

Authority of Remote Online Notary in Making Notarial Deeds: Comparative Study of the United States Federal Law and the States of Texas and Indonesia

Kanisius Ronaldo Yato ¹, Kurniawan ¹, Salim H Sidik ¹

¹ *University of Mataram*

Jl. Majapahit No 62 Mataram, Nusa Tenggara Barat, Indonesia

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Corresponding Author:

Kanisius Ronaldo Yato

ronaldyato17@gmail.com

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Abstract: This study aims to analyse the authority of remote online notaries in creating notarial deeds and assess the validity of remote online notary deeds in the United States of America, specifically in the States of Texas and Indonesia. The type of research used is normative legal research. The study's results reveal similarities and differences between the authority of a remote online notary in the United States, as outlined in Article 5.1 of the Model Electronic Notarization Act of 2017. The Texas Government Code, Section 406.016, regulates the authority of a remote online notary in the State of Texas. In contrast, Article 15 of Law No. 2 of 2014, which amends Law No. 30 of 2004 concerning the Notary's Position, governs the authority of a notary in Indonesia. However, Indonesian law currently lacks regulations on the authority of a remote notary. In the United States, Section 1625 of the Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021 establishes the validity and legal effect of remote online notarised deeds and recognises their legal authority. The legal consequences of a remote notarial deed made by a remote notary are valid. The validity of a remote notarial deed (remote online act) in the State of Texas is regulated in Government Code Chapter 406, Subchapter C, online notary. Notaries who make remote notarial deeds have received permission from the Texas Secretary of State. Meanwhile, in Indonesia, there are no regulations governing the validity of remote notarial deeds.

Keywords: authority; remote notary; validity of deed

INTRODUCTION

Notary is one of the oldest legal professions in the world. The term "notary" is well-known and popular because it originates from the name of the first devotee in carrying out notarial activities, namely "notarius", which is also a term for a group of people who perform writing work [1].

In the 2nd and 3rd centuries BC, the term "notarii" referred to individuals who possessed the skill of writing quickly, often referred to as stenographers. These notaries held a high position because they were responsible for recording everything discussed in the emperor's consistory meetings, which addressed state secrets and other sensitive matters. In the 3rd century AD, people also referred to notaries as tabeliones. Tabeliones performed duties similar to those of modern notaries, serving the public by drafting

deeds and letters. However, they did not hold official positions as state employees, nor did any public authority appoint them to carry out legal formalities [2].

Notaries play a crucial role and hold significant authority in human life, providing protection and legal certainty for the rights of the community. This authority includes making and validating notarial deeds, as well as other related authorities. In the development of technology, notaries are categorised into three types: conventional notaries, electronic notaries, and remote notaries (also known as remote online notaries) [3].

Online notary services enable participants to create documents online without being physically present at a specific location. Remote online notarisation is one of the breakthroughs in notarial deed-making services for individuals seeking fast

and cost-effective solutions. The technology used in the implementation of notarial deed making is audio-video communication [4].

In the United States, notaries typically provide advice and prepare documents, especially those related to treaty relations with foreign countries. In the United States, the law limits notaries to issuing certificates and prohibits them from expanding this authority. Notaries primarily serve the public as impartial witnesses when vital documents are signed [1].

The remote online notary powers in the United States and the State of Texas have similarities and differences. The remote notary powers of the United States, as regulated in Article 5.1 of the Model Electronic Notarization Act 2017, include receiving acknowledgements, attesting to oaths or affirmations, witnessing or attesting signatures, certifying or attesting copies, and recording protests of negotiable instruments [5]. Meanwhile, the authority of a remote online notary in the state of Texas is regulated in Texas Government Code 406.016, which includes taking acknowledgements or written evidence, administering oaths and affirmations, taking depositions, certifying copies of documents, and protesting instruments.

During the COVID-19 pandemic, some notaries in Indonesia conducted notarial activities using remote notarisation (also known as remote online notarisation). Still, until now, there have been no laws and regulations governing remote notaries (remote online notaries) due to several factors, including the Notary Law (UUJN) which currently emphasises physical presence in making notarial deeds, very rapid technological developments that make it challenging to keep up with regulations, concerns about data security and the authenticity of documents made electronically.

Based on the description of the authority of a remote notary or Remote Online Notary (RON) applied to Notaries in the United States, the State of Texas and the State of Indonesia, the author is interested in conducting further research with the title; "The authority of remote online notaries in making notarial deeds (comparative study of the United States federal state, the State of Texas and the State of Indonesia)".

Based on the background description above, the author formulates two main problems, namely, how is the authority of a remote notary (remote online notary) in making notarial deeds in the

United States Federal State, the State of Texas and the State of Indonesia? And how is the validity of a remote notary deed (remote online notary) in making notarial deeds in the United States Federal State, the State of Texas and the State of Indonesia?

METHOD

This study employs normative legal research, also referred to as doctrinal legal research. This type of research examines laws and regulations (Laws in books) or law conceptualised as rules or norms that serve as benchmarks for human behaviour considered appropriate [6].

The approach methods used in this study are the Statutory Approach, the Conceptual Approach and the Comparative Approach. The primary data in normative legal research is library data. In legal literature, the term "legal material" refers to the data source. Legal researchers refer to any information that can be used or is necessary to analyse applicable law as legal material [7]. The legal materials used in this study were collected by conducting searches and documentation studies, both through bookstores, libraries and internet media, as well as other media and places (institutions) that publish and store archives (documents) related to the research problem. The technique involves collecting primary and secondary legal materials, utilising document study techniques (documentary), and then inventorying and grouping them according to the main problems studied. The analysis of legal materials used in this study involves interpretation and analysis.

RESULTS AND DISCUSSION

The Authority of Remote Online Notary in Making Deeds in the United States, the State of Texas and the State of Indonesia

1) Remote Online Notary Authority in Making Deeds in the United States. Authority Remote Online Notary is regulated in Article 5.1 of the Model Electronic Notarization Act 2017. The article reads [3]:

"Authorised notarial acts concerning electronic records. A notary public of this [state] who has notified the (commissioning officer or agency) in compliance with Rule 3.1 may perform the following notarial acts concerning electronic records: a) Taking an acknowledgement; b) Taking a

verification on oath or affirmation; c) Witnessing or attesting a signature; d) Certifying or attesting a copy; e) Noting a protest of a negotiable instrument".

Essence is that the notary is authorised to make notarial deeds. There are five notary authorities, which include: a) Receiving recognition; b) Carrying out proof of an oath or promise; c) Witnessing or attesting a signature; d) Notarising or attesting the copy; e) Recording the process of negotiable instruments.

2) Authority Remote Online Notary Authority in Making Deeds in the State of Texas. The state of Texas has established laws and regulations regarding remote online notaries. One of these laws is Texas Government Code, Section 406, Subchapter C. Online notaries have the authority to perform a function permitted by Texas Government Code, Section 406.016. This law governs the powers of remote notaries, which include [3]: a) Taking acknowledgements or proofs of written instruments; b) Administering oaths and affirmations; c) Taking deposits; d) Certifying copies of documents not recorded in the public records; e) Protesting instruments.

A brief explanation of these five things is presented by the American Association of Notaries [8]. The summary, presented briefly:

Taking acknowledgements or proofs of written instruments. Grammatically, taking acknowledgements or proofs of written instruments is the same as taking acknowledgement or proof of written instruments. Taking an acknowledgement is one of the general notarial deeds. In acknowledgement, the signatory, after the notary verifies their identity, states that they are willing to sign the document for the stated purpose. The notary is not required to see the signatory sign the document in front of him. However, the notary is required to ask the signatory to acknowledge the signing of the deed freely and voluntarily and for the purpose stated therein.

Administering oaths and affirmations. An oath is a sacred statement that proves the truth of the contents of a document signed before a notary or via audio-video. Some people have religious objections to taking an oath; a notary may allow the signatory to make an affirmation, which means a promise made on their conscience without speaking to the other party. Oaths and promises are the same in the eyes of the law. Making a false statement under oath is a crime called perjury.

Taking deposits. Witnesses play a crucial role in clarifying a case, both in civil and criminal proceedings. The court must swear in witnesses before they give testimony. The oath taken is called a deposition. A deposition is testimony taken under oath from a witness in a civil lawsuit. Depositions are usually taken outside of court before the trial begins. Although Texas notaries rarely experience depositions, they should have a basic knowledge of how to take a deposition and administer an oath to the deponent if necessary.

Certifying copies of documents not recorded in the public records. Texas notaries are not only authorised to certify oaths, but also to certify copies of documents. Typically, when a notary certifies a copy of a document, they are not certifying that the primary document is the original; instead, they are certifying that it is a true and accurate copy of the original document. A notary must refuse to certify a copy of a document if the original has been altered.

Protesting instruments. Protesting instruments are documents relating to statements that disagree, oppose, or deny something [9]. In the state of Texas, notaries also have the authority to create protest documents. Protest documents are documents relating to records that can: a) Negotiated; b) Bills; c) Rejection.

3) Remote Online Notary Authority in Making Deeds in Indonesia. Notary's authority in Indonesia is regulated in Article 15 of Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the position of notary, stating:

a) Notaries may create authentic deeds for all acts, agreements, and stipulations required by law or requested by interested parties. They also guarantee the certainty of the date the deed is made, store the deed, and provide grosses, copies, and quotations of the deed, provided that the law does not assign or exclude these responsibilities to other officials or individuals.

b) In addition to the authority as referred to in § 1, a notary also has the authority to:

- Validate signatures and verify the authenticity of the dates on private letters by registering them in a special book;

- Record a letter by hand by writing it in a special book;

- Make a copy of the original private letter in the form of a copy containing the description as written and described in the letter in question;

- Verify the conformity of the photocopy with the original letter;
- Provide legal advice regarding the preparation of deeds;
- Make a deed relating to land;
- Make a deed of auction minutes.

c) In addition to the authority as referred to in § 1 and § 2, a notary has other authority as regulated in statutory regulations.

In this law, several articles implicitly open up opportunities to carry out remote notary, one of which is related to electronic transaction certification (cyber notary). However, the authority of remote notaries in Indonesia is still in the development stage, and there are no regulations governing the authority of remote notaries.

Based on the authority of remote notaries in the United States, as well as in the States of Texas and Indonesia, this study employs the theory of authority to analyse the problem of the authority of a remote notary. According to authors [10], individuals or institutions can obtain the authority to make decisions in only two ways: by attribution or by delegation. Attribution is the authority that is inherent in a position. If the authority is imperfect, it means that the decision based on that authority is not legally valid. This statement illustrates that legal scholars utilise attribution and delegation as tools to determine whether an agency has the authority to impose obligations on the community.

4) Similarities and Differences in the Authority of Remote Online Notaries in the United States, the State of Texas and Indonesia. Based on the analysis of Table 1, it can be seen that there are similarities and differences in the authority of a remote online notary (RON) between the United States and the State of Texas.

Table 1 – Similarities and Differences

Remote Notary	Remote Notary Authority
United States of America	1) Taking an acknowledgement 2) Taking a verification on oath or affirmation 3) Witnessing or attesting a signature 4) Certifying or attesting a copy 5) Noting a protest of a negotiable instrument
Texas	1) Taking acknowledgements or proofs of written instruments

Remote Notary	Remote Notary Authority
	2) Administering oaths and affirmations 3) Taking deposits 4) Certifying copies of documents not recorded in the public records 5) Protesting instruments
Indonesia	In Indonesia, there are no similarities or differences with the authority of a remote notary in the United States or the State of Texas, as Indonesia does not have regulations governing the authority of a remote notary.

The similarities in the authority of a remote online notary (RON) between the United States and the State of Texas are:

Taking an acknowledgement (accepting recognition). Grammatically, taking acknowledgements or proofs of written instruments has the same meaning as taking acknowledgements or proofs of written instruments.

Taking a verification on oath or affirmation (to make a proof, oath or promise). In general legal, verification on oaths or affirmation oaths is conceptualised as: "made by an individual on oaths or affirmation before a notarial officer, that a statement in a record is true". (Article 42.45.010 No. 18 Residential Code Of Washington (RCW), 2017)

Essence: This definition is a statement. The person making the statement is an individual. The notary makes the statement with an oath or affirmation. The oath is taken before a notary, stating that the statement made is true and accurate.

Certifying or attesting a copy (certify or prove the copy). In principle, every copy of the deed made by the parties must be legalised and attested by a notary. Validating and proving a copy is called certifying or attesting a copy.

Noting a protest of a negotiable instrument (recording protests from negotiated instruments). Noting and protesting are proactive measures to protect the holder's right to recourse against the drawers and proponents of a dishonoured bill.

Meanwhile, the differences between the remote online notary (RON) authorities of the United States and the State of Texas are as follows:

a) Witnessing or attesting a signature (witness or prove a signature). Grammatically, witnessing a signature is conceptualised as witnessing or

proving the signatures of the parties. Scholars conceptualise witnessing as: looking to prove, seeing for real, knowing (attending) as a witness, and stating the truth.

b) Taking deposits(taking deposition). Witnesses play a crucial role in clarifying a case, both in civil and criminal proceedings. Before giving testimony in court, the witness must be sworn in. The oath taken is called a deposition. A deposition is testimony taken under oath from a witness in a civil lawsuit.

Based on the similarities and differences in the authority of remote notaries in the United States, the State of Texas, and Indonesia, the researcher applies comparative law theory to analyse the problem. This case presents one of the elements of comparative law – specifically, the ability to review it through legal regulations themselves. According to Gutteridge, comparative law serves as a method of legal study and research. Gutteridge distinguishes between descriptive comparative law, whose primary purpose is to obtain information, and applied comparative law, which has a specific target.

Validity of the Deed Notary Public Remote (Remote Online Notary) In Making Notarial Deeds In The Federal State Of The United States, The State Of Texas And The State Of Indonesia.

1) Validity of remote online notary acts in the United States. The validity of remote online notarial deeds in the United States is regulated by legislation S. 1625, Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021. Article 5 of S. 1625 stipulates the validity of notarial deeds made by electronic notaries and remote notaries [11]. There are two things regulated in Article 5 of S. 1625, which include: a) Recognition of validity(recognition of its validity); b) Legal effects of recognised notarisation (legal effects).

The essence of this article is about the legal consequences of notarial deeds made by a notary official. The legal consequences of a remote notarial deed made by a remote notary are valid – valid means recognised by law, both federal and state law. What is recognised as valid is a notarial deed made in the form of: a) Tangible notes; b) Electronic records; c) A Deed made by a remote notary.

2) Validity of remote online notary acts in the State of Texas. The validity of a remote online no-

tary act in the State of Texas is regulated in Government Code Chapter 406, Subchapter C, online notary. The Texas Secretary of State has licensed notaries who perform remote notary acts. The license relates to the authority to make remote notary acts, namely: a) Proof of written instruments; b) Proving the truth of the contents of the signed document; c) Taking of oath or deposition; d) Validate a copy of the document; e) Record a protest against the security.

3) Validity of Remote Notarial Deeds (Remote Online) in Indonesia. The validity of remote notarial deeds in Indonesia is still in the development stage. Although there is great potential for information technology to improve the efficiency and accessibility of notarial services, it is essential to remember that the creation of a notarial deed is a significant legal act. According to Article 5, § 1 of the Information and Electronic Transactions Law (UU ITE), it is emphasised that electronic information, electronic documents, and their printouts are valid legal evidence. However, there are no regulations governing the validity of remote notarial deeds in Indonesia.

Based on the validity of long-distance notarial deeds in the United States, as well as in the States of Texas and Indonesia, the author applies the theory of legal certainty to analyse the validity of long-distance notarial deeds. Gustaf Radbruch, in the concept of the "Standard Priority Doctrine," posits that the three fundamental principles of law, or the three primary objectives of law, are justice, benefit, and legal certainty. Legal scholars interpret legal certainty as a condition in which the law functions as a clear and unambiguous regulation that must be obeyed [12]. In understanding the value of legal certainty, it is essential to note that this value has a close relationship with positive legal instruments and the role of the state in actualising it in positive law [13].

CONCLUSIONS

Article 5.1 of the 2017 Model Electronic Notarization Act regulates remote online notaries in the United States. The authority includes receiving acknowledgements, verifying oaths or promises, witnessing or verifying signatures, validating or verifying copies, and recording the process of negotiable instruments. Meanwhile, Texas Government Code 406.016 regulates the authority of a remote online notary in the State of Texas. This authority includes taking acknowledgements or written instrument evidence, administering

oaths and confirmations, taking depositions, validating copies of documents, and protesting instruments. Article 15 of Law No. 2 of 2014, which amends Law No. 30 of 2004 regarding the Position of Notaries, regulates the authority of notaries in Indonesia. However, the authority of a remote notary in Indonesia is still in its development stage, and there are no regulations governing the authority of remote notaries. The study's results reveal both similarities and differences between the authority of a remote online notary in the United States and the State of Texas. The similarities include taking acknowledgement, taking verification on oath or affirmation, certifying or attesting a copy, and noting a protest on a negotiable instrument. The differences are witnessing or attesting a signature and taking depositions. Meanwhile, in Indonesia, there are no similarities or differences with the authority of a remote notary in the United States or the State of Texas, as Indonesia does not have regulations governing the authority of a remote notary.

Validity deed remote online notary in the United States is regulated by legislation S. 1625 Securing and Enabling Commerce Using Remote and Electronic Notarization Act 2021 which includes recognition of validity, lawmakers ask every American federal court to recognise the validity of every notarial deed made by a notary in the state and the state in question recognises its validity and Legal effect of recognised notarisation,

The legal consequences of a remote notarial deed made by a remote notary are valid – valid means recognised according to Law, both federal and state Law. The law recognises as valid notarial deeds made in the form of tangible records, electronic records, and deeds created by remote notaries. Meanwhile, the validity of remote notarial deeds (also known as remote online notarisations) in the State of Texas is regulated in Government Code Chapter 406, Subchapter C, regarding online notaries. Notaries who make remote notarial deeds have received permission from the Texas Secretary of State. The permit authorises the performance of remote notarial deeds, including the attestation of the authenticity of written instruments, verification of the truth of document contents, administration of oaths or depositions, validation of document copies, and recording of protests against a valuable document. Therefore, regulations in the United States and the State of Texas affirm the validity of remote online notarised deeds (RON). In Indonesia, Article 5, Section 1 of the Information and Electronic Transactions Law (UU ITE) emphasises that electronic information, electronic documents, and their printouts constitute valid legal evidence. However, the Notary Law does not include provisions governing the validity of remote notary deeds, so legal authorities in Indonesia declare such deeds invalid.

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