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# LEGAL IMPLEMENTATION OF CYBER NOTARY REGULATION: IMPLEMENTATION OPPORTUNITIES AND LEGAL CHALLENGES IN INDONESIA

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## Abstract

**Background.** This study reviews how regulations related to *cyber notaries* are implemented in Indonesia. The main focus lies in the effectiveness of implementation and the gap between the potential use of *cyber notary technology* and the lack of optimal regulations that regulate it as a whole. Although the Electronic Information and Transaction Law (ITE Law) has become the legal basis, the lack of technical regulation still makes the implementation of *cyber notary* vulnerable to legal uncertainty.

**Aims.** This study also analyzes the fundamental differences in the concept of *cyber notary* in civil law *legal systems* such as Indonesia and *common law*, which underlines the importance of appropriate regulatory adjustments. The issue of electronic data security is a major concern, so clear rules are needed regarding electronic certification and institutions that have the authority to regulate it.

**Methods.** This research uses a qualitative approach with a descriptive method in data collection and analysis.

**Conclusion.** The study's conclusion shows that although cyber notaries have great potential to increase efficiency and effectiveness in the notary field, more complete and systematic regulations are needed to ensure data security, the validity of electronic documents, and legal certainty in Indonesia.

**Implementation.** The application of this technology is an important step in balancing the development of digitalization, which needs to be realized immediately in order to encourage modernization in notary practice.

**Keywords:** Regulation, *Cyber Notary*, Electronic Data, Digitalization, Electronic Certificates, Information Technology, Descriptive, Qualitative

## INTRODUCTION

Digital transformation has significantly impacted various aspects of people's social lives. The various conveniences, efficiency, and effectiveness presented open up new opportunities that help encourage progress in the economy, technology, and information. Especially in the administrative sector, technological developments have brought significant changes that have simplified the process of managing data and information, while accelerating operational activities in various institutions. Previously, the administrative process was carried out manually and traditionally, but now it has switched to a more modern and automated digital system. These

changes include archiving, data processing, and communication systems, both internal and external. In today's sophisticated digital era, people enjoy a more practical lifestyle and much easier access to information. This era is characterized by the ability to access and disseminate information quickly through digital technology.<sup>1</sup>

Indonesia, which is currently in the era of digitalization, must also face a technology, namely developing, information, and communication. There needs to be awareness, namely that information can have a function and play a role in economic, social, and cultural growth. As for the advancement of information and communication technology, there is also an impact on the social situation in the future era, for example, the medical service system, education services, government administrative services, and various other realms.<sup>2</sup> The future development of information and communication technology will impact the authority of notaries in line with the rapid progress of the times. Until now, notaries in Indonesia still use old legal provisions that have not undergone significant changes, especially in drafting deeds, including in terms of the direct presence of the parties, reading the contents of the deed, signing, and using seals. In the digital era, various limitations and potential obstacles in the movement of information can be studied by understanding the meaning and function of the information system itself. Therefore, notaries must prepare themselves to provide relevant services and in line with advances in information and communication technology. Consequently, it is necessary to prepare an adaptive concept in the implementation of the duties and authority of a notary, so that it remains relevant to technological developments at the global level.

Notaries are public officials or individuals who have legal authority under the law to draft authentic deeds. The duties and authorities of a notary are clearly regulated in Law Number 30 of 2004 concerning the Notary Position (UUJN). The regulation emphasizes that the preparation of an authentic deed by a notary is a form of legal protection that provides legal certainty for interested parties.<sup>3</sup>

Based on Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (hereinafter referred to as the new UUJN), Notaries have the authority, namely:

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<sup>1</sup> Ministry of Education and Culture, 2018

<sup>2</sup> Badruzaman, Mariam Darus. 2003. Bank Credit Agreement. Bandung: Alumn

<sup>3</sup> G.H.S Lumbang Tobing S.H 2018: Rules

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(1) The notary is authorized to make an authentic Deed regarding all deeds, agreements, and stipulations required by laws and regulations and/or that are required by the interested party to be stated in the authentic Deed, guarantee the certainty of the date of making the Deed, keep the Deed, provide grosse, copy and quotation of the Deed, all of which as long as the making of the Deed is not assigned or excluded to other officials or other persons stipulated by law.

(2)

- a. certify the signature and determine the certainty of the date of the letter by hand by registering it in a special book;
- b. Write a letter with your hand by registering in a special book;
- c. make a copy of the original letter by hand in the form of a copy containing the description as written and described in the letter concerned;
- d. Verify the compatibility of the photocopy with the original letter;
- e. provide legal counseling in connection with the making of the Deed;
- f. make an Act related to land; or
- g. Make an auction minutes deed.

In practice, notary services in Indonesia are still conventional, where the process between the notary and the attending party is carried out directly or face-to-face. Amid the current era of digitalization, the generation that grew up with technological developments is required to understand and utilize technology individually. This understanding can also be applied in the legal field through information technology-based notary services known as *cyber notary*.<sup>4</sup> *Cyber notary* refers to using information technology to carry out notary duties. This includes digitizing documents, signing authentic deeds electronically, and utilizing teleconferencing media to implement activities such as the company's General Meeting of Shareholders (GMS).<sup>5</sup> *Cyber notary* is a modern concept that began to be introduced in the Law on the Notary Position (UUJN). This term refers to expanding the notary's authority to carry out his duties electronically. In this concept, notary deeds that were previously made in physical form and required the direct presence

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<sup>4</sup> Edmon Makarim, (2013). Notary and Electronic Transactions, Jakarta : Raja Grafindo Persada, 2013

<sup>5</sup> Respati Nadia Putri, (2017)." The Concept of Cyber Notary in the Amendment of the Law on the Notary Position as a Result of the National Legislation Program

of the parties can now be prepared digitally through electronic media, including the internet, thus allowing the implementation of online deeds<sup>6</sup>

In the context of digitalization, humans as a resource with perfect potential are required to create innovation, especially in public services. This innovation is realized through the use and strengthening of Technology, Information, and Communication (ICT) to increase the efficiency and effectiveness of public services in line with the dynamics of human development. Technological advances also affect the quality of services to the community, including in the field of notarization. The concept *of a cyber notary is a form of adaptation to the development of information technology, which consists of the use of computers, internet networks, and electronic media such as teleconferencing or virtual meetings to implement notary duties and authority.*<sup>7</sup>

Implementing *Cyber Notary* emerged as a response to the digital era and modernization that brings convenience in various jobs, including in the notary field, especially in terms of time efficiency. In Indonesia, legal developments have also adjusted to technological advances, as reflected in Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law), which was later updated through Law Number 19 of 2016. The ITE Law regulates the legal basis related to the use of the internet and electronic transactions in this digital era.

Notary services began to shift to an electronic system known as a Cyber Notary in the era of globalization. This innovation changed the conventional paradigm, where notaries had to meet directly with the client to make a deed. Now, the making of deeds can be done online, without the physical presence of the parties, with information technology as the main medium.

The process of making and notifying deeds is traditionally time-consuming, requires the physical presence of the parties and two legal witnesses, and is accompanied by a complex administrative burden and significant costs. In addition, manual processes also have the risk of errors, ranging from recording, calculation, to document filing.

Therefore, more detailed and specific regulations are needed in the Indonesian legal system to ensure legal certainty, order, and protection for the parties and notaries in the making of deeds. Based on observations of other countries, both those that adhere to the *Common Law* and *Civil Law* systems, many of them have integrated the functions and roles of notaries in electronic

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<sup>6</sup> Merlyani, Yahanan, & Trisaka, 2020). "LEGAL STUDY ON THE ELECTRONIC MAKING OF NOTARY DEEDS"

<sup>7</sup> Maharani, Parman, & Haq, 2019. "Cyber Notary System in the Norm Order in Indonesia and Australia"

transactions. This shows that Indonesia also needs to encourage the implementation of electronic-based notary services as a whole.

In countries that adhere to the *common law* system, notaries generally do not undergo special education as jurists, and their positions are limited to a certain period of time. In contrast to the *civil law* system, where a deed produced by a Latin notary has the power of formal and material proof, even in legal actions, the deed has executory power.

In *the civil law* system, an authentic deed is seen as written evidence that has the highest, strongest, and perfect position. This makes the role of notaries in the system very crucial, because they have the authority and responsibility in the preparation of authentic deeds.

Therefore, the use of the concept of *cyber notary* in the *common law* system does not have a significant influence on the strength of a deed. On the other hand, in Indonesia, which adheres to *the civil law* system, notaries have the authority to draft deeds authentically carried out by and in front of a notary, so that the use of technology through *cyber notaries* actually strengthens this role in the legal realm<sup>8</sup>

The meaning of laws and regulations related to the notary profession in Indonesia needs to be studied further and compared with the regulations of other countries that also adhere to *the civil law* system. Countries such as Belgium and France have made reforms to their Civil Codes, which provide a legal basis for the power of authentic deeds in electronic form.

In contrast, Indonesia, which until now has not fully adopted digitalization in the field of electronic-based notary. The government has not issued a firm policy regarding the application of this technology in the realm of notary. This condition is exacerbated by disagreements regarding the implementation of *Cyber Notary* due to potential legal implications, such as regulatory uncertainty and the risk of misuse of personal data.

Another problem is the physical absence between interested parties, which is still a major obstacle in the process of electronic ratification of deeds. Therefore, an in-depth study is needed so that each related party can understand the extent of the effectiveness of the implementation of information technology-based notary services.

The use of *Cyber Notary* in Indonesia still causes various pros and cons in the midst of a digital society. Therefore, this journal is focused on three main issues, namely:

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<sup>8</sup> Nurita, E., & Ayu, R. (2012). *Cyber notary: initial understanding in the concept of enumeration*. Bandung: Refika Aditama

1. How is the implementation of *Cyber Notary* in Indonesia according to applicable laws and regulations.
2. The effectiveness of the opportunity to implement *Cyber Notary* in the Indonesian legal system in the digital era.
3. The legal challenges faced by the electronic notary system in Indonesia and the extent of its success in providing legal protection.

The purpose of this study is to determine the effectiveness of the implementation of *Cyber Notary* and analyze the various challenges and obstacles that arise, considering that until now there is still no comprehensive legal certainty related to this.

## METHOD

The normative juridical method is a legal research approach that focuses on the study of literature through the analysis of legal documents and literature. This research utilizes secondary data consisting of **primary**, **secondary**, and **tertiary** legal materials.

The approach used is **qualitative**, with data collection techniques carried out through **descriptive analysis**. This provides detailed explanations and analyses of problems based on relevant legal theories. Data analysis was carried out qualitatively by comparing and examining the provisions of applicable laws and regulations, the opinions of legal experts (doctrine), and other legal theories that support the discussion.

## RESULTS AND DISCUSSION

### The Implementation of Cyber Notary in Indonesia According to Applicable Regulations in Indonesia

Historically, *the terms cyber notary and electronic notary or e-notary* were born from two different concepts, which are rooted in two different legal traditions. The term *e-notary* is better known and popularized by legal experts from countries that adhere to the **Civil Law legal system** or the Continental European legal tradition. On the other hand, the term *cyber notary* is evolving and widely used by legal experts from countries with **common law** systems, such as the United States and the United Kingdom. These differences reflect different perspectives and approaches in

understanding and applying technology in notary practice.<sup>9</sup> Thus, the use of the term *electronic notary* or *e-notary* is considered more appropriate to be used in Indonesia, considering that the Indonesian legal system adheres to **the Continental European** tradition (*Civil Law*), not *Common Law* as in the United States.

The legal basis regarding the legality of electronic signatures in Indonesia has been regulated in **Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE)** which was later updated with **Law Number 19 of 2016**.

**Article 5 paragraph (4) of the ITE Law** states that:

*"Electronic signatures have legal force and legal consequences as long as they meet the requirements in accordance with the provisions of laws and regulations."*

This provision confirms that **electronic signatures are valid and equivalent to wet signatures**, as long as they meet specified conditions, such as authentication and data integrity.

Furthermore, **Article 11 of the ITE Law** states that:

*"Electronic signatures are considered valid and have binding legal consequences, as long as they meet requirements that include identity verification, document integrity, and can be legally proven."*

This article provides a juridical basis that the application *of cyber notary* in the process of making authentic deeds electronically can be recognized as long as it uses qualified technological systems, including certification and digital encryption.

From the civil law side, **Article 1320 of the Civil Code** explains that the conditions for the validity of an agreement include:

1. By agreement of the parties,
2. Legal proficiency,
3. Specific objects, and
4. Because it is halal.

Meanwhile, **Article 1328 of the Civil Code** warns about agreements obtained by fraud, which makes the agreement invalid.

In the context *of cyber notary*, agreements between parties made through digital media such as *teleconferencing* or other electronic platforms can still be considered valid as long as they meet

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<sup>9</sup> *Ibid*

the four conditions above. Therefore, the presence of a digital notary or *cyber notary* is important to ensure the validity and evidentiary strength of a digital agreement.

With this provision, Indonesia should be more adaptive in implementing *the cyber notary system*, considering that the basic legal framework is already available. The challenge now is **derivative regulations and the technical readiness and human resources of notaries**, so that their implementation does not cause legal uncertainty and the risk of misuse, especially related to the protection of personal data.

Article 1328 of the Civil Code, A valid agreement can be amended or canceled based on the approval of the competent party<sup>10</sup>. In the context of digital transactions, the parties who have the legal authority to ensure the validity of an agreement are those who have formal authority, one of which is **a notary**. The existence of **cyber notaries** in the digital realm is important as an extension of the law to ensure that all parties involved in electronic transactions have **legal competence**, as well as that **agreements made through electronic media have recognized legal force**.

One of the legal bases that strengthen the position of cyber notaries in Indonesia can be found in **the Regulation of the Minister of Law and Human Rights (Permenkumham) Number 21 of 2021**. In **Article 1** of the regulation, it is explained that:

*"This regulation provides a legal basis for notaries to authenticate documents electronically."*

With this regulation, **online notary services can be operated legally**, as long as the notary performs his duties in accordance with applicable regulations. The *electronic notarization* procedure regulated in Permenkumham No. 21 of 2021 involves the **ratification of electronic documents through an electronic signature**, the provisions of which have been further described in the **ITE Law**.

Furthermore, **Article 4 of Permenkumham No. 21 of 2021** stipulates that:

*"Notaries in carrying out their duties electronically must still comply with applicable legal principles."*

This means that even though the process is carried out digitally, notaries must still be subject to **established legal norms**, including:

- **Civil Code (KUHPdata),**
- **the Electronic Information and Transactions Law (ITE Law), and**
- **Law on the Notary Position (UUJN).**

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<sup>10</sup> Civil Code (Article 1320 and Article 1328)  
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In practice, **cyber notaries are obliged to maintain the legal integrity, validity, and authenticity of notarized electronic documents.** The aspect of data security and **accurate verification of the identity of the parties** are crucial points that must be considered so that the electronic notarization process is not only legally valid, but also ethically and professionally accountable.

In addition to Permenkumham No. 21 of 2021 which is the main legal basis for the implementation of electronic notary services, there are also several **other Regulations of the Minister of Law and Human Rights** that also form the procedural framework for the implementation of notary duties, namely:

1. **Regulation of the Minister of Law and Human Rights No. 5 of 2014** This regulation **regulates the technical procedures** that must be followed by notaries in carrying out their duties in general. This includes procedures for reporting, recording, and exercising notary authority in the context of the modern administrative system.
2. **Permenkumham No. 6 of 2014** This regulation **provides further and specific guidance regarding the procedure for notifying documents** carried out by notaries. This arrangement is important to ensure that documents that are notarized, both conventionally and electronically, still meet the principle of legal validity.
3. **Regulation of the Minister of Law and Human Rights No. 10 of 2013** This regulation **regulates the implementation of notary administration**, including the system of recording and managing documents by notaries. This is important in the context of digitalization because it touches on **archiving standards and data security** that must be maintained by a notary, both in physical and electronic form.

These three regulations, although born in the context of conventional notary, have important value in the transition to **digital notary (cyber notary)**. Integrating the principles stipulated in these three regulations with newer regulations such as **Permenkumham No. 21 of 2021** can create a stronger and more comprehensive legal foundation for the development of electronic-based notary services.<sup>11</sup> All current laws and regulations still focus on **operational procedures and the obligations of notaries** in carrying out their duties. With the concept of *cyber notary*, notaries are still required to comply with the provisions that have been set out in these various regulations, but

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<sup>11</sup> Permenkumham No. 5 of 2014 jo Permenkumham No. 6 of 2014 jo Permenkumham No. 10 of 2013  
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with adjustments to digital media and the use of electronic signatures. Notary obligations in terms of recording, identity verification, and maintaining the integrity and confidentiality of documents are becoming more complex in the context of electronic transactions, and this needs to be explicitly accommodated in existing regulations.

One of the main legal bases is **Law Number 30 of 2004 concerning the Notary Position (UUJN)**.

- **Article 15 of the UUJN** states that notaries have the authority to make authentic deeds that include all agreements or statements of interested parties. In the context of *cyber notary*, this function is still attached, but its implementation is carried out in digital form. The validity of electronic notary deeds must be ensured through a reliable identity verification mechanism and digital technology security.
- **Article 16 of the UUJN** emphasizes that notaries must be objective, impartial, and obliged to maintain the confidentiality of the data obtained. This is becoming increasingly important in *cyber notary* systems, as the delivery and attestation of documents are done electronically, thus demanding higher data security and authentication through technologies such as **encryption** and **digital authentication systems**.

Furthermore, another important legal basis that is the foundation for the legal use of electronic documents and electronic signatures in Indonesia is **Law No. 11 of 2008 concerning Electronic Information and Transactions (UU ITE)**, as amended by **Law No. 19 of 2016**:

- **Article 5 Paragraph (4)** states that electronic signatures have the same legal force as wet signatures on paper documents, **as long as they meet the provisions stipulated in this Law**. This gives legitimacy to deeds notarized by *cyber notaries*.
- **Article 11 of the ITE Law** further clarifies that electronic signatures are considered valid and legally binding if they meet certain conditions, such as identity authenticity, appropriate technology, and a security system that ensures data integrity.

Then, in the context of technical adjustments to digital practices, **Permenkumham No. 21 of 2021** is present as the legal basis for implementing electronic notary services.

- **Article 1** provides a legal basis for notaries to authenticate electronic documents.
- **Article 4** emphasizes that in carrying out their duties electronically, notaries must still comply with applicable legal principles, including those regulated in the Civil Code, the ITE Law, and the UUJN. Notaries must also maintain the credibility and integrity of the

notarized electronic deed, including the use of valid electronic signatures under the ITE Law.

This regulatory support is also strengthened by:

- **Permenkumham No. 5 of 2014** which regulates technical procedures for the implementation of notary duties.
- **Permenkumham No. 6 of 2014**, which provides further guidelines for the ratification of notary documents.
- **Permenkumham No. 10 of 2013**, which discusses the implementation of notary administration.

These three regulations provide an administrative and procedural foundation that can be developed and adapted in implementing *a cyber notary*.

Thus, *cyber notaries* in Indonesia can be carried out throughout the notary digitization process while upholding applicable legal principles, and supported by technology that guarantees:

- verification of valid identity,
- data security,
- integrity of documents,
- and legal protection for all parties involved.

The implementation of *cyber notaries* is a response to the growing legal needs in the digital era, especially to accommodate electronic transactions. However, until now, electronic notary services have not been explicitly regulated in the body of the Notary Position Law (UUJN), although there have been efforts to include them in the revision of the law.

In the **Amendment to the UUJN, Article 15, paragraph (3)** states that:

"Notaries have other powers regulated in laws and regulations."

The article's explanation expands the understanding that these "other authorities" **include the authority to certify electronic transactions**, or what is now known as *a cyber notary*. However, using "certification" in this context is often considered inappropriate. This is because **what notaries do in electronic transactions is not just certification. It provides legal reinforcement** to transactions carried out digitally, so that they can be recognized and legally valid.

One form of this strengthening is time *stamping*, which records official time for an electronic transaction carried out by the parties. *This time stamp* is essential proof that an event or agreement occurred at a particular time and was legally verified by a notary.

Conventionally, notaries strengthen the law by ratifying signatures in documents, which has also become part of the notary's authority as stipulated in the UUJN. With digitalization, this attestation practice has transformed into **the use of electronic signatures accompanied by technology-based authentication and validation systems**.

In this context, *cyber notaries* not only act as neutral witnesses, but also as parties responsible for **binding digital documents to the time, identity, and truth of substance**, so as to be able to provide **the same evidentiary force as authentic deeds** before the law.

Thus, although it has not been explicitly contained in a separate article, the practice of *cyber notary* has gained **legal legitimacy through a systematic and teleological interpretation** of Article 15 paragraph (3) of the UUJN and its explanation. This legitimacy is then strengthened by the existence of derivative technical regulations such as Permenkumham No. 21 of 2021 and synchronization with the ITE Law<sup>12</sup>

In addition to having the authority to make authentic deeds, **notaries also play the role of a party authorized by the community** to carry out various legal functions, such as **the formation of a Limited Liability Company (PT)**, fiduciary management, to inheritance and grant statements. In the implementation of these tasks, the role of the notary **is crucial to ensure the validity and legal force of the documents** made.

Currently, **the process of forming a PT has used an electronic system**, as facilitated through the **AHU Online application** by the Ministry of Law and Human Rights. The Decree (SK) of the establishment of a university issued by the Minister of Law and Human Rights is also issued electronically. But in practice, **notaries face obstacles**, especially in terms of:

- **Electronic storage of Decrees** that are not integrated with the notary documentation system;
- **Doubts about the legal validity** of electronic decrees by some parties, especially in the context of proof in court or other legal proceedings;
- There is no standard regarding the mechanism of digital attestation or filing that guarantees **equivalence with authentic written deeds**.

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<sup>12</sup> Law No. 2 of 2014

This raises concerns and uncertainties, so a **procedural reference and electronic system are needed that are able to ensure the creation, storage, and use of electronic documents** with a *level of security and authentication equivalent* to physical deeds.

The problem is even more complex when **some circles consider the Article 16 letter c amendment to the Law on Notary Positions (UUJN) as a step backward in recognizing electronic documents**. In the article, it is stated that:

*The audience must attach letters, documents, and fingerprints to the Minutes of the Act.*

This provision creates a **normative contradiction** with the spirit of digitalization contained in the ITE Law and Permenkumham No. 21 of 2021. **The need to physically attach fingerprints** has the potential to hinder the validity of electronic documents made using **electronic signatures**, even though electronic signatures have been recognized as valid as long as they meet the requirements of the ITE Law.

This condition raises doubts about **the authenticity of electronic certificates**, because fingerprints as an element of physical identity verification cannot be applied directly in digital media without legally recognized biometric technology innovations.

Therefore, it is necessary to do:

- **Regulatory reconciliation** between changes to the Law and other laws and regulations that are more adaptive to digitalization;
- **Development of digital identification and authentication systems that can replace physical functions such as fingerprints**, for example with **digital biometric technology, digital certificates**, and the use of **blockchain-based timestamping**;
- **The preparation of national cyber notary technical guidelines (SOPs )** that guarantee the integrity and legal force of electronic documents, especially those related to public services such as the establishment of PT.

Thus, cyber notaries can still carry out their important functions in the legal realm without violating the UUJN-regulated principles of formality and validity of authentic deeds.

The concept of cyber notary is often misunderstood as the process of making a complete deed through online media such as teleconferencing or webcam, when in reality, this is not the case. As stated by Edmon Makarim, the working principle of cyber notaries is not much different from conventional notaries because the parties are still physically present and face-to-face with the notary. The main difference lies in using digital media in the process, where the parties read the

draft deed through a computer and sign it electronically at the notary's office. Thus, cyber notary is not a complete virtualization, but a digitalization of the notary process that still maintains the principle of physical presence as a form of legal prudence. Even in other countries that have advanced in the use of legal technology, the method of creating deeds entirely via webcam has not yet become a prevalent practice as there are still concerns regarding the validity of identity and the security of electronic transactions<sup>13</sup>

If the relationship is examined based on the analysis of the previous descriptions, and by referring to the Explanation of Article 15 paragraph (3) of the Amendment to the Law which functions as the official interpretation of the formation of Laws and Regulations on certain norms in the body of the Amendment to the Law, it can be concluded that the concept of cyber notary that has been accommodated today is in the context of the notary's authority to print and legalize letters and/or print certificates printed through the system Directorate General of General Legal Administration (AHU) online. This means that although it has not fully regulated the mechanism for making deeds digitally with complete electronic procedures, this form of authority is already part of the first step in legalizing digital notary activities that remain within the corridor of applicable regulations.<sup>14</sup>

The forms of application of the concept of cyber notary in Indonesia became clearer after the promulgation of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (Amendment to the UUJN), which indirectly regulates the authority to certify transactions carried out electronically. Although it is not explicitly included in the body of the law, this authority is contained in the Explanation of Article 15 paragraph (3) which states that notaries have other powers regulated in laws and regulations, including the authority to certify transactions carried out electronically (cyber notary), make waqf pledge deeds, and aircraft mortgages. This shows that the existence of cyber notaries has begun to gain legal legitimacy, although their implementation still requires further comprehensive and technical regulation.

Regarding the problem of opinions about cyber notaries in Indonesia, the conception of progressive law can answer the pros and cons that arise. Progressive law, which Satjipto Rahardjo initiated, emphasizes the importance of a law that lives and develops according to the needs of society, not the other way around. In this context, the law is not positioned as something rigid and

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<sup>13</sup> Ibid

<sup>14</sup> Directorate General of AHU online

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closed, but must be open, adaptive, and responsive to the times, including the advancement of information technology. With this approach, notaries are encouraged to implement flexible and progressive legal methods, so that they can provide convenience and happiness for the community in obtaining authentic deed making services. The concept of progressive law invites notaries to understand social reality more deeply and prioritize the substance of justice over formal procedures, so that cyber notaries can be seen as an effort to bring the law closer to the real needs of society in the digital era <sup>15</sup>

The provisions in Article 15 paragraph (3) of Law Number 2 of 2014 concerning the Notary Position are sufficient to be the initial legal basis for the implementation of cyber notary in Indonesia. Although the law does not explicitly explain the definition of cyber notary, its application by notaries reflects the progressiveness of the law that prioritizes public services that are adaptive to the times. In this case, notaries as public officials not only adhere to the provisions of written law in a formalistic manner, but also use the morals and integrity of their profession to provide convenience to the community, especially in facing the challenges of the digital era. Referring to progressive legal principles, the provisions of Article 15 paragraph (3) contain a responsive and dynamic dimension to social and technological changes. This indicates that the authority of cyber notaries is a concrete form of legal flexibility that is oriented to the needs of the community, as well as a concrete step in reforming legal services to be more inclusive, efficient, and relevant in the midst of digital developments.

The making of an authentic deed as stipulated in Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning the Notary Position emphasizes that in the process of making a deed, the parties (presenters) and notaries are obliged to face each other directly. This provision aims to ensure the validity and authenticity of the deed made, by requiring the deed to be read in front of the audience and witnessed by at least two witnesses, or four witnesses specifically for the making of the will under hand. The signing of the deed must also be done at that time by the witnesses, witnesses, and notaries as a form of direct verification of the truth of the content and identity of the parties. This provision is a challenge in the implementation of cyber notary because the principle of physical face-to-face has not been fully accommodated through the digital system,

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<sup>15</sup> Rahardjo, Jakarta Progress Law : Kompas, 2006  
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so further regulation is needed that can adjust the principle of notarial legal formality with the legal and responsible use of information technology<sup>16</sup>

Thus, the provisions in Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning the Notary Position can be interpreted progressively that the obligation to face each other and read the deed does not always have to be done physically in one place, but can be done through the use of communication technology such as Zoom or Microsoft Teams. The use of electronic technology reflects a response to the development of people's aspirations and needs for convenience and efficiency in legal services. The progressive legal approach encourages notaries to not only stick to the legal text rigidly, but also to consider moral logic and evolving social realities. Thus, the use of technology as a media of face-to-face and the reading of deeds can be a form of modernization of notary services without ignoring the principles of validity and legal protection for the parties<sup>17</sup>

However, in the implementation of the creation of deeds, storage, and use of electronic signatures, Notaries must still have or cooperate with electronic signature service providers and document storage systems that have been registered in accordance with the provisions of Law Number 1 of 2024 concerning Electronic Information and Transactions. This is important to ensure that the implementation of Cyber Notary is able to provide guarantees for the protection of personal data and the legal interests of the parties involved in the transaction. With the fulfillment of all these formal and technical requirements, authentic deeds produced through the Cyber Notary mechanism can be a tangible embodiment of progressive legal principles, namely laws that are present to the community, are adaptive to technological developments, and ensure convenience and justice in legal services.

### **The Effectiveness of Cyber Notary Implementation Opportunities in the Legal System in Indonesia in the Digital Era**

This means that although in practice notary services in Indonesia are still traditional—where the notary and the parties (witnesses) must meet face-to-face – in the current era of digitalization, the generation that is familiar with the development of information technology is required to understand and utilize it, including in the legal realm. This opens up space for the

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<sup>16</sup> Law No. 2 of 2014

<sup>17</sup> Ibid

implementation of information technology-based notary services known as *cyber notary*. The term *cyber notary* itself refers to the use of information technology by notaries in carrying out notary duties, such as digitizing documents, signing authentic deeds electronically, to the use of teleconference media in the implementation of the General Meeting of Shareholders (GMS). Thus, *cyber notaries* are a representation of the modernization of legal services that are more adaptive and efficient.<sup>18</sup>

In Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN), the concept of *cyber notary* has indeed been implicitly mentioned in Article 15 paragraph (3) which states that notaries have other authorities stipulated by laws and regulations, including electronic transaction certification. However, this provision has not comprehensively regulated the application of *cyber notary*, especially in the aspect of drafting a full deed. This is the main subject of study that shows that *cyber notary* in Indonesia has not been fully implemented in the legal service system, because there is no comprehensive regulation that regulates all implementation mechanisms. In fact, the preparation of deeds through electronic media has great potential in reducing costs, speeding up the process, and saving time. Through video conferencing, the notary and the parties do not need to be physically present, it is enough to use their respective computers to communicate with each other and read the deed, so that efficiency increases significantly. If previously the creation of conventional deeds such as sale and purchase deeds could take up to one month, then through the electronic system the process can be much faster because the required documents can be directly uploaded to the official website or database for further processing. Therefore, *cyber notaries* have great potential in providing benefits to the community, especially in improving the validity of fast, efficient, and modern notary services.

Cyber notary is closely related to the concept of bureaucratic digitalization, which is a series of efforts to change towards a bureaucratic system that is more efficient, effective, and responsive to the times. Bureaucratic digitalization itself is part of the government's strategic steps in realizing *good governance*, as stated by the Coordinating Ministry for PMK RI, which includes updating the government administration system based on the principles of governance, institutions, and strengthening the human resources of the apparatus. In this context, cyber notary functions as a notary innovation that is in line with the main values of bureaucratic digitalization, namely

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<sup>18</sup> Respati Nadia Putri, 2017. The Concept of Cyber Notary in Changes to the Law on Notary Positions as a Result of National Legislation Programs  
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innovation, collaboration, and the use of information and communication technology (ICT). Cyber notary is the result of collaboration between the government and the Indonesian Notary Association (INI) in responding to the public's need for faster and more efficient public services through the digitization of notary work processes such as authentication, storage, and electronic legalization of documents. The presence of cyber notaries not only reflects the application of technology in the legal field, but also strengthens the principles of good governance in the realm of notary. Bureaucratic digitalization involving the Ministry of Law and Human Rights and the active role of notaries in the use of technology will create a modern, transparent, and accountable legal service ecosystem. This is in line with the view of R. Siti Zuhro (2012) that the effectiveness of bureaucracy and public services will have a direct impact on the success of development. Therefore, the development and sustainability of the implementation of cyber notary in Indonesia is important as part of efforts to improve the efficiency, effectiveness, and responsiveness of the bureaucratic system in supporting the advancement of technology-based legal services.

The implementation of cyber notary, when linked to the principle of legal certainty, requires a firm and general arrangement in order to provide a clear understanding of what actions are allowed or prohibited in digital-based notary practice. Legal certainty is an important element in the functioning of a legal system, including in the context of cyber notary. Therefore, the study and application of cyber notaries should have a firm legal basis in the Law on Notary Positions (UUJN), so that notaries have clear guidelines regarding the extent of their authority in applying information technology in notary practice. That way, notaries can find out whether their actions in the implementation of cyber notary are in accordance with the regulated authority and understand the limits in achieving the main goal, namely the preparation of an authentic deed that is legally valid. Clarity on the meaning and scope of "cyber notary" is urgently needed, so as not to cause legal confusion in the future and to ensure that digital innovations in the field of notary remain within the legal corridor that applies <sup>19</sup>Article 15 Paragraph (3) of the UUJN, namely the certification of deeds in the study of the authority of notaries as public officials.

The transfer of data storage electronically can only be considered as a form of backup, not as a copy that has binding legal force. Normatively, the opportunity to prepare the deed of results of the General Meeting of Shareholders (GMS) as stipulated in the Limited Liability Company Law (UUPT), as well as the storage of notary protocols in electronic form, has actually opened up

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<sup>19</sup> UUJN, Article 15 Paragraph (3)

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in line with technological advances. However, the main challenge in the implementation of *cyber notaries* lies in the limits of the notary's authority in the preparation of deeds, as stipulated in Article 16 paragraph (1) letter m of the Law on Notary Positions (UUJN), which requires notaries to be physically present and sign the deed in front of witnesses and witnesses.

The meaning of "physically" is then the main obstacle in the development of cyber notaries. The preparation of deeds that is carried out remotely and digitally is actually contrary to the provisions of physical attendance. This is where the *conflict of norms* occurs between the obligations and authority of the notary. If the notary does not carry out these provisions, then the power of proof of the resulting deed will only be considered as a deed under hand, in accordance with Article 16 paragraph (9) of the UUJN. This has serious implications, because notaries can be subject to civil sanctions in the form of compensation, compensation, and interest if the deed made becomes legally defective and does not have authentic force.

Conceptually, cyber notary in Indonesia is still not fully implemented and is only limited to discourse, considering that its normative arrangements still refer to the conventional system based on paper documents and physical presence. Although Article 15 paragraph (3) of the Law has opened up space for the practice of cyber notaries by authorizing notaries to certify electronic transactions, the overall implementation is still hampered due to the lack of a comprehensive legal framework.

In the context of future law, cyber notaries have the potential to be a means of support in the implementation of notary duties in the era of digitalization. Notary activities in the future can be carried out through personal computerized systems, internet networks, and the use of electronic documents that have authentic evidentiary power. The concept of cyber notary, in line with technological developments, demands legal reform as expressed by Roscoe Pound, that law *is a tool of social engineering*, as stated in *An Introduction to the Philosophy of Law* (1954).

To provide a solid legal basis for the implementation of cyber notary, regulatory updates are needed, especially to the Notary Position Law, Article 1868 of the Civil Code, and Article 5 paragraph (4) b of the Electronic Information and Transaction Law (ITE). With the reform of these provisions, the implementation of cyber notary in Indonesia will be able to ensure legal certainty, utility, and overall legal order

### **Legal challenges and opportunities faced by the cyber notary system in Indonesia**

The implementation of *cyber notary* in Indonesia is a progressive step in efforts to modernize notary services. However, its implementation is still faced with quite complex legal challenges. One of the main issues that emerged was the lack of clear and comprehensive regulations regarding the legal status of digital documents legalized by notaries.

Although Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position has provided a legal basis for the implementation of *cyber notary*, various studies show that the lack of clarity in its definition and implementation procedures is the main obstacle. This uncertainty has the potential to raise legal doubts, both for notaries as public officials, and for parties involved in electronic-based transactions. Without strong legal certainty, the sustainability and legitimacy of *cyber notary* services in Indonesia will be difficult to implement comprehensively and effectively<sup>20</sup>

In addition to legal challenges, the implementation of *cyber notary* in Indonesia is also faced with technical obstacles that are no less significant. One of them is the inequality of technological infrastructure in various regions of Indonesia. Limited uneven internet access, low network quality, and lack of adequate digital equipment are serious obstacles in realizing a digital-based notary system. In addition, digital security systems that are not optimal increase the risk of *cyber security* threats that can endanger the integrity and validity of electronically processed documents.

Some studies suggest that improving security systems and providing ongoing training for notaries are important steps for them to be able to adapt to evolving technology. In this context, strengthening technical capacity needs to be accompanied by adequate regulatory readiness.

The legality aspect is also a major concern in *the cyber notary discourse*. Although digital technology is developing rapidly, the legal framework in Indonesia has not been fully able to accommodate this transformation. The lack of regulatory clarity regarding the procedures and legal validity of documents generated through *cyber notaries* raises doubts among notaries to adopt this system comprehensively. Therefore, regulatory reforms that are more adaptive to technological developments are needed, including revisions to the Notary Position Law (UUJN), the Civil Code (KUHPperdata), and harmonization with the Information and Electronic Transactions Law (ITE Law).

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<sup>20</sup> Anindita Prameswari "Legal Challenges and Opportunities for the Implementation of Cyber Notaries in the Era of Digital Transformation" (2024)  
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In addition, the protection of personal data is a very crucial challenge in the implementation of *cyber notary*. The use of digital systems will automatically store various important documents in electronic form, thereby increasing the risk of data leakage. The newly passed Personal Data Protection Law (PDP Law) regulates how personal data should be managed and protected, but the implementation and oversight of compliance with these regulations is still a major challenge that requires serious attention from the government and relevant agencies.

The absence of special provisions that explicitly regulate *cyber notaries* also creates legal uncertainty. Clear, firm, and detailed regulations are needed to ensure legal certainty and protection for all parties involved in digital transactions involving notaries.

Finally, another challenge that is no less important is building public trust in the *cyber notary* system. The public needs to be convinced that digital-based notary services have the same level of security and reliability, even better than conventional systems. Therefore, education and socialization about the benefits and security guarantees of *cyber notaries* must be carried out massively and in a structured manner. With the increase in public trust, the implementation of *cyber notary* can run more smoothly and provide optimal benefits for the community.

Along with the rapid development of technology, these various challenges must be responded to with an adaptive, innovative, and responsive legal approach to the needs of the times.

The Cyber Notary arrangement has been regulated at a glance in Article <sup>21</sup> 15 Paragraph 3 of the UUJN which states the authority of notaries to carry out certification online, but obstacles also arise in the UUJN itself, namely in Article 16 Paragraph 1 Letter c of the UUJN, namely "attaching letters and documents as well as face fingerprints to the Minuta deed", the article explains that the attendees are required to provide their fingerprints on the Minuta deed as valid evidence and understanding of the content of such an agreement. The purpose of the restriction of authority is that the parties are obliged to provide a fingerprint on the minutes of the deed, so that the need for direct physical presence is contrary to the concept of Cyber Notary. The existence of a deed minuta also poses a challenge for regulations in Indonesia because there is no law and regulations including the UUJN that regulates the mechanism of electronic storage of notary deeds as a measure to anticipate events such as damage or loss of a deed which is an authentic letter evidence

The second obstacle to authority is contained in Article 16 Paragraph 1 Letter m of the UUJN which reads "reading the Deed in front of the audience in the presence of at least 2 (two)

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<sup>21</sup> Ibid

witnesses, or 4 (four) witnesses specifically for the Will Deed under hand, and signed at the same time by the witness, witness, and Notary", in the sense of the word "facing" in the content of the article, namely a face-to-face meeting and which means also in the same place at the time of the that. This provision reflects the principle of the obligation to be physically present as the main element in the notary service process. With the development of digital technology, this interpretation has begun to expand to consider the use of technology as a supporting tool in fulfilling these obligations<sup>22</sup> The article also means that notaries are required to be present in person and open the signature of authentic deeds in front of the audience and witnesses (Wardhani & Musyafah, 2023: 580). The explanation of "facing" and the mandatory attachment of fingerprints to the Minuta deed, so that it requires physical presence is what will cause problems in the application of the concept of Cyber Notary, because the concept is part of technological advances that bring together two or more parties in each place by using a device that emits sound and displays a real image, so that the shape of the face, voice, and real state can be seen.

The various restrictions of authority contained in the concept *of cyber notary* are indeed one of the inhibiting factors in its implementation, especially if it is associated with Article 15 paragraph (3) of Law Number 2 of 2014 concerning the Notary Position (UUJN). Although these provisions provide their own legal basis, their application often clashes with other norms that support each other and are mutually binding. This disharmony creates unclear interpretation in practice, making it difficult for notaries to carry out digital functions legally and fully in the eyes of the law.

However, in the Indonesian legal system, there are actually other regulations that can function as a *supporting component* or *complementary foundation* in accommodating the practice of *cyber notary*. One of these provisions is Article 11 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law). This article regulates the *requirements for the validity of electronic signatures*, which basically provide legality for electronic documents as long as they meet the criteria of authenticity and data integrity.

Thus, Article 11 of the ITE Law can be positioned as a loophole or normative opportunity to support the legitimacy of *cyber notary* practices. This provision can be used as a foothold in

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<sup>22</sup> Subekti, 2008. *Covenant Law*. Jakarta: PT.

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expanding the meaning of "endorsement" by notaries not only limited to physical documents, but can also include electronic documents as long as they are legally signed and meet the applicable legal provisions.

Collaboration between the UUJN and the ITE Law is very important in an effort to build a legal framework that is synchronous and responsive to information technology developments. The harmonization between these regulations is expected to encourage the creation of a strong and progressive legal foundation for the implementation of *cyber notaries* in Indonesia.<sup>23</sup> Article 11 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) expressly provides legitimacy for the use of electronic signatures (*digital signatures*). In this provision, it is explained that electronic signatures have legal force and legal consequences, as long as they meet the terms and conditions stipulated in laws and regulations. This shows that the state has recognized the validity of electronic signatures as a means of authentication and identity verification in electronic transactions.

The implications for the concept of *cyber notary* are very significant. With the legal recognition of electronic signatures, the necessity of the physical presence of the parties in the deed signing process can be waived. The parties are no longer required to be present in person before a notary to sign the deed, as the process can be done digitally while maintaining the evidentiary strength equivalent to an authentic deed.

Based on Article 11 of the ITE Law, electronic documents that have been digitally signed by related parties have the same legal force as documents signed manually in front of public officials. This means that as long as the electronic signature process meets the standards of security, authenticity, and integrity as specified in the provisions of the law, there is no difference in terms of evidentiary strength with conventional authentic deeds.

This provision provides a great opportunity for the implementation of *cyber notary* in Indonesia, because it can answer the challenges of notary practice in the digital era. However, even though the recognition of electronic signatures is normatively clear, strengthening of technical arrangements, supervision mechanisms, and harmonization with the provisions in the UUJN is still necessary so that there is no *conflict of norm* that can cause legal uncertainty in its application <sup>24</sup> .

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<sup>23</sup> ITE Law Article 11

<sup>24</sup> Saraswati, Amelia Intan. Syabana, Alde E., Moselle S., Gracia Ravina, Farenia, Nabila M., 2023. "The Applicability of Electronic Signatures on State Documents".

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## CONCLUSION

Application *Cyber Notary* in Indonesia is currently still in its early stages and faces various challenges that are quite complex. Although Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position has provided space for the use of technology in the practice of notary, the regulations specifically and in detail regulate the *Cyber Notary* still not available. One of the most significant challenges is the lack of legal certainty regarding the authenticity of deeds made electronically. This raises doubts about the legality and evidentiary power of deeds produced through digital mechanisms.

The concept of *Cyber Notary* itself comes from the *common law legal system* which has a different structure and function of notaries from the legal system in Indonesia which adheres to *civil law*. Therefore, the application of this concept cannot be done raw without adaptation in accordance with the national legal context.

Nonetheless, *Cyber Notary* holds great potential in improving the efficiency and effectiveness of notary services. The use of technology allows notaries to reach clients from different locations, speed up the process of administration and document creation, and improve data security and integrity.

Thus, more comprehensive, adaptive, and structured regulations are needed so that the implementation of *Cyber Notary* in Indonesia can run optimally. Clear regulations will provide legal certainty for notaries and service users, as well as pave the way to a more inclusive and efficient modernization of notary services in the digital era.

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