdictions: Drawing insights from the experiences of Singapore and the USA is instrumental in shaping a tailored approach for Indonesia. The efficiency of Singapore's digital infrastructure and the flexibility of notarial practices in the USA offer valuable lessons. Adapting successful elements from these jurisdictions

while considering the unique characteristics of the Indonesian legal system can guide the formulation of pragmatic and effective reforms.

Suggestions for Future Action:

1. **Legislative Reforms:** Advocate for legislative changes that align with contemporary needs, providing a legal foundation for the integration of digital technologies and improved notarial practices.

2. **Technology Integration:** Encourage notaries to embrace technological solutions, offering training programs and incentives for the adoption of electronic signatures and block chain technologies. **International Collaboration:** Foster collaboration with international legal communities, enabling the exchange of best practices and experiences to inform the evolution of Indonesian notary practices.

1. **Public Awareness Campaigns:** Educate the public and legal professionals about the benefits of notarial reforms, emphasizing the improved efficiency, security, and accessibility that a modernized system can offer.

2. **Continuous Evaluation:** Establish mechanisms for ongoing evaluation and adaptation, ensuring that the notarial system remains agile in responding to emerging legal and technological trends.

A recurring theme throughout this discussion is the transformative potential of technology. The integration of block chain for secure transactions, electronic signatures for expediency, and other technological advancements can revolutionize notarial practices in Indonesia. Embracing these innovations cannot only address existing challenges but also future-proof the notarial system against emerging complexities.

As Indonesia stands at the crossroads of change, a forward-looking approach is paramount. The discussion should extend beyond the identification of challenges to proposing actionable solutions. Stakeholders, including legal professionals, policymakers, and technology experts, must collaborate to develop a comprehensive roadmap for the evolution of notarial practices in Indonesia. This could involve legislative reforms, technological integration, and capacity-building initiatives to ensure a smooth transition towards a more efficient and responsive notarial system.

IV. Conclusion

According to Fingland, Legal certainty is a slippery concept, hard to pin down, with its multiple nuances and its relationship to a raft of other closely related definitions and meanings. These include knowledge, belief, doubt, justification, truth, conviction, intuition, opinion, judgement, risk and a host of others” (Van den Hoek et al., 2020) Indonesian Notary Law have not met any change and development in the era hyper connected society whereas society need everything run faster, efficient and effective and costless to them. The old tradition of Indonesian notary procedure such as physical attending directly, wet signature, wet stamp /seal on some part still maintain while this condition should be adjust to futuristic and modern notary in their practice by accommodate technology development by deduct physical attending, using electronic document, electronic signature and kept the documents in big data. Extended notary’s authority not only make legal authentic deed but also electronic deed, electronic signature, electronic notary and remote online notary.

We expect by strengthen hard skill and soft skill through amendment the Notary Law in Indonesia could survive the existence of Indonesian Notary and make them as a professional notary in the era hyper connected society. Reform within the regulatory framework is imperative to streamline notarial processes and enhance clarity. Clearer guidelines, simplified procedures, and a proactive approach to incorporating best

practices from international counterparts can foster a more conducive environment for notarial activities. Collaborative efforts involving legal experts, policymakers, and relevant stakeholders are essential to ensure that regulatory changes align with the evolving legal landscape.

In conclusion, the future of Indonesian notary practices hinges on a proactive and collaborative approach. By addressing regulatory bottlenecks, embracing technology, and learning from global counterparts, Indonesia can embark on a transformative journey that ensures the longevity and relevance of its notarial system in the 21st century legal landscape. The time is ripe for a strategic and concerted effort to usher in positive change, marking not a farewell but a profound evolution in the practice of notarial services in Indonesia.

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