

## Problems of Implementing Cyber Notary in Notarial Deeds in Indonesia

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**Abstract.** *This article reviews the implementation of Cyber Notary in Indonesia. Cyber Notary is a concept that integrates the authority of a Notary with information technology. The use of technology in notarial services in Indonesia has not been optimized. Article 15 paragraph (3) of Law No. 2 of 2014, which amends Law No. 30 of 2004 concerning the Position of Notary, stipulates that Cyber Notary only applies to the certification of transactions between a notary and the relevant party, without covering the authority of a Notary as a whole. A Notary is a public official who has a role in carrying out legal acts in accordance with Law No. 2 of 2014 concerning the Position of Notary. Notaries adapt and follow the changing times to carry out their positions, the goal is for Notaries to be able and able to face global challenges and competition. Cyber Notary can facilitate and accelerate the performance of Notaries in the future. The use of an electronic digital system in Cyber Notary is expected to make better and more effective changes in the world of Notaries. Regarding the authority of Notaries to make deeds electronically, it is clearly an obstacle for Notaries. Despite its problems, Cyber Notary certainly has opportunities that can be used in Indonesia. To improve the quality of public services with technology in the notary field effectively and better, rapid improvements in the quality of technology are needed in this digital era. Therefore, the author recommends the adoption of the Cyber Notary concept in changing notary law. However, Indonesia has not been able to fully adopt this concept due to differences in authority and verification systems between common law countries and civil law systems in Indonesia. In addition, effective regulatory changes are needed in the process of changing notary law because there are still many regulations governing the authority of Notaries.*

**Keywords:** *Cyber; Deed; Digitalization; Notarial.*

## 1. Introduction

Due to the rapid development of information systems and technology, the legal aspect of Indonesia is currently having a major impact. One of the areas affected is the Notary's office, where the Notary is tasked with creating unique works that answer the needs of the community's civil rights. Basic things like legal documents depend on technological developments. Thanks to these developments, Notaries can now use information systems and technologies called electronic Notaries or e-notaries in their work. In the era of Industry 4.0, electronic services have begun to emerge in the field of documents, and information technology has begun to influence business.<sup>1</sup>

More modern and progressive developments have led from the Industrial Revolution 4.0 (four zeros) to the Social Revolution 5.0 (five zeros). Society 5.0 (five zeros) is a human-centered approach that balances technological advances in solving social problems with Internet-connected systems and real-world scenarios.

The goal of the social revolution is to create a society where people can enjoy life. Technological advancement is available to everyone, not just a select few. Although Society 5.0 started in Japan, its goal is not limited to that country alone, but to all countries. The development of the era gradually encourages development in other areas such as economic, cultural, social and legal aspects along with development.<sup>2</sup>

The development of technology in Indonesia currently follows the development of the legal side, namely Law No. 11 November 2008 concerning what is also known as the Information Technology Law. The 2008 Electronic Information and Transactions Law. Related to this, the ITE Law regulates the flow of information in existing technology such as the Internet, as well as legal regulations related to the use of electronic media.

According to the United Nations e-Government Development Index (EGDI) study in 2020, the implementation of e-Government in Indonesia, or abbreviated as SPBE, is ranked 88th out of 193 middle-income countries. This shows that public services, infrastructure development, and human resource skills in Indonesia have adapted well to digitalization and are still developing.<sup>3</sup> For example, neighboring countries such as Malaysia, which is ranked 47th out of 193 countries, and Singapore, which is ranked 11th in average income.<sup>4</sup>

Regarding the industrial revolution as an intellectual human resource 4.0, we must immediately carry out new innovations in social services and apply information and

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<sup>1</sup>Nola, L. F. (2011). Peluang Penerapan Cyber Notary Dalam Peraturan Perundang-Undangan Di Indonesia. *Negara Hukum*, 2(1), 75–102

<sup>2</sup>Hendarsyah, D. (2019). E-Commerce Di Era Industri 4.0 Dan Society 5.0. *Iqtishaduna: Jurnal Ilmiah Ekonomi Kita*, Vol. 8, (No. 2), p.171-184. <https://doi.org/10.46367/iqtishaduna.v8i2.170>.

<sup>3</sup>United Nations (Department of Economic and Social Affairs), *E-Government Survey 2020*, (New York: United Nations, 2020), p. 261.

<sup>4</sup>United Nations (Department of Economic and Social Affairs), *Op. Cit.*, p. 264.

communication technology (ICT).<sup>5</sup>based on social services. This is more effective in accordance with human development. According to Hidayningrat, when talking about the definition of public services in Suwon 2001, public services are defined as a service offered to contribute to society by prioritizing the needs of efficiency, effectiveness and economy.<sup>6</sup>

In order to implement fundamental reforms and changes related to public services to be more efficient, the search for new innovations in areas that have developed involves bureaucratic reform. Bureaucratic reform is a process of radical change to the desired state and situation as a response to the current bureaucratic situation and demands for reform. As stated on the official website of the Ministry of State Apparatus Empowerment and Bureaucratic Reform, in connection with environmental changes and the rapid development of science and ICT, the state bureaucracy requires rapid reform to meet the needs of social mobility.<sup>7</sup>

In practice, there are two types of public service provision, namely public service and non-public service. However, this kind of free service is closely related to the provisions of public services and laws, because the rights and work, as well as the services of Notaries, are clearly regulated in the Law. Notaries or public officials are people who are authorized by Law to carry out official functions. The provisions of the Law on the duties and rights of Notaries are contained in UUJN Number 30 of 2004 Article 1 concerning their authority in requiring the creation of official deeds for the sake of legal certainty and security.<sup>8</sup>

In practice, Notary services in Indonesia are traditional, meaning that all interactions between Notaries and contractors are carried out face-to-face. In the current era of the industrial revolution 4.0, the generation facing digital transformation generally plays an important role in the development of community technology. In the legal life of the event, Notary services based on information technology can be implemented, namely those called cyber notaries. The concept of Cyber Notary includes improving information technology for notaries, digitizing all documents, electronic signatures on all official deeds, using teleconferencing in general meetings of shareholders (GMS) to

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<sup>5</sup>Irfan Setiawan, "Pengembangan Teknologi Informasi dan Komunikasi Dalam Menghadapi Era Revolusi Industri 4.0 Di Kota Pontianak", *Jurnal Teknologi dan Komunikasi Pemerintahan*, Vol. 1 No. 1, October 2019, p. 3.

<sup>6</sup>Rizky Hersya Pratama, Abdul Hakim, Muhammad Shobaruddin, "Pelayanan Publik Berbasis Teknologi Informasi dan Komunikasi (TIK), Elektronik Rukun Tetangga/Rukun Warga (e-RT/RW) (Studi e- Government di Kelurahan Ketintang Kecamatan Gayungan Pemerintah Kota Surabaya)", *Jurnal Administrasi Publik (JAP)*, Vol. 3 No. 12 , p. 2129.

<sup>7</sup>Yusriadi, Misnawati, "Reformasi Birokrasi Dalam Pelayanan Publik (Studi Pelayanan Terpadu Satu Pintu)", *Jurnal Ilmiah Ilmu Administrasi Publik*, Vol. 7 No. 2, July – Desember 2017, p. 100

<sup>8</sup>Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi, "Reformasi Birokrasi", <https://www.menpan.go.id/site/reformasi-birokrasi/makna-dan-tujuan>

carry out Notary work.<sup>9</sup>

Seeing the clarity of the Article above, the meeting can be conducted by video conference, and the Notary is there to explain the article, then the minutes of the meeting are made, after the conference meeting is read via video, in Cyber terms, the Notary acts as a transaction, a video conference is held to read the document. However, in the case of provisions in the GMS only based on the PT Law, witnesses can only be examined via video conference.<sup>10</sup>

After the reading, the signing is carried out. Based on Article 44 paragraph (1) UUJN, the document states that: Immediately after the reading of the deed, the signatures of all exhibition participants, witnesses and Notaries are taken. Although the host cannot sign or provide an explanation. The duties of a Notary as referred to in Article 16 paragraph (1) letter (m) are as follows: Simultaneous signature means that the Notary immediately signs the deed after reading it. However, if the deed is signed electronically according to the Cyber Notary concept. If the Cyber Notary concept is used for signing, then electronic signing is also possible.

The development of information technology in Indonesia began rapidly in the 20th century. The first development of information technology in Indonesia was in the form of radio, while the first development of information technology in Indonesia was in the Netherlands, with the official establishment of Batavia Radio Vereeniging (BRV) in Batavia (Jakarta) on June 16, 1925, five years after the establishment of America, three years later England came to the Soviet Union. Continuing with television, on August 24, 1962 the first Indonesian television station TVRI was launched with the name Television of the Republic of Indonesia.<sup>11</sup>

TVRI, the Indonesian government television station, previously operated as several private television stations. Then in 1975, Indonesia's first satellite, the National Satellite Communication System (SKSD), was launched and completed in 1976 in the United States. The satellite was named Palapa A1. In addition, the progress we see today is computers and the Internet. Computer technology originated in Indonesia in the 1970s. In addition, the University of Indonesia was the first university in Indonesia to introduce computers.

As a result of the above, there are clear and detailed statutory regulations, which are not mutually agreed upon before the electronic statement is submitted to the general legal department, only then can it be truly implemented, and this applies to Cyber

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<sup>9</sup>Respati Nadia Putri, "Konsep Cyber Notary Dalam Perubahan Undang-Undang Jabatan Notaris Sebagai Hasil Program Legislasi Nasional", Tesis Magister, Fakultas Hukum Universitas Padjadjaran Bandung, 2017, p. 13

<sup>10</sup>Edmon Makarim, (2013), *Notaris dan Transaksi Elektronik; Kajian Hukum tentang Cyber Notary atau Electronic Notary*, Jakarta: PT Raja Grafindo Perkasa, p. 117

<sup>11</sup>Herianto Sinaga, "Tanggung Jawab Werda Notaris Terhadap Akta yang Dibuatnya", *Jurnal Premise Law*, Vol. 6, 2015, p. 1

Notary who also works. Based on the principle of competence, in this case the Notary has the right to act as an electronic Notary, but taxation does not have more definite rules, and there is only a brief explanation in the description of article 15 of the UUJN. So the concept of implementing an electronic Notary has many limitations that have not been developed. Therefore, this process is related to other laws and regulations, such as the ITE Law which regulates the use of technology, or the PT Law which regulates the use of video conferencing. There are also technological advances that we may experience in the near future in the form of 5G networks, such as the Internet, which facilitates various activities in using the Internet.<sup>12</sup>

In principle, the law must follow current developments. Now, if the law is considered irrelevant or unable to follow current developments, the law must be amended or modified. In essence, the law is a norm binding violence against people made by an official body or organization that enforces and punishes its violations, thus leading to the codification of the law when the law is no longer valid.

Currently, notaries can sign documents via video conference or virtual programs. Based on the Law "On Information and Electronic Transactions" dated November 11, 2008, Notaries gain significant benefits from the use of Internet technology, because document preparation becomes faster, easier, and more efficient. This digital process is spreading rapidly in various professions. Almost all jobs require computers to store business data, messages, electronic transactions, and other information technology. The development of information and communication technology, the internet affects the work and authority of Notaries. Currently, Notaries carry out their duties traditionally, namely meeting in person to register physical documents and submitting copies to interested parties.

However, even though Notaries have started using the Cyber Notary concept in real transactions, they still need to be witnesses. According to Article 16 paragraph 1 of the Law, Notaries are required to submit the deed to the interested party witnessed by at least two or three witnesses, especially if the personal will needs to be signed. By the interested parties, witnesses and Notaries at that time. Furthermore, Article 5 number 4 of the ITE Law excludes authentic electronic civil law deeds as evidence that can cause legal difficulties for Notaries in general administrative and criminal cases.

The definition of Article 15 of the Directorate General of Taxes refers to Cyber Notary, but in Articles 1 and 7 of the Directorate General of Taxes it is stated that certification is based on, with the fact that certification must be before a Notary, because the possibility of making a Cyber Notary, which is authenticated based on Cyber Notary is very low; Shareholder meetings and Notaries cannot be the Notary's workplace. Research always requires theory to support problem-based discussions and topic

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<sup>12</sup>Mardatila, ani. (2022). Perkembangan Teknologi Informasi di Indonesia, Patut Diketahui. Retrieved from <https://www.merdeka.com/sumut/perkembangan-teknologi-informasi-di-indonesia-kl.html>

writing. This theory can be used to analyze research. Theory-Based Research. or causes the event being investigated. The theory used in this study is the theory. The law of triangulation formulated by Gustav Rodberch is a theory based on the principle of utilitarianism. law, the principle of justice, the principle of legal trust and the principle of legal certainty, founded by lawyer Roscoe Pound. Social Engineering Tools (Law as a Social Engineer).<sup>13</sup>

The purpose of this post is to discuss the opportunities and obstacles of Cyber Notary in Indonesia. This era requires Notaries and future Notaries to develop rapidly. Several articles discuss the potential of Cyber Notary, including Habib Azi's study entitled "The Concept of Mayantara Notaries Facing Challenges". No physical or face-to-face contact is required, but the media can cross city, state, or country boundaries. Therefore, the requested documentation must be downloaded and filled out electronically, while the contract must be in paper form. Vidya Sujud Nadia's research on cybernotary legal power in the Indonesian legal system shows that the power of attorney based on electronic notary deeds presented in this study still does not have a strong legal basis, so that the Law still does not provide legal guarantees.

So, the notary who made the deed is out of it. Cybernotary can sue for costs, damages and interest. On the losing side. The obstacle in implementing cybernotary is the inconsistent rules regarding the right to receive documents made by cybernotary. Indonesia, especially Indonesia, is bound by Article 1868 of the Civil Code. Despite having limitations as a notary, cyber notaries still have options. Made in Indonesia. This may be a digital collection of notarial documents or public archives, because notarial documents are basically public archives.

A blog has two main components: authority and technology. Many systems allow and facilitate the use of information technology by notaries in carrying out their duties. The development of this technology will certainly include legal trust in Indonesian legal practice, including the use of the concept of cybernotary and the limitations of its use. To provide legal certainty to the public, we must research and examine various potential problems related to power of attorney.

(PUUJN) regarding the amendment to Law 30 concerning the Position of Notaries, Cybernotary are regulated in Article 15 paragraph (3) which states that Cybernotary only use Notaries and proof of transactions. but generally do not apply to public authority such as the implementation of duties. The concern is that cyber notaries in Indonesia are still not fully integrated into legal life, especially notary services, because there are no clear regulations to regulate cyber notaries as a whole.

## **2. Research Methods**

The nature of inheritance law in Indonesia needs to be reviewed and compared with

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<sup>13</sup>Salim, H. (2013). Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi. Jakarta: PT. Raja Grafindo Persada.

civil law in other countries, because other countries are more advanced than Indonesia in implementing notary procedure technology, such as Belgium and France which have made changes to their civil code. Legalizing the creation of official documents. Unfortunately, the revolutionary developments in the field of electronic notary services in Indonesia have not received much attention and have been ignored by the government. Therefore, to understand the importance of organizing notary services electronically, special attention is needed for various stakeholders. Therefore, this study is important to do because there are many advantages and disadvantages of adopting cybernotary by the people in Indonesia, as well as all the advantages and importance of adopting cybernotary in Indonesia in bureaucratic reform. has been discussed Efforts in Era 4.0, Survival and Justice - urging cyber bloggers to civil law countries, especially Belgium and France

### **3. Results and Discussion**

The development of technology provides great opportunities for society in many ways. The transition to the era of information technology 4.0 has given birth to new innovations in the field of public services. Digitalization of public services is an important component that can be easily integrated into service delivery to create technology services that prioritize efficiency, effectiveness, and economic needs. Public services in the field of notaries are generally provided and often do not use information technology. Therefore, the role of information technology in social technology can be implemented in legal life as a notary service called the concept of information technology or internet notary.<sup>14</sup>

Regarding the concept of cybernotary which was developed by several legal experts with the help of electronic media, as Edmond Makarim said, there are also those who compare with teleconferencing. The working principle of a cybernotary is not much different from a regular notary. Organizations are still emerging and facing notaries. However, the parties immediately read the deed on their respective computers, and after an agreement is reached, the parties immediately sign the deed electronically at the notary's office<sup>15</sup>. Therefore, the process is not done remotely with the help of a webcam, and the parties face the notary directly. If you use a webcam, other countries have not implemented this practice either.

The various advantages obtained from the implementation of cybernotary in Indonesia are influenced by various factors and disadvantages of society. The importance of electronic notarial deeds was demonstrated in 2004 at the 34th International Congress of Latin Notaries and discussed in the second working group which began with the approval and implementation of the main labor law<sup>16</sup>. This conversation. The ability to

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<sup>14</sup>Habib, A. (2017). View of Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global. Retrieved January 20, 2021, from *Jurnal Hukum Respublica*

<sup>15</sup>Nadia, W. S. (2019). Kekuatan Hukum Cyber Notary Menurut Sistem Hukum Di Indonesia. *Jurnal Civil Law*, Vol. 1, (No 4).

<sup>16</sup>Ibid

surrender original documents electronically. This means that notaries must be ready to carry out rapid digital transformation in order to have a positive impact on various community needs in utilizing information technology. The role of a notary is to understand the use of information technology in managing various legal products.

The success of utilizing ICT through the concept of cybernotary in AHU e-governance encourages Notaries to use and utilize ICT, this system is a Legal Entity Management System (SABH) that has undergone many changes, the latest developments are the current conditions. Capacity, e.g. Service time that used to take days, can now be completed in minutes. With AHU Online Training, bureaucratic procedures are reduced because there is no need for meetings between service providers and service users to avoid opportunities for corruption, collusion, and nepotism. By prioritizing professional, fast, accurate, efficient, low-cost and lawless services, excellent service is created for the community to build good and clean governance. This will increase the effectiveness and efficiency of Notaries in providing accurate information to the public regarding their term of office, thus influencing the development of the business world and the national economy to improve people's welfare.

Different findings show that if certification bodies are still used traditionally, these services will be time consuming, complicated, and disproportionate to the challenges and opportunities available to HR. Physical documents such as certificates can be damaged, lost or falsified. Certification is carried out electronically using information technology based on the principles of rationality, legal certainty, choice of law, good faith and freedom to choose technology.<sup>17</sup>. Notary Law applied in Indonesia is a legal product that is not entirely based on modern civil law. This is reflected in the first part of the definition of UJN, where many laws and regulations governing UJN are still based on laws and regulations during the Dutch East Indies colonial period. I still don't know about the digital revolution and technological developments used by society<sup>18</sup>.

It is undeniable that notary services intend to utilize IT functions. The authenticity of electronic documents can be legally protected in court, for example with digital signatures, digitally protected documents, video conferencing at the time of the implementation of documents between the notary and the exponent. A digital signature is like a signature or document that is locked and its contents cannot be changed.

With an electronic signature, the parties involved use the same key to encrypt and decrypt the document, so that third parties or other parties involved in the document cannot access or manipulate the document or signature. Section 3 of Article 15 of the Internal Revenue Service defines "other organizations regulated by law," including the

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<sup>17</sup>R.A. Emma Nurita, *Cyber Notary; Pemahaman Awal dalam Konsep Pemikiran*, Bandung: Refika Aditama, 2012, p. 17

<sup>18</sup>Edmon Makarim, "Modernisasi Hukum Notaris Masa Depan: Kajian Hukum Terhadap Kemungkinan Cyber Notary di Indonesia", *Jurnal Hukum dan Pembangunan Tahun ke-41 No. 3*, July-September 2011, p. 493



authority to approve electronic transactions (cybernotary), execute pledges and pledges of endowments.

The legal basis is sufficient to strengthen the electronic power of attorney and notary power of attorney. Indonesia has a digital signature that can be verified using a secure digital certificate or PriVID service. Article 1 of the Tax Code 7 clearly defines that a notarial deed is made by a notary or with the participation of a notary. From the contents of the article, it can be concluded that the deed must be made officially with the participation of a notary and the parties. This has raised public debate regarding the introduction of cybernotary in Indonesia.

At the general meeting of the Indonesian Notaries Association (INI), Edman Makrim said that the participation or meeting of notaries and exhibition participants conducted through electronic or video conferences constituted a physical presence because the video conference was live. or alive. The parties concerned, the parties and the actual documents involved in the preparation of the official deed. Ricky Arif Goonan, Assistant Deputy for Information Security, Communication and Information Technology, said that technology has enabled notaries to enter the digital world and now we must be careful not to go cyber laptop In Indonesia<sup>19</sup>.

Alvisius, director of the INI Training Program, has a similar but not identical sentiment, saying that the phrase "physical presence" in the law is not always interpreted in the conservative sense that physical presence must be in the same place. But there is a party. Stakeholders should always be informed of the progress made and, if possible, inform via video conference. By using electronic notary, one can get many advantages and benefits. for example, the notary's task becomes faster and the time is shorter, only electronic documents are needed to make transactions as transactions/contracts, but the parties can transact without obstacles, costs and expenses. Costs can be lost Another important factor is the implementation of traditional civil services which are more efficient and effective than operations.

The law defines the duties of a notary to assist and protect people who need written or certified evidence in various circumstances, events or legal processes. Anyone who is appointed as Secretary must be willing and committed to public service. The author has the right to charge a fee for this service. The existence of a Notary, even if made by law, is meaningless if the community does not need it.

A deed is a signed document containing events that give rise to obligations and can be proven to be true in their entirety. The actual register is an official act of the ruler, with or without the support of interested parties, in accordance with relevant and established laws and regulations, and records what the interested parties request to be recorded in the nineteenth century. The actual log contains information that describes what was done or seen in front of the officer. The original document written by the

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<sup>19</sup>Qisthi Fauziyyah Sugianto, "Peluang dan Tantangan Calon Notaris Dalam Menghadapi Perkembangan Disrupsi Era Digital", *Jurnal Notarius*, Vol. 12 No. 2, 2019, p. 658.

author has legal force. Perfection means that when one party submits a notarial deed, the judge must accept and accept that what is written and recorded in the notarial deed is true. The opposite must be proven, so that the judge does not order additional evidence.

According to Article 1868 of the Civil Code, official duties are carried out according to law or before an authorized official. According to Articles 1870 and 1871 of the Civil Code, minutes have special evidentiary power: 1. External. 2. Sequentially; And 3. Material.

The powers of a notary are explained in article 15 of the UUJN and are described as follows:

1. Exit the actual instrument, confirm the instrument return date, save the instrument and send, copy and send the total amount of the instrument;
2. Checking the authenticity of the signature and determining the correct date of writing by recording it in a separate book;
3. Keep emails confidential by writing them down in a private book;
4. Make a copy of the original letter you have;
5. Check whether the image matches the original message;
6. Legal advice on draft documents;
7. Performance of work related to property;
8. Drafting auction protocols.

In addition to the Notary's powers that have been described above, the Notary has other powers in accordance with the laws and regulations that apply to him. In this context, it is explained in the rationale of Article 15 Section 3 of the Internal Revenue Service which states that other institutions regulated by law appoint institutions that are authorized to confirm electronic transactions (cybernotary), endowment mortgages, and aircraft. Cyber Notary is the latest concept in the UUJN<sup>20</sup>.

What is meant by Cyber Notary is a current term that authorizes a notary to carry out his official duties electronically, because he is the main intermediary in the implementation of notarial deeds, while previous deeds were written on paper and submitted electronically directly. Business can be served and carried out electronically (Internet). Cyber Notary is a new innovation that balances current technological developments. However, UUJN has followed all regulations related to Cyber Notary or

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<sup>20</sup>Part I General Explanation of the Republic of Indonesia Law Number 30 of 2004 Concerning the Position of Notary.

notary regulations in order to keep up with technological advances<sup>21</sup>.

Legal theory is basically a legal system that analyzes various aspects of legal phenomena individually or collectively from an interdisciplinary perspective as a theoretical concept. Legal theory in its practical development, the goal is to obtain a better picture and a clear picture of the object of law. The legal theory used by researchers in the study is as follows:

### 1. Theory of Authority

Power is defined by Ridwan HR as "all regulations related to the acquisition and implementation of state power in public legal affairs in state legal relations". In contrast to power, permission has a meaning that comes from state institution laws, which are all regulations related to the acquisition and use of state power by public legal subjects in community legal relations. Shakti is different from power, power (*vlast, gezag*) comes from formal power, the law of power, but power does not only include power but also a series of socio-legal actions. In addition, the scope of state power does not only include the right to make state decisions, but also the power to carry out official duties. The source of authority is based on three themes in public administration law: authority, delegation, and mandate<sup>22</sup>.

### 2. Legal certainty theory

According to Satgypto Raharjo, "Legal belief is the core of legal norms because it is the basis for the formation of legal norms, as well as the legal relationship of legal norms." The rule of law is the supremacy of law as the legal basis, truth and justice in every political action taken by the government. Legal guardianship can be interpreted as a regulation that is designed and adopted and then enacted and announced because it regulates it clearly and firmly. Of course, this is a clear and definite situation in terms of rules or regulations. The law must be binding and fair. The code of ethics can be a clear and concise guideline for behavior because it must be evaluated properly and accurately. Only if the law is fair can the law be enforced with confidence and fulfill its function. Furthermore, legal certainty is a problem that can only be found in normative responses, not in sociology.<sup>23</sup>

Notaries are civil servants who are really needed by the community to provide assistance and services to parties who need written evidence that can be accounted for regarding facts, events or a case. If an official (Notary) acts outside his authority, then this is an abuse of authority. The use of cyber notebooks not only provides benefits but also creates a new world called cyberspace and raises various challenges<sup>24</sup>.

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<sup>21</sup>PrivyID, 2018, "Kesiapan Notaris Indonesia dalam Menyongsong Cyber Notary", <https://blog.privv.id/kesiapan-notaris-menyongsong-cyber-notary/>

<sup>22</sup>Ridwan, H. (2011). State Administrative Law. Jakarta: Rajawali Pers

<sup>23</sup>Ibid

<sup>24</sup>Syahrani, R. (2008). Rangkuman Intisari Ilmu Hukum. Bandung: Citra Aditya Bakti.

In Indonesia, legal development is often hampered, and the use of information technology brings many benefits to human life, but also gives rise to various legal problems. Many colonial laws are still in effect, and existing legal products have not been able to adapt to the rapid development of information technology. These laws reflect the history of technological development and legal efforts to control this technology. These official requirements must be complied with at all times. Failure to comply with these requirements may result in the legal revocation of the CA. Although Cyber Notary has been introduced in Indonesia based on the definition in Article 15 paragraph (3) of the Notary Law, there are currently no detailed regulations. The absence of legal regulations regarding electronic notaries hinders the development of the notary profession in accordance with the needs of the community. In accordance with the concept of cyber-notary, legal services provided through notary services require a clear legal framework to be a guideline for notaries in carrying out their duties and services in order to provide notary services that provide legal certainty for all parties.<sup>25</sup>.

Notarial Deed is a legal deed for parties known as cyber notaries in electronic notary services. Cyber Notary is a specialist in the field of law and computer technology. Real operations using this technology are difficult to implement in Indonesia.

According to Junita et al., it is still difficult to provide notary services with the concept of electronic deeds, because it does not fulfill the formal requirements for notary deeds according to the law.<sup>26</sup>:

1. The letter must be made by an authorized official (Article 15 of the Notary Law).
2. There must be an intermediary when making a deed (Article 16 paragraph 1 of the Law on Notary Services);
3. The parties, witnesses and notary must immediately read and sign the deed (Article 16 (1) (m) of the Notary Law);
4. The parties are obliged to know and convey it to the Notary (Article 39 of the Notary Law);
5. There must be at least two witnesses at the time the deed is executed (Article 40 of the Notary Law).

The complexity of implementing authentic transactions in electronic form is related to the duties of a notary as referred to in section 1 of Article 16 of the Law "On Notaries" which requires notaries to attach protocols to letters, documents and fingerprints. According to Article 16 paragraph 1 letter (m), at least two witnesses or four special witnesses must read the deed in front of the party submitting the deed, and the notary

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<sup>25</sup>Rato, D. (2010). *Filsafat Hukum Mencari Dan Memahami Hukum*. Yogyakarta: Laksabang Presindo

<sup>26</sup>Ibid

must immediately sign the deed; Leader, witnesses and documentary film. The obligation to provide fingerprints is intended to confirm the physical presence of the person and thus strengthen the validity of the guarantee agreement.

The Indonesian Notary Association is currently facing difficulties in accepting notarial deeds in electronic form. It is difficult for most notaries to implement this law, because the current laws and regulations do not contain clear and specific provisions. However, advances in digital technology, such as the concept of cyber notaries, promise such services. However, compliance with the law remains important and is more appreciated through the development of the notary profession to encourage the development of the notary profession. Creating a more efficient, fast and cost-effective service system is important for the community.

E-commerce can save costs. Virtual meetings via electronic video conferencing allow notaries and clients to review documents remotely, eliminating the need for travel costs and increasing time efficiency. Similar to real estate transactions, probate documents typically take about a month to complete. With electronic access, this process can be simplified and made more efficient, and records are stored securely and linked to a source database or website for tracking procedures. Cyber notaries provide important benefits to society by guaranteeing the authenticity of notarial deeds.<sup>27</sup>.

A notarial deed is an agreement between the parties (parties) that binds the signatories, thereby fulfilling the conditions for the validity of the contract. Conditions for the validity of an agreement according to Article 1320 of the Civil Code:

1. Subjective requests, e.g. requests relating to the subject matter of the agreement, which include the agreement of the parties and the possibility of continuing according to legal procedures;
2. Basic conditions, namely conditions related to the contract or the main contract, which contain certain contents and legal basis. The terms of the contract have certain legal consequences if not fulfilled. The legal consequence of not fulfilling the main terms of the contract is that the contract can be terminated at the request of a certain person, for example parents canceling a contract signed by a minor.

Moreover, if the basic conditions contained in the contract are not met, then the contract is considered invalid or no longer needed for both parties, because the contract did not exist from the start and has no binding force for the contractor. Or community representatives. The contractor's visit to the Notary is closely related to the fulfillment of the subjective conditions for the validity of the contract, especially the conditions for its acceptability. With the help of letters or letters issued by the court, the notary can determine whether the jurisdictional requirements in the trial exist.

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<sup>27</sup>Sitompul, J. (2012). *Cyberspace Cybercrimes Cyberlaw: Tinjauan Aspek Hukum Pidana*. Jakarta: Tatanusa.

Regarding the submission of documents or letters, Article 16 paragraph 1 letter c) of Law JN 2/2014 states that notaries are required to show documents and letters and fingerprints in carrying out their duties. The person is included in the legal list. Usually, to find out the competence of the speaker or speaker, the notary asks for his identity and proof of authority<sup>28</sup>.

The KTP can be verified with the Electronic Population Identity Card (KTP) for Indonesian citizens, Passport, Limited Stay Permit or Permanent Stay Permit (VNA) for Foreign Citizens, Birth Certificate (for some special legal procedures, such as inheritance), marriage book, family book. NPRZ (individuals and legal entities)) and other supporting documents. The power of attorney can be confirmed by the articles of association of the legal entity (if acting as a legitimate legal entity), power of attorney (in the case of acting based on a power of attorney), heir's certificate (in the case of heirs).

Official documents made officially require more time and cost compared to official documents made electronically. Generally, certificates contain incomplete and varied price details, such as contract implementation worth IDR 2,000,000, contract implementation worth IDR 4,000,000 and establishment of a PT, commercial contract implementation worth IDR 6,500,000, this is only limited to the cost of preparing the required documents, but does not include other costs such as transportation to various locations that require several visits to obtain the required documents. If the crime is committed electronically, the costs will be reduced<sup>29</sup>.

Meetings between notaries and deed makers have now been replaced by electronic video conferencing, where notaries and deed makers can use computers from their respective places without having to leave the house. This of course has an impact on time efficiency with the digital transformation, because everything becomes more efficient and saves time. The process of making a deed of sale and purchase file takes about a month like the traditional notary process. However, if the file is processed through electronic media, it will be more efficient and effective and the required files can be uploaded through the official website or the intended database, which can then be processed directly. Cyber notaries certainly bring many benefits to the community, especially notary services to carry out initial transaction verification<sup>30</sup>.

Discussion of criminal record provisions cannot be separated from criminal records. Notarial deeds are a collection of documents considered as government records that

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<sup>28</sup>Jodhi Restu, P., Suryadi, & Ayu E., (2021) "Analisis Kepastian Hukum Akta Terhadap Kewenangan Notaris Dalam Pelayanan Berbasis Elektronik (Cyber Notary)", *Student Online Journal*, 2(1).

<sup>29</sup>Rizky Hersya Pratama, Abdul Hakim, Muhammad Shobaruddin, "Pelayanan Publik Berbasis Teknologi Informasi dan Komunikasi (TIK), Elektronik Rukun Tetangga/Rukun Warga (e-RT/RW) (Studi e- Government di Kelurahan Ketintang Kecamatan Gayungan Pemerintah Kota Surabaya)", *Jurnal Administrasi Publik (JAP)*, Vol. 3 No. 12, p. 2129.

<sup>30</sup>Junita, F., Abdul Halim, B., & Djoni, S., G., (2022) "Kedudukan Hukum Akta Notaris Yang Menerapkan Konsep Cyber Notary di Masa Pandemi Covid-19 di Indonesia", *Notary Law Journal*, 3(1)

are prepared and maintained by a notary in accordance with the provisions of laws and regulations. The interpretation of Article 62 of Law JN 30/2004 states that one of the evidentiary records is a record of court decisions. Except for legal protocols, all other written protocols are in paper form. A book is a sheet of paper surrounded by text or spaces. Therefore, the duties of a notary as regulated in the Law JN are to prepare and store notarial records as part of the notarial records, as well as written records and all other notarial records in paper form. The records can be sewn into a cover or bound into a book.

In other words, the form is a physical/paper document and can be viewed physically. UUJN does not specify that authentication functions and other authentication protocols can be formulated differently. In addition to UUJN, the document list is also important because document records are known as government records. The repository organization cooperates with relevant state and local government agencies to provide backup training to private and public organizations that determine the public interest, serve the interests of the state, and protect the civil rights of the community. Government agencies include private educational institutions, private hospitals, and notary offices.

One of the warehouse development initiatives is direct training on warehouse management systems that are able to manage warehouses comprehensively, reliably, and reliably, both manually and electronically. Joint Regulation Number 20 of 2011 of the National Archives of the Republic of Indonesia concerning Guidelines for Electronic Archive Examination defines electronic archives as archives that are created (generated or received and stored) electronically.

Regarding the use of online notaries, and especially regarding the notary's duty to collect and maintain trial transcripts as part of the notary's archives, this seems difficult to do unless the provisions of the JN Law are amended. In addition, the provisions of Article 5 paragraph (4) letter b of the Information Technology Law No. 11 of 2008 stipulate that electronic information and/or electronic documents are valid evidence, but do not apply to letters and documents. Electronic documents must be in the form of a notarial deed or a deed made by a notary in accordance with the provisions of laws and regulations. This article does not provide further explanation regarding the ITE Law No. 19 of 2016.

However, it can be clarified that letters and documents issued under the law must still be made in the form of a certification body or by an official who carries out the function. Documents issued by the certification authority or official of the document. In other words, the information and/or documents must be presented on paper and then signed by the parties, witnesses, notaries, or officials who prepare the document.

Cybernotary is closely related to the digital transformation of bureaucracy in order to adapt to current administrative conditions and increase efficiency. This is a strategic response to the challenges of the industrial revolution 4.0 applied to public institutions

that prioritize digitalization, innovation, collaboration, and information and communication technology (ICT). Cyber Notary is a modernization effort that reflects these principles in the field of public notary services, where government agencies and the Indonesian Notary Association collaborate to integrate ICT in the verification and authentication of various documents. Cyber notaries play an important role in driving comprehensive digitalization initiatives aimed at improving management and services in the notary industry.

The use of government (KEMEMKUMHAM), notaries and information technology is key in efforts to introduce bureaucratic digitalization. In Indonesia, the concept of good governance cannot be separated from the success of the bureaucracy because the two are closely related. Efficient bureaucracy and good public services can have a significant impact on development. We hope that the cooperation between the government and notaries can be appreciated by the public because of its effectiveness.

Cyber Notary in Indonesia is still in a conceptual context and its regulation cannot be separated from the provisions of Article 15 paragraph (3) of the UUJN which allows Notaries to validate electronic transactions (Cyber Notary). Although technological advances allow the implementation of notary duties electronically and remotely, this is currently not possible in Indonesia, where the UUJN still relies on traditional procedures based on paper documents and physical presence. The implementation of Cyber Notary or e-notary must begin by identifying complex digitalization needs and processes, as well as considering strategic innovations in the fields of environment, infrastructure, and culture in order to achieve maximum efficiency.

Information Technology Law 11/2008 No. 19/2016 is a basic law that guarantees a sense of security, justice, and legal certainty for users and managers of electronic systems in the use and utilization of information technology. An electronic signature is a signature consisting of electronic data that is attached, linked, or linked to other electronic data that is used as a means of verification and authentication. An electronic signature functions as a means of authentication and verification:

1. The person who signs.
2. Integrity and reliability of electronic data. Electronic signatures on electronic data must at least:
  - a. Created using data to create an electronic signature;
  - b. Including signing time.

Certified electronic signatures can be obtained by using the services of an Indonesian electronic certificate provider. PP 82/2012 regulates the obligation of Notaries to submit applications for electronic deeds and professional deeds which are credibility verification institutions. Based on PP 82/2012 and the Regulation of the Minister of Communication and Information concerning the Implementation of Electronic Deeds



(Permenkominfo 11/2018), specifically in articles 25, 27, 28, 29 and 30, it is also regulated that Notaries can appoint authorized authorities for requests for the issuance of electronic documents. In addition to being appointed by the population office, notaries also verify identity and completeness of documents. However, the implementation of the test has its own challenges in the form of identity verification and completeness of documents, as explained in Permenkominfo 11/2018. Article 33 of Permenkominfo 11/2018 has two levels of identity verification, namely the third level for identity verification and the fourth level for electronic identity verification using Population Council data. PP 82/2012 was then revoked and replaced with Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Institutions (PP 71/2019).

PP 71/2019 does not mention notaries. Notaries are not mentioned as parties who can request e-certificates and notaries are excluded from professions that help increase trust in certification. Issuing various professions is ideal for building a trusted certification authority. This is because professionals who become members of a privacy certification body must be professionals with a certain period of education and experience in the field of information technology. Other professionals who wish to join a trusted certification body in the future can seek special education and training to gain knowledge and experience in the field of information technology.<sup>31</sup>

Worst case scenario, since electronic notarial deeds can be considered as private deeds, it does not cause any legal problems as long as all parties accept them without any objections. The government should establish clear rules regarding the acceptance and recognition of electronic notarial deeds as the basis for filling out documents in completing electronic administration. This is in accordance with the legal value of electronic documents that meet the requirements for writing, signing, and documentation. Cybernotary is closely related to bureaucratic reform, namely the process of changing existing bureaucratic terms and conditions to the desired status and conditions in response to demands for reform. The official website of the Coordinating Ministry for Human Development and Culture of the Republic of Indonesia or KEMENKO PMK RI states that bureaucratic reform is one way for the government to achieve better governance and carry out fundamental reforms or changes in the state system in terms of management aspects. This involves three main elements, namely innovation, collaboration and most importantly the use of information and communication technology or ICT.

The relationship between cybernotary and bureaucratic reform is that cybernotary fulfills three main points involved in bureaucratic reform, where the concept of cybernotary is the same innovation introduced in the field of Notary towards a better direction to facilitate daily public services. The implementation of cybernotary is based on cooperation between the government and the Indonesian Notary Association (INI),

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<sup>31</sup>Habib, A. (2017). View of Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global. Retrieved January 20, 2021, from *Jurnal Hukum Republica*

with the aim of integrating the use of information technology in the implementation of notary duties as well as digitalization, notary, and legalization of various documents. The concept of e-notary aims to implement fundamental reforms and changes in the administrative aspects of notary to achieve better government services. The characteristics of the Notary Position based on the Prosecutor's Office are appointed and dismissed by the government or the relevant minister<sup>32</sup>.

The type of cooperation or collaboration between the government and the notary is taken into account when the notary prepares the LLC (LTC) registration documents using the KEMENKUMHAM General Legal Administration (AHU) system. Such as company contracts or agreements. If a PT is established with the KEMENKUMHAM AHU system by a notary, it must be based on the relevant regulations issued by the Ministry of Law and Human Rights. In this case, the role of the Notary is fully responsible for making the deed of formation of the work team, permits (companies) and using the AHU system. In addition to PT, Notaries can also carry out many actions related to Limited Liability Companies (CVs), such as making transactions through the AHU system, searching for CV names, registering new CVs, changing and canceling CVs. Resumes and internal procedures can be done during the test, as well as overseas applications.

This aspect of bureaucratic reform includes the priority of government cooperation or cooperation with Notaries (KEMEMKUMKHAM) and the application of information technology. The implementation of good governance in Indonesia cannot be separated from the success of the functioning of the bureaucracy, because the two factors have a close positive relationship and influence each other. The better the bureaucracy and public services, the better the impact on development. The government and notaries work together to produce something more efficient and get public support.

Civil law is a legal system that has binding force, because it is implemented in the form of legal rules that are permanently established in a codification system. Countries in the world that adopt the civil law system are Indonesia, Belgium, and France. Regarding the implementation of electronic authentication, this study includes a comparative study between Belgium and France, countries that have changed their laws to allow electronic confirmation, or what is commonly called electronic validation. Both countries have changed their civil law articles, especially those related to actual transactions, to allow for the introduction of electronic signatures. The existence of this article clearly shows that any technology is acceptable in court if it meets certain basic requirements, namely identification, content integrity, and content authentication.<sup>33</sup>

Article 1322 of the Belgian Civil Code states that "information in electronic form that can be attributed to a specific person and preserves the integrity of the contents of the

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<sup>32</sup>Ni'mah Sona, M. (2022). Penerapan Cyber Notary Di Indonesia Dan Kedudukan Hukum Akta Notaris Yang Bebas Cyber Notary. *Jurnal Officium Notarium*, 2(3), 497–505. <https://doi.org/10.20885/jon.vol2.iss3.art12>

<sup>33</sup>Amalia, A., & Handoko, W. (2022). Peluang Penerapan Cyber Notary Di Indonesia. *Notarius*, 15(2), 616– 625. <https://doi.org/10.14710/nts.v15i2.36030>

instrument meets the legal requirements for a signature", that is, all information in electronic form. "With regard to the party who undertakes to preserve the integrity of the contents of the document, the Belgian state has considered making changes in relation to the decree that it meets the legal requirements for an original signature, hereinafter referred to as PJN, in order to improve the conditions for the application of the Law on electronic certification under the direction of the Belgian Notary Council, in this case in 2017. The Belgian Law Potpourri V appeared on July 6, 2017, indicating that the majority of notarial transactions can be carried out remotely or via video conference in France, more than 70% of Notarial deeds are notarized.

The first authentic document signed on electronic media was in 2008. The certification involved video conferencing over a computer network to facilitate the creation of remote tools with the public. Article 1317 of the French Civil Code states: "An original document is a document received by a civil servant authorized to make the document at the place where the document is made and with the observance of the necessary formalities. It can be made on electronic media, made and stored under certain conditions, provided that the transaction is stored and the conditions for obtaining an electronic signature are met.

In such circumstances, the deed can retain all its elements or characteristics, such as legal history, evidentiary force and enforceability. This is reinforced by article 1316 of the French Civil Code which states that "an electronic document is admissible as evidence as a paper document, provided that the person it represents is properly identified and is created and stored under conditions designed to preserve its integrity".

Belgian and French laws clearly regulate the legality of using electronic authentication procedures, even in real life, Notaries in both countries issue paperless authentication documents and include video conferences with those present. Since Belgium and France have clear legal coverage for cyber Notaries, the implementation of cyber Notaries and regulations in Indonesia will have an impact on both countries. In order to have a strong legal framework for online Notaries, Indonesia needs to change several regulations, including the Notary Law, Article 1868 of the Civil Code, and Article 5 paragraph (4) letter (b) of the Information and Electronic Transactions Law. With the changes to many of these regulations, we hope that the introduction of Cyber Notary in Indonesia can guarantee and prioritize the principles of security, benefits and legal systems, and have a clear legal basis for Cyber Notary.<sup>34</sup>

The implementation of electronic notaries has several advantages, namely that its implementation is more efficient and effective in terms of tasks, time and costs compared to traditional methods. In Indonesia, there are also trusted digital signatures

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<sup>34</sup>Rachman, R., Tadulako, U., Ardiansyah, E., Tadulako, U., Utami, F. F., Tadulako, U., & Tadulako, U. (2022). Urgensi Penerapan Cyber Notary Pada Akta Pengikatan Jual Beli Tanah Di Masa Pandemi Covid-19. 6, 1–14

or digital certificates, where the security and legality of electronic documents are no longer in doubt. The relationship between e-notebooks and the three main aspects of bureaucratic reform (innovation, collaboration and utilization of ICT) supports the introduction of e-notebooks in Indonesia because they can help public administration achieve good governance. The activities of cybernotary in Belgium and France are clearly regulated by their legal norms. In practice, notaries in both countries prepare paperless documents and use video conferencing with auction participants. To create a strong legal framework for online notaries, Indonesia needs to change several regulations, including the Notary Law, Article 1868 of the Civil Code, and Article 5 paragraph (4) letter (b) of the Information and Electronic Transaction Information Law.

#### **4. Conclusion**

The implementation of Cyber Notary offers several advantages, including increased effectiveness and efficiency compared to conventional methods in terms of tasks, time, and costs. Reliable digital signatures in Indonesia guarantee the security and validity of electronic documents without a doubt. The relationship between Cyber Notary and the core values of bureaucratic digitization such as innovation, collaboration, and the use of information and communication technology (ICT) are key factors in its adoption in Indonesia, which has the potential to improve good governance in the government sector. The role of Notaries in adopting Cyber Notary changes their duties and authorities by integrating information technology, especially in the preparation of deeds. In this context, physical presence is no longer required. Procedures can be carried out using audio and video technology, without geographical limitations (borderless), eliminating the need for clients to physically visit the Notary's office. In its development phase, client information only needs to be downloaded without physical presence, allowing documents needed for the preparation of deeds to be downloaded directly from the Notary's institution. In addition, digital signatures, seals, and stamps are used by clients, witnesses, and Notaries. However, the implementation of the Cyber Notary concept in Indonesia must be supported by effective legal reform, starting from the beginning of the legal reform process. The goal is not only to maintain the authenticity of the deed through the principles of legal formation, but also to minimize the negative impacts of technology such as dematerialization and deterritorialization, and to ensure that this new legal concept is responsive and acceptable to all parties, especially notaries as the main implementers in notary regulations.

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Part I General Explanation of the Republic of Indonesia Law No. 30 of 2004 Concerning the Position of Notary.

**Regulation :**

Civil Code

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