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The Liability of Notaries In The Execution of Hybrid Deeds: A Review of Compliance With The Notary Law And Notarial Code of Ethics

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Abstract: The execution of authentic deeds by notaries is a legal function endowed with the highest evidentiary value. However, technological advancements and the demand for efficient legal services have prompted the emergence of hybrid deed practices, which combine online and offline processes. Although innovative, this practice raises legal concerns due to its inconsistency with the principle of physical appearance as mandated in Article 16 paragraph (1) letter m and Article 38 of the Notary Position Act (UUJN). This article examines the scope of notarial liability in the drafting of hybrid deeds that fail to comply with the formal requirements set out in the UUJN. Based on a normative juridical approach, it is found that the substitution of physical appearance and signature before a notary with hybrid procedures constitutes a legal violation, triggering three forms of liability: civil, criminal, and administrative. Notaries may face civil lawsuits for breach of contract or unlawful acts, criminal prosecution for forgery, and ethical sanctions by the Notary Supervisory Council.

Keywords: Notary, Liability, Deed, Hybrid

INTRODUCTION

The rapid development of information and communication technology has triggered transformations across various sectors, including legal services. One legal domain affected by this transformation is notarial practice. In response to society's increasing demand for efficiency, procedural innovations have emerged, such as the hybrid execution of notarial deeds—a combination of online and offline processes in carrying out notarial duties. This hybrid model has gained prominence, particularly since the COVID-19 pandemic, which limited physical meetings and encouraged notaries and clients to utilize communication technologies such as video conferencing for data collection, consultation, and deed reading. However, the implementation of hybrid methods in the execution of authentic deeds raises complex legal issues, especially concerning the validity of such deeds and the notary's liability, given that the Indonesian Notary Position Act (Undang-Undang Jabatan Notaris/UUPN or UUJN) does not explicitly accommodate such practices (Wulandari, R.A., 2024).

As public officials authorized by the state to execute authentic deeds, notaries bear significant responsibility in upholding the formal and material integrity of each deed they draft. The UUJN, as the primary legislation governing notaries' duties, stipulates strict procedural

requirements. Article 16(1)(m) of the UUJN requires that the notary read the content of the deed in the presence of the appearers, who must be physically present along with the witnesses, with the signing of the deed to be carried out simultaneously. This provision affirms that physical presence is an essential element in ensuring the authenticity of a notarial deed. Therefore, if a notary conducts the appearer's presence or the signing process virtually or through electronic means without physical attendance, it potentially violates the formal requirements under the UUJN (Rumadanu, F., Masri, E., & Handayani, O., 2022).

Furthermore, Article 38 of the UUJN emphasizes that a notarial deed must be signed by the appearers, witnesses, and the notary at the same time and in the same place. In this context, hybrid deed execution that involves electronic signatures without physical presence contradicts such formal provisions. As a result, a hybrid deed that fails to meet formal requirements may lose its status as an authentic deed and be treated merely as a private deed. Additionally, if a notary states in the deed minutes that the appearers were physically present and signed the deed, while in reality they were not, the notary may be deemed to have committed document forgery under Article 264 of the Indonesian Penal Code (KUHP), exposing them to potential criminal liability.

From a civil law perspective, the notary may also be held liable in a civil suit by any party suffering losses due to an invalid deed. Such a claim can be based on Article 1365 of the Indonesian Civil Code regarding unlawful acts (*onrechtmatige daad*), as the notary may be considered negligent or knowingly in breach of legal obligations in the deed-making process. Moreover, Articles 65 to 70 of the UUJN provide for the imposition of administrative sanctions on notaries who violate their professional duties. These sanctions range from written warnings to suspension and even permanent dismissal. The Notary Supervisory Council (*Majelis Pengawas Notaris/MPN*), as the oversight authority for notarial conduct, has the power to examine and sanction such violations under the framework of administrative accountability.

Beyond the realm of positive law, the practice of hybrid deed execution must also be examined through the lens of the Notary Code of Ethics. The code mandates that notaries carry out their duties professionally, honestly, and with integrity. Exercising authority in ways that contravene positive law or potentially harm the public is considered an ethical violation. As holders of public trust, notaries are expected not only to obey the law but also to uphold prudential principles in following formal notarial procedures. Implementing a hybrid model without a clear legal basis may constitute professional negligence and tarnish the dignity of the notarial office.

Nevertheless, it must be acknowledged that information technology has become an integral part of modern legal practice. In several countries such as Estonia, Singapore, and the Netherlands, online or semi-online notarial deed execution is legally recognized, supported by biometric identity verification systems, digital signatures, and advanced encryption technologies. These models ensure both efficiency and legal certainty. In Indonesia, although digital notariat has yet to be regulated by comprehensive legislation, preliminary steps have been taken—such as the implementation of the AHU Online system and the Ministry of Law and Human Rights Regulation No. 24 of 2021, which enables electronic reporting of deeds. Unfortunately, this regulation does not cover fundamental aspects of the deed execution process, such as appearer presence and electronic signatures. There is thus an urgent need to revisit Indonesian notarial regulations to accommodate technological developments without compromising the core principles of authentic deed-making. The idea of drafting a Digital Notary Bill, previously proposed by the government, represents a necessary legal innovation that must be realized so that notarial practice in Indonesia can keep pace with contemporary advancements while maintaining a sound legal foundation. Until such legislation is enacted, notaries must prioritize caution, compliance with the UUJN, and adherence to ethical standards in fulfilling their duties.

This study stems from the urgency to examine the legal liability of notaries in the context of hybrid deed execution and to assess the extent to which this practice aligns with the provisions of the UUJN and the Notary Code of Ethics. Employing a normative juridical approach, this research analyzes statutory regulations, legal literature, and relevant case law. The study primarily focuses on identifying the forms of legal liability (civil, criminal, and administrative) that may be imposed on notaries engaging in hybrid deed execution, as well as analyzing potential ethical breaches and professional sanctions resulting from such conduct. Through this analysis, the research aims to contribute to the development of notarial law discourse in the digital era and offer applicable legal policy recommendations responsive to current needs. In general, notary liability in hybrid deed execution reflects the tension between the demand for innovation and the principle of legal certainty. On one hand, the public demands accessible, rapid, and cost-efficient services from notaries. On the other, notaries remain bound by rigid legal frameworks that are not yet adaptive to technological change. The absence of a clear legal framework creates a gray area that threatens both clients and notaries themselves. Therefore, a balance must be struck between procedural innovation and regulatory reform to ensure that legal services can be delivered in a modern way while still guaranteeing legality, validity, and robust legal protection for all involved parties (Purba, D. R., & Sudirman, 2023).

METHOD

This study employs a normative juridical research method, which emphasizes the examination of legal norms as stipulated in statutory regulations, legal doctrines, and relevant court decisions. The objective of this research is to analyze the legal validity of hybrid deed execution by notaries under the framework of the Notary Position Act (Undang-Undang Jabatan Notaris/UUJN) and to explore its legal implications. The approaches used in this study include the **statute approach**, which focuses on the analysis of applicable legislation, and the **conceptual approach**, which is aimed at understanding legal concepts and doctrines relevant to the issue. Data were analyzed qualitatively through a systematic interpretation of the prevailing legal norms.

RESULTS AND DISCUSSION

Forms of Notary Accountability for the Validity of Deeds Executed Through Hybrid Procedures (Online and Offline) Based on the Provisions of the Notary Position Act (UUJN)

In carrying out their official duties, the preparation of authentic deeds constitutes one of the core legal services inherently attached to the authority of notaries as public officials. Law Number 30 of 2004 concerning the Position of Notary Public, as amended by Law Number 2 of 2014 (hereinafter referred to as the Notary Law or UUJN), explicitly requires that notaries ensure the physical presence of parties appearing before them for the execution of a deed. This obligation is firmly stated in Article 16 paragraph (1) letter m of the UUJN, which mandates that a notary must “read out the deed in the presence of the appearers and in the presence of at least two witnesses, or four witnesses in the case of a private will,” and that the deed must be “signed at that very moment by the parties, the witnesses, and the notary.” This provision confirms that the principle of *physical presence* is an essential requirement in the creation of authentic deeds.

However, with the advancement of technology and growing societal demands for efficiency, hybrid deed execution practices have emerged—combining online processes (e.g., via video conference or other digital communication tools) with traditional face-to-face proceedings. Such hybrid practices have become particularly relevant during specific circumstances such as the COVID-19 pandemic. Nonetheless, these procedures currently lack explicit legal recognition under the UUJN. This means that unless the UUJN is amended to

formally accommodate digital or hybrid mechanisms for deed execution, such practices remain vulnerable to legal challenges, particularly regarding the validity of the deed and the accountability of the notary involved (Hayun, H., Mashendra, 2025).

The legal accountability of a notary for hybrid deeds can be assessed through three primary dimensions: civil liability, criminal liability, and administrative or ethical responsibility. From a *civil liability* standpoint, a notary may be sued for breach of contract (*wanprestasi*) or for committing an unlawful act (*onrechtmatige daad*) if the deed fails to meet the formal or material requirements stipulated in the UUJN. In the hybrid context, if a deed is later declared invalid due to the absence of physical appearance as mandated in Article 16 paragraph (1) letter m of the UUJN (e.g., due to online-only appearances), the aggrieved parties may pursue a civil lawsuit against the notary. Such a claim may seek compensation for losses incurred due to the deed's ineffectiveness in achieving legal purposes (such as property title transfer, loan applications, etc.).

With regard to *criminal liability*, a notary may be subject to criminal sanctions if found to have deliberately falsified the process of appearance or the contents of a hybrid deed. Article 264 of the Indonesian Penal Code (KUHP) provides that "Any person who makes a false document or falsifies a document that may give rise to a right or release from debt, or that is intended to serve as evidence of an event, with the intention of using or causing another person to use said document as if it were genuine and not falsified, shall be subject to imprisonment for up to eight years." If a notary knowingly includes a false statement in the deed's *minuta* that parties "appeared before the notary," while in fact they only appeared virtually through Zoom or similar platforms, then criminal elements may be satisfied, particularly where the deed results in harm to other parties (Utomo, D. S., 2024).

Administrative and ethical responsibility is equally critical. Notaries, as public officials, are subject to the oversight of the Notary Supervisory Council (Majelis Pengawas Notaris or MPN), comprising the Regional, Provincial, and Central Supervisory Councils. Article 67 of the UUJN stipulates that a notary who violates professional obligations or the Notarial Code of Ethics may be subject to sanctions, ranging from verbal warnings to permanent dismissal. In the hybrid deed context, failure to comply with formal requirements—such as reading the deed aloud and ensuring physical presence—may constitute a breach of administrative duties and lead to disciplinary action. These violations also relate directly to the Notarial Code of Ethics, particularly the principles of prudence, honesty, and professionalism.

On the other hand, the digitalization of notarial services is an undeniable necessity in the modern era. Several modernization efforts have been made, such as the issuance of Minister of Law and Human Rights Regulation Number 24 of 2021 concerning Procedures for Registration of Notarial Services and Deeds, as well as the AHU Online system, which facilitates digital deed reporting. However, these systems only accommodate reporting and do not authorize online execution of deeds. In contrast, countries such as Estonia and Singapore have introduced regulations that permit full online deed execution via video conferencing, supported by secure digital signatures and biometric verification systems. Indonesia, as of yet, lacks a statutory framework that comprehensively accommodates such practices (Putra, W. S., 2024).

Although there have been legislative efforts to introduce a *Draft Law on Digital Notaries*, there is currently no positive law that explicitly permits hybrid or fully online deed execution. Consequently, any hybrid practice that deviates from the formal requirements of the UUJN risks being classified as unlawful. In this regard, notaries are expected to fully understand the legal boundaries of procedural innovation, as the principle of *legality* in Indonesian law demands that all acts by public officials must be based on lawful authority. Nonetheless, in practice, several notaries have adapted by maintaining procedural caution—for instance, by conducting initial consultations and document collection online, while ensuring that the deed reading and signing occur in person. This hybrid model, wherein only non-essential stages are

conducted virtually, may still be legally acceptable, provided the notary refrains from making any false statements in the deed (Irfansyah, M., 2021).

Moreover, the Supreme Court of Indonesia, through several precedents, has affirmed that the validity of an authentic deed depends not only on its content but also on the formal process of its execution. If the deed creation process violates statutory provisions, the deed may be downgraded to the status of a private deed or even declared null and void by operation of law. This emphasizes that notaries bear responsibility not only for the substantive content of the deed but also for its formal execution. Ultimately, the notary's accountability in relation to a hybrid deed depends on the extent to which the process complies with the UUJN. If the hybrid process is limited to non-mandatory stages, then the notary may still be deemed to have acted within the law. However, failure to ensure physical appearance and signing before the notary may trigger civil, criminal, and administrative liabilities. Therefore, pending legislative reform to fully regulate digital notariat, notaries must adhere to caution, professionalism, and compliance with positive law as guiding principles in performing their duties during this digital transformation era.

Can the Execution of a Notarial Deed in a Hybrid Manner Be Considered a Violation of the Legal Requirement to Appear and Sign in Person Before the Notary, and What Are the Legal Implications Thereof?

The execution of notarial deeds in Indonesia is firmly grounded in the legal framework established by Law Number 30 of 2004 concerning the Position of Notary (UUJN), as amended by Law Number 2 of 2014. Within this framework, a fundamental principle that must be observed by notaries in creating authentic deeds is the direct physical appearance of all parties before the notary. This requirement is emphasized in Article 16 paragraph (1) letter m of the UUJN, which stipulates that the notary is obligated to read the deed aloud in the presence of the appearers and that it must be signed simultaneously by the parties, the witnesses, and the notary. Consequently, physical presence and in-person signing before the notary constitute imperative legal elements that cannot be substituted by alternative procedures, including hybrid methods.

In practice, the term “hybrid execution of deeds” refers to a process wherein certain stages, such as consultation, data collection, or even the reading of the deed, are conducted online (via video conference), while other stages, such as the final signing, are conducted offline. However, if crucial stages—namely appearance and signing—are conducted online, such practices directly conflict with Article 38 of the UUJN, which mandates that the parties must appear physically and sign the deed in the presence of the notary. This renders the hybrid approach a violation of the formal requirements for the creation of an authentic deed (Andhira & Cahyono, 2021).

From the perspective of civil law theory, an authentic deed that fails to comply with formal legal requirements loses its evidentiary power as an authentic deed and may be reclassified as a private deed (*onderhands akte*). In legal doctrine, this principle is known as “*actus contrarius*,” which asserts that what is created in a certain legal form must be amended or revoked by the same form. Therefore, hybrid execution that does not comply with the formalities prescribed by the UUJN cannot be legally upheld as an authentic deed. This is in line with Article 1868 of the Indonesian Civil Code, which defines an authentic deed as one that is drawn up in a form prescribed by law by or in the presence of a public official authorized to do so in the place where the deed is made.

Violating the procedures for authentic deed execution through a hybrid method may result in civil, criminal, and administrative/disciplinary liabilities. On the civil side, an improperly executed deed may fail to serve as valid evidence in legal acts such as land title transfers, bank credit collateral, or enforcement actions. In such cases, injured parties may file

claims against the notary under Article 1365 of the Civil Code on the grounds of unlawful acts (*onrechtmatige daad*), citing a breach of legal obligations that resulted in damages (Julianto, Wulan, & Ismiyanto, 2025).

In the realm of criminal law, the notary may be subject to prosecution under Articles 263 or 264 of the Criminal Code for document forgery. Article 264 paragraph (1) of the Criminal Code states that anyone who makes or falsifies a document that may create rights or debt relief or serve as evidence of a legal fact with intent to use or to have others use it as though it were true and unaltered, shall be punished with imprisonment of up to eight years. If a notary includes in the deed a statement such as “the parties have appeared before the notary and signed the deed,” while in fact such processes were carried out via video conferencing or digital signatures, the element of falsification is fulfilled, as the statement misrepresents the actual facts.

Administratively and ethically, a notary who executes deeds through a hybrid process in violation of statutory provisions may be subject to sanctions from the Notary Supervisory Council (*Majelis Pengawas Notaris* or MPN) pursuant to Articles 67 through 70 of the UUJN. These sanctions range from verbal warnings to permanent dismissal. Furthermore, from the perspective of the Notarial Code of Ethics, such conduct may be deemed a breach of the principles of professionalism, integrity, and compliance with positive law. The notarial code of ethics demands that every deed be executed with prudence and strict adherence to legal norms (Septiana, 2021).

It is important to note that, to date, no amendment to the UUJN has been enacted to authorize online appearances. While there have been discussions regarding a Draft Law on Digital Notaries, this has yet to be formalized as binding law. In contrast to countries like Estonia or Singapore, which have enacted regulations and developed systems that permit online execution of notarial deeds, Indonesia continues to uphold a physical presence paradigm. Although some legal scholars and practitioners view hybrid deed-making as a legal innovation suited to the digital era, it must be stressed that such procedural innovation is constrained by the legality principle—public officials may only act within the scope of authority granted by law. Absent a statutory revision accommodating hybrid procedures, notaries lack legal justification to substitute the appearance and signing stages with digital alternatives, even when supported by technologies such as digital signatures or video conferencing (Anggara, 2021).

Although some notaries argue that hybrid methods are used only for preliminary stages such as data collection or draft review, and that signing still occurs physically before the notary, this must be demonstrably proven. The notary must be able to show that no falsehood or fabrication occurred in the execution process, as failure to do so could expose the deed to civil claims or criminal complaints. To avoid such risks, notaries should document in the *minuta* of the deed the exact communication methods used and clearly identify which stages were conducted online versus offline, as a matter of legal accountability.

In conclusion, the hybrid execution of notarial deeds—especially when the mandatory stages of appearance and signing are conducted virtually—constitutes a violation of the formal requirements stipulated in the UUJN and may result in serious civil, criminal, and administrative consequences. Until the law is amended to accommodate technological developments in deed-making, notaries must continue to comply strictly with the formal provisions set forth in the UUJN. Any violation not only threatens the legal validity of the deed but also undermines the integrity of the notarial profession as a whole (Sidik, 2025).

CONCLUSION

Based on the analysis presented above, it can be concluded that the execution of notarial deeds through a hybrid method—combining online and offline procedures—does not yet have a solid legal basis within Indonesia’s positive legal system, particularly under the Law on the

Position of Notary (UUJN). Article 16 paragraph (1) letter m and Article 38 of the UUJN explicitly require physical appearance and direct signing before the notary as essential components of the authentic deed-making process. Therefore, if a notary substitutes the appearance or signing process with an online method, such action may constitute a legal violation, which could result in serious implications in the form of civil, criminal, and administrative liability.

Deeds executed through hybrid procedures that are not in accordance with statutory provisions risk losing their authenticity, being reclassified as private deeds, or even being declared null and void *ipso jure*. Furthermore, a notary may be criminally liable for document forgery if false statements regarding the presence of the parties are included in the deed. In addition, the Notary Supervisory Council (Majelis Pengawas Notaris) is authorized to impose disciplinary sanctions on notaries who are found to have violated the formal procedures for deed execution.

As a recommendation, notaries in the digital era must uphold the integrity of their profession by strictly adhering to the applicable legal framework. Although digitalization is an inevitable demand of the times, every procedural innovation must remain subject to the principle of legality. Notaries are expected to refrain from adopting hybrid practices during procedural stages that legally require physical presence, such as appearance and signing.

Should there be an urgent need to accommodate technological advances and modern societal conditions, legislative reform is necessary—whether through an amendment to the UUJN or the enactment of a new law governing digital notarial practices. The government and lawmakers must respond to this evolving dynamic by drafting regulations that ensure legal certainty while preserving the fundamental values of authentic deeds. Until such regulations are in place, notaries must exercise prudence and assume full responsibility for the deeds they execute, in order to maintain public trust and uphold the dignity of the notarial profession.

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