

Analysis of the Strength of a Deed Made by a Notary Against the Concept of Cyber Notary

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Abstract. *Technological advances are increasingly developing every year, bringing impacts to all aspects, especially in the field of notary. One of them is the concept of Cyber Notary which uses electronic media in every act, while the field of notary has not regulated this, therefore this condition requires further research. The problem taken in this study is whether the deed remains an authentic deed if using the Cyber Notary concept based on the Notary Law and the Electronic Information and Technology Law and solutions to deal with digital developments for Notaries when making deeds. This study uses descriptive Normative Law Research. The results of this study indicate that according to Law No. 2 of 2014 concerning the Notary, basically the concept cannot be applied because based on Article 16 paragraph 1 letter m it stipulates that after the deed is read in front of the parties, witnesses and Notary, the deed is signed at that time, therefore in this case it is necessary to have harmonization between the Notary Law and the Law on Information and Electronic Transactions.*

Keywords: *Authentic; Cyber; Deed; Notary.*

1. Introduction

The rapid development of the current technology system has had many significant impacts. This certainly affects the development of increasingly modern communication media which also provides convenience for more effective communication. The increasing needs of society for the use of this technology require that applicable laws can adjust to existing situations and conditions. In our Constitution, it is clearly stated that Indonesia is a country that provides guarantees of order, certainty and protection

for all citizens.¹(Baiti & Badriyah, 2023).

The legal system in this case also affects the position of Notary. It should be noted that the legal system has 2 types, namely Civil Law and Common Law or often referred to as Anglo Saxon.² In both legal systems, the position of a notary is certainly different. In Civil Law, the term notary is used, while in the Common Law system, the term notary is used.³ In addition, the difference that can be seen in the appointment of each Notary in the two systems, in Civil Law a Notary must first take a special education path and obtain a degree or what is known as a Master of Notary, while in Common Law there are Notaries who do not need special education but can still be appointed with a position of 2 years at the longest and can be reappointed.⁴In addition, the duties of a Notary in each of the two systems above are also different, in Civil Law the Notary is tasked with making authentic deeds, while in Common Law the duties of a Notary are limited to making limited certificates and their authority cannot be expanded, and the duties of a Notary Public from the explanation are only to legalize and sign. Therefore, the power of proof carried out by a notary in each of these legal systems, in Civil Law the Notary is the one who has the authority to prove the authenticity of a deed, which means that the authentic deed does not need to be proven because the Notary's signature in value true and the deed is always considered true, whereas in Common Law there is no distinction between authentic deeds and private deeds.⁵

Notary is a profession that is tasked with providing counseling and legal services to provide certainty to the community, especially in making authentic deeds. Notaries have 2 forms of deeds, namely release deeds and party deeds. Release deeds are those whose making is done by a Notary, meaning that the Notary in the deed contains only what is witnessed, heard, and experienced by the Notary, one example is the General Meeting of Shareholders which produces minutes, while for party deeds or party deeds are authentic deeds that are done before a public official or Notary, which means that it contains what is agreed upon and the wishes of the parties facing the Notary, for example, such as Joint Agreement Deeds, Deeds of Establishment, and so on.⁶

Notary is understood to be someone who is authorized and has the authority to create authentic deeds and other authorities as referred to in the related regulations, as explained in Article 1 number (1) of Law No. 2 of 2014 concerning Amendments to Law

¹Intan Nur Baiti dan Siti Malikhatun Badriyah, "Urgensi dan Penerapan Konsep Cyber Notary di Masa Pandemi Covid-19" *Jurnal Notarius*, Volume 16 Nomor 1 of 2023, p. 541.

²Nadhif M. Alkatiri et al. (2021), *Perbandingan Tugas dan Wewenang Notaris Indonesia dan Amerika Serikat*, Yogyakarta: Tanah Air Beta, p. 11.

³Ibid., p. 12.

⁴Ibid., p. 13.

⁵Ibid., p. 14.

⁶ Rismiyanto, P. L. (2019), *Implementasi Klausula Proteksi Diri Dalam Akta Autentik Notaris*, Doctoral dissertation, Universitas Islam Indonesia, p. 59

No. 30 of 2004 concerning the Position of Notary.⁷From the above meaning, it is clear that the making of authentic deeds is the authority of a Notary and there are other authorities that have been set out in the Notary Law.

The formation of an authentic deed is contained in the relevant regulations of all its procedures and parts of the deed. The Notary's Job Regulations have also been regulated regarding parts of the deed, namely in article 38 paragraph (1), which in this article regulates that a Notary's deed has 3 parts, namely the beginning of the deed or head of the deed, the body of the deed, and the end or closing of the deed. The three points above have of course also regulated what is included in each part, one of which is in the deed, the end of the deed contains the reading and signing of the deed. So an authentic deed certainly has its own regulations in the Law, especially for Notaries.

Notaries themselves are always challenged by the development of the times, one of which is with a new concept, namely Cyber Notary. Cyber Notary can be interpreted as a concept carried out by Notaries to carry out their duties and authorities, including in the processing of deeds based on Information Technology or Digital Technology..⁸This concept can certainly facilitate the work of Notaries to help the community in making authentic deeds without meeting in person and all storage of documents for deeds is entirely electronic. The Notary service system that previously used a face-to-face system or could be called a conventional or traditional way, then with the existence of Cyber Notary it becomes an alternative in Notary services.

However, in fact, until now, the regulation regarding the Cyber Notary concept has no specific rules governing the concept in Indonesia. While an authentic deed has the meaning as stated in the regulation regarding the Notary Position or known as UUJN, Article 1 number 7 explains that an authentic deed is one that is made by or before a Notary based on the method and form specified in the regulation. In addition, it is also stated that a Notary must read the deed and sign it at that time as stated in Article 16 paragraph (1) letter m of the Notary Position Law, explaining that when reading an authentic deed, the Notary must be present and must be witnessed by at least 2 (two) witnesses and the signing is carried out at that time by the parties, witnesses and the Notary and is strengthened by Article 16 paragraph (1) letter c which also explains that the documents and letters of the parties and their fingerprints must be attached to the minutes of the deed. Based on the article above, it can be concluded that an authentic deed must be made based on statutory regulations and read directly in front of the person appearing and witnesses and signed and then fingerprinted at that time by the person appearing. While in the Cyber Notary Concept, the authentic deed has not been determined how to make it based on the Law and the marker.His hand has not been determined by law based on Cyber Notary. Article 5 paragraph (3) of the 2008

⁷Article 1 paragraph (1), Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary

⁸BENNY, B. Penerapan Konsep Cyber Notary Di Indonesia Ditinjau Dari Undang-Undang Nomor 2 Tahun 2014. *Premise Law Journal*, 5, 2015, p. 4

regulations regarding Electronic Information states that in using an electronic system, electronic documents are declared valid based on the provisions regulated in the regulations and then reinforced by Article 5 paragraph (4) of Law No. 1 of 2024 concerning the Second Amendment to Law No. 1 of 2008 concerning Electronic Information and Transactions which states "The provisions concerning Electronic Information and/or Electronic Documents as referred to in paragraph (l) do not apply in cases regulated otherwise in the Law.", where from the regulation it can be concluded that a Notary deed is based on the regulations legislation must be made based on the regulations of the Notary Law so it cannot be said to be valid if it is made using an electronic system. Based on this, the creation of authentic deeds using the Cyber Notary concept is unclear and has no legal force, which is feared to trigger pros and cons against proving the deeds produced through this concept.

Therefore, the concept of Cyber Notary requires more in-depth studies and a more definite system in making authentic deeds using the Cyber Notary concept, and how the legal force is born from the system. Based on the above, the author feels that there needs to be a deeper study related to the concept of Cyber Notary along with the products it produces. From what is explained above, the formulation of the problem that can be taken is:

- a. Does a deed remain an authentic deed when the deed uses the Cyber Notary concept based on the Notary Law?
- b. How does the legal comparison between the Notary Law and the Electronic Information and Technology Law relate to the Evidential Power of Electronic Deeds as Authentic Deeds?
- c. What is the solution to face the challenges of digital development in the making of Notarial deeds in Indonesia?

2. Research Methods

The author uses the Normative Law Research Method, namely by studying the problem in depth by applying the Statutory Approach and Case Approach.⁹ This research is descriptive analytical in nature. The data source is based on secondary data, namely primary legal materials consisting of the Civil Code (KUHPperdata), Law No. 2 of 2014 concerning the Position of Notary, Law No. 1 of 2024 concerning Information and Electronic Transactions, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 19 of 2019 concerning Requirements, Procedures for Appointment, Leave, Transfer, Dismissal and Extension of the Term of Office of Notaries. As well as secondary legal materials in the form of legal publications consisting of books, legal journals, other scientific works. The approach in this research, the author uses the Statute Approach. The analysis technique related to this research uses

⁹Peter Mahmud Marzuki, (2016), *Penelitian Hukum, Edisi Revisi*, Cetakan ke-12, Jakarta: Kencana, p. 226

qualitative analysis techniques, namely in this technique, the analysis will be carried out by discussing the legal materials that have been obtained.¹⁰

3. Results and Discussion

3.1. The Validity of Authentic Deeds Made by Notaries Against the Cyber Notary Concept

Notaries when carrying out the obligation to form authentic deeds are certainly required to work professionally and well to produce products in the form of authentic deeds in order to provide legal security and comfort for the Notary's witnesses who are interested in their actions. Notaries are given this authority to express any wishes of the witnesses who are directly facing the Notary, for all actions, agreements, and so on, to be expressed in the form of authentic deeds, because based on Article 1886 of the Civil Code, Notaries in producing a deed have perfect evidentiary power.¹¹

The meaning of an authentic deed is explained in Article 1868 of the Civil Code, that the structure of the deed has been regulated by statutory regulations and its creation by or in the presence of an authorized official is an authentic deed.¹²The deed certainly has requirements so that the deed is legally authentic, these requirements have been determined in the Civil Code regulations and in the Notary's job regulations.(Salim HS, 2022). In the Civil Code, the authenticity of a deed has 3 (three) requirements, namely: (1) made by or before a public official, (2) its making has been determined by law, the form of the deed and (3) the public official by or before an official who has the authority to prepare the deed. Meanwhile, in the Notary Position Regulation, the authenticity of a deed will have three requirements, which include (1) made by or before a Notary, (2) its form is determined in the form of a Law, and (3) the method of making it is also determined by Law.

There are 2 (two) types of deeds made by Notaries, namely release deeds and party deeds. Release deeds are authentic deeds in their making carried out by public officials, for all that is seen, heard and witnessed, this deed is not included in the definition of a contract, release deeds are officials who declare themselves based on what is heard, seen and witnessed, for example a General Meeting of Shareholders which produces minutes. While in the party deeds are deeds of the parties and are made by the parties and stated in front of an official who has the authority, namely in this case a Notary and so on, for example a deed of sale and purchase, a deed of borrowing and others(Salim HS, 2022).¹³In this case, the two deeds have differences, namely: (1) a release deed is made by an official and a party deed is made by the parties and is stated and stated in

¹⁰Mukti Fajar dan Yulianto Achmad, (2010) *Dualisme Penelitian Hukum Normatif & Empiris*, Yogyakarta : Pustaka Pelajar. p. 182.

¹¹Article 1886, Civil Code.

¹²Article 1868, Civil Code.

¹³H. Salim, (2022), *Teknik Pembuatan Akta Satu (Konsep Teoritis, Kewenangan Notaris, Bentuk dan Minuta Akta)*, Depok : Rajawali Pers, p.28.

the form of an authentic deed, (2) a release deed sometimes in making this deed the official has his own will to make the deed, while for a party deed the official who makes the deed does not have any initiative at all, (3) a release deed contains a written statement from the maker of the deed, namely a Notary, while a party deed contains the will of the party who makes the deed.¹⁴

The concept of Cyber Notary itself is a technological development in the field of notary, because Notaries themselves are certainly required to follow the development of technology and the progress of science today. Therefore, it is necessary to utilize electronic media as much as possible so that Notaries can follow the development of the times, because in this concept everything is transferred to electronic transactions both from signing which is done electronically and also for reading deeds which are done through Gadget media or other online platforms. However, basically this concept must return to the respective laws and regulations.¹⁵

The composition of the deed is carried out by a Notary. There are separate regulations for the procedures for its preparation, namely that a deed consists of the beginning of the deed, the body of the deed, and the end of the deed, as in accordance with Article 38 paragraph 1. Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary, 2014.¹⁶ In its composition, each Notary deed must contain whatever has been determined by the regulation. In this section as regulated in the relevant Law, it must contain the Title of the deed, Number, hour, day, date, month, year, full name and place, this is regulated in article 38 paragraph 2 of the UUJN. So this section can be concluded as belonging to the Notary or something that the Law determines completely.

In the Title section of the deed, this section is to determine a type of legal act of the parties to be carried out, by the parties briefly mentioning the deed to be made by the parties, for example "Deed of Sale and Purchase, Deed of Grant". The Deed Number section, this is the structure of the deed that a Notary makes, based on article 16 paragraph 1 letter g of the Notary's job regulations that for the numbering of Notary deeds every 1 (first) of each month, it returns to number 1. In the hour, day, date, month, and year section is the time the deed was made. In the section stating the Full Name and domicile of the Notary, this section states the full name of a Notary with his title and the area of work that has been determined by the Decree of the Minister of Law and Human Rights, and the parties are dealing directly with the Notary which is marked in this section, usually with the sentence "facing me ..., present before me ...,

¹⁴Rismiyanto, PL, Op. cit. p. 59-60

¹⁵ Intan Nur Baiti & Siti M.B. Urgensi dan Penerapan Konsep Cyber Notary di Masa Pandemi Covid 19. *Notarius Vol. 16 No. 1* (2023), p. 20

¹⁶Indonesia, Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (State Gazette of the Republic of Indonesia 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491), Article 38 paragraph (1).

facing me".¹⁷

In the body of the Notary deed based on Article 38 paragraph (3) of the Notary Regulations, it contains (1) the identities of the parties mentioned and described in accordance with the Population Identification Card from the full name to the Population Identification Number of the party appearing, (2) information about the acting position of the party appearing, (3) regarding the wishes and desires of the interested party, (4) the identity of each identifying witness from the full name to the Population Identification Number of the identifying witness.¹⁸In this section, it can be interpreted as belonging to the party who wishes for the deed to be made, because the contents of the body of this deed concern the identities of the parties, the wishes and desires of the interested parties.

At the end of the deed in accordance with Article 38 paragraph (4) UUJN, it contains (1) an explanation regarding the reading of the deed, this is intended so that what is said or stated by the parties in the deed is clearly known, the intent and desire, matters that are not explained, both regarding the title, body of the deed and the closing of the deed, as well as the writing procedure, and guarantees the parties that what they have signed is the same as what they heard when the deed was read.¹⁹(2) a description of the place of signing and the signatures of the parties appearing or the translator of the deed if necessary, this must be included in the minutes of the deed signed by the parties appearing, witnesses and the Notary, as stated in Article 16 (1) letter m of the Notary Law, in contrast to a copy of the deed, which only contains the Notary's signature.²⁰The signing is also mentioned where it is because the location will be used as a place or area for filing a lawsuit by one of the parties if there is a dispute, (3) the identity of each witness to the deed, witnesses in this section are those who witness and are present in the making of the deed, usually these witnesses are asked to be present so that if at any time a dispute occurs or at any time they are needed to provide information if the parties have indeed made the deed before an Official, the witnesses have 5 requirements that have been determined in Article 40 paragraph (2) of the Notary's job regulations, namely being at least 18 (eighteen) years old or having been married, being competent to carry out legal acts, understanding the language used in the deed, being able to sign and initial, not having a marital or blood relationship in a straight line up or down without limitation of degree and line to the side up to the third degree with the Notary and the relevant party,²¹The witnesses must be known to the notary and introduced to the notary in the form of their respective identities, (4) an explanation of

¹⁷H. Salim, Op.Cit., p.74.

¹⁸Indonesia, Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (State Gazette of the Republic of Indonesia 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491), Article 38 paragraph (3).

¹⁹H. Salim, Op.Cit., p.84.

²⁰Ibid., p.84.

²¹Indonesia, Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (State Gazette of the Republic of Indonesia 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491), Article 40 paragraph (2).

whether or not there are changes in the deed or description. If there are changes, they must be made using additions, deletions or replacements and the number of changes must be stated.²²If we look again, there are things that are included in the deed section, namely the reading of the deed, the signing of the deed, the place where the deed was signed, a translator if necessary, witnesses and whether or not there were changes. The final part of the deed can be concluded to belong to the Notary because in this section it is regulated in the legislation that the deed is read in front of the parties, witnesses and the Notary, and at the same time it is also signed by the parties as this is also regulated in Article 16 paragraph (1) letter m.

So the deed made by a Notary is an authentic deed whose provisions are determined by law in its structure and arrangement. This is related to the concept of Cyber Notary which is a concept using current technological developments to facilitate the work of Notaries, but of course this must be considered again with the applicable Law regarding authentic deeds made by a Notary as an official who has the authority, because an authentic deed is a deed with its arrangement that already has its own regulations in law.

The Notary Law has regulated the initial part of the deed which belongs to the notary because it has been regulated by the regulations, especially in the section "Facing me... or Present before me..." can be interpreted that the parties must face the Notary directly face to face. This can be interpreted that the parties can meet face to face directly at the Notary's office or can also face each other using the Online Platform in this case is an example of the Cyber Notary concept which can make it easier for parties to communicate face to face even though on a Platform such as Zoom or others. So it can be concluded that the Cyber Notary Concept in the initial part of the deed has no problems as long as the face to face interpreted by the Notary and the parties on the platform continues to be clearly visible, each of the Notary's and the parties' faces. The body of the deed is a deed owned by the parties which is the will of the parties concerned. Meanwhile, the Closing or end of the deed also belongs to the Notary because this section has also been regulated by the Notary's job regulations, and is reaffirmed in Article 16 paragraph 1 letter m UUJN that the deed is read in front of the appearers and signed at that time by the appearers, witnesses, and notary, then also reinforced by Article 44 paragraph 1 of the Notary Law which states that "immediately after the deed is read, the deed is signed by each appearer, witness, and notary..."²³so it can be concluded that the concept of Cyber Notary in this deed section cannot currently be implemented because the signing must be signed at that time by the parties, witnesses and Notary. The Notary Law also does not regulate electronic signing.

²²Indonesia, Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (State Gazette of the Republic of Indonesia 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491), Article 38 paragraph (4).

²³Indonesia, Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (State Gazette of the Republic of Indonesia 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491), Article 44 paragraph (1).

Based on this, the deed is not an authentic deed but rather a deed under hand because the related regulations must be signed wet after the deed is read.

3.2. Legal comparison between the Notary Law and the Electronic Information and Technology Law on the evidentiary power of Authentic Deeds

In the current era of globalization, almost all areas of life with everything that has changed to be more effective with the sophistication of the era of information and communication technology that has emerged at this time by utilizing all existing technologies, with the emergence of this, what is known as cyberspace has also been formed, virtual world, which is an electronic media on a computer network that is often used in the interests or needs of one-way or reciprocal communication electronically without using paper.²⁴

The era of technological advancement at this time has also begun to be utilized in activities in Notary services, One of which is in the making of deeds in Indonesia by Notaries based on technology, then known as Cyber Notary. The influence of this technology has formed something new in the role of Notaries in the activity of Drafting a deed. The role of a Notary is a public official in this case who is obliged to provide public services, is willing to advance the mindset and abilities in a field related to the use and application of Information and Communication Technology in the era of technological advancement at this time and can be responsible for the use of the Technology which is useful in the effectiveness and efficiency of public services.

The developments that have occurred in several countries, both those that follow the Common Law legal pattern or those that apply Civil Law, in this case countries that apply this system have implemented the Notary Office in functions and roles that use electronic transactions, so that Indonesia simultaneously also follows the implementation in encouraging the implementation of electronic transactions in Notary services, namely by implementing a system by means of electronic transactions in the implementation of the notary services themselves.²⁵

There are 2 major legal systems in the legal scope, namely Private Material, namely Roman law and English law in this case, legal experts usually call it Civil Law or Roman Civil Law and Common Law. a legal or juridical culture originating from Western Europe, such as the Netherlands, France, Greece, Italy, Germany, Portugal, Spain, and countries in Asia and Africa that have been colonized or as colonies such as Indonesia, Cambodia, Vietnam and Congo which are regulated by Corpus Iurius Civilis as a law book. In addition, the European mainland and some of its colonies follow the legal tradition ruled by traditions or customs in Roman law, while in England and its colonies and other countries, namely Australia, New Zealand, Ireland, Canada except Quebec, the United

²⁴Mariam Darus Badruzaman, (2001), *Mendambakan Kelahiran Hukum Saiber (Cyber Law) di Indonesia*, Medan: Pidato Purna Bhakti, p. 3.

²⁵Edmon Makarim, (2013), *Notaris dan Transaksi Elektronik: Kajian Hukum tentang Cyber Notary atau Electronic Notary*, ed. 2, cet. 2, Jakarta: Raja Grafindo Persada, p. 133.

States, and Asian and African countries that have been colonies such as Singapore and Malaysia in this case are ruled by a tradition called Common Law which is based on customs that originate from a judge's decision and a basic thing for the development of law.²⁶

Related to Common Law and Civil Law, there are differences between the duties and authorities of Notaries. There are several differences between Civil Law and Common Law regarding the role, duties and authorities of Notaries. The country that follows the Civil Law pattern is Indonesia, the Law Regulations in Indonesia during the colonial era in the field of notaries came from "Notariswet" which originated from the Netherlands on July 9, 1842 (Ned. Stbl. No.20).²⁷The Republic of Indonesia and several other countries follow a pattern commonly known as the civil law pattern, in terms of the term Notary, which comes from the Latin word Notariat.²⁸ In order to become a Notary in Indonesia, it is mandatory to first go through a special education path. Notaries are appointed and dismissed by the Indonesian Ministry of Law and Human Rights, regarding this matter, it has been arranged in the regulation regarding the Notary Position, which explains that the Minister appoints and dismisses Notaries from their positions, therefore it is explained that the Minister in the legal field is contained in Article 1 number 14 of the Notary Position Law²⁹ and Regulation of the Ministry of Law and Human Rights of the Republic of Indonesia Number 19 of 2019 concerning the Requirements, Procedures for Appointment, Leave, Transfer, Dismissal and Extension of the Term of Office of Notaries.

The definition of a Notary according to Civil Law is regulated, namely explained in Article 1 paragraph (1) of Law No. 2 of 2014 concerning the Position of Notary. A Notary is an official who has the authority to make authentic deeds and has other authorities that are stated in the Law concerning the Position of Notary and other regulations.

According to one expert, namely R. Soegondo, it is explained that a Notary is a public official, specifically only authorized to make authentic deeds concerning all actions, agreements required by general regulations to be desired by the person concerned and included in an authentic deed, ensuring the date, storage of the deed or document and issuing a grosse, a copy of the deed, and quotations where all of these are made specifically for that person or specifically for another official or person.³⁰

In Civil Law related to authentic deeds, the making of them is the authority of a Public Official, namely a Notary, in making authentic deeds there are deeds that are required by legal regulations in order to produce legal certainty, legal security and legal protection. Notaries also make other deeds, not only those required but also from

²⁶Nadhif M. Alkatiri et al. (2021), *Perbandingan Tugas dan Wewenang Notaris Indonesia dan Amerika Serikat*, Yogyakarta: Tanah Air Beta, p. 11.

²⁷Ibid., p. 11.

²⁸Ibid., p.12.

²⁹Ibid., p.17.

³⁰G. H. S. Lumban Tobing, (1992), *Peraturan Jabatan Notaris*, Jakarta: Erlangga, p. 31.

parties who want it and have an interest in providing certainty of rights and things that must be fulfilled, namely having the aim of legal certainty, legal order and legal security for the related parties and of course for the entire Community.³¹In addition, in the authority of the Notary in this case, he is authorized to make evidence of proof, namely as explained above in the form of an authentic deed that is mandatory in a proof (een dwingende bewijskracht). The Notary in making a deed has the power to verify formally and materially and also has the power of execution in certain legal actions.³²

There are several elements of a notary's duties as a public official, including:³³

- a. As a public official, a Notary in this case is different from a civil servant in the explanation of Law No. 43 of 1999 concerning the basic rules of Personnel, but a Notary is a position from the explanation in Article 1868 of the Civil Code which explains that the making of an authentic deed is formed based on the rules and is made in front of a public official who has the authority in that case and at the point where the deed is made. So it can be concluded that a Notary is different from a civil servant who is given a salary by the state apparatus. Because the position of a Notary is different and is not included in a position that receives a salary, and a Notary does not receive a salary given by the government but a Notary in this case receives a salary or income for his services from a party who has requested services from a Notary;
- b. An authentic deed as mentioned above, according to Article 1868 of the Civil Code, is a form of deed containing provisions of statutory regulations and in its making is carried out by or in the presence of a public official who has the authority in that matter and at a point in a region where the deed is made;
- c. Ensuring certainty on the date, should be interpreted as the date on which the deed was made and signed by the parties based on actual events;
- d. Storage of deeds, in this case the Notary is obliged to keep a list of deeds, minutes of deeds, List of Deeds made underhand, Klapper, Repertorium, Protest Register Book, List of Wills and other books, must be stored with full care and must be in a storage place that is of course appropriate and can be maintained;
- e. *Gross Deed*, has an executorial power similar to a judge's decision or verdict. The main authority for a Notary in this case is in making authentic deeds until the authenticity of the Notary's deed is driven by Article 15 of the Notary Law and the Civil Code.

Regarding the form of the deed, which the Notary makes has a basic explanation from the Civil Code, namely that there are two forms of deeds, namely the *Relaas deed* made

³¹Nadhif M. Alkatiri et al., *Op.Cit.*, p. 7.

³²*Ibid.*, p.16.

³³Komar Andasasmita, (1983), *Notaris Selayang Pandang*, Bandung: Alumni, p. 2.

by the Notary and the Partij deed made in front of the Notary. Notarial Deeds can be in the form of a relaas or a deed that explains authentically regarding certain actions witnessed by the Notary who prepared the making of the deed.³⁴

Notary in the regulation on Notary Position is a legal unification of special provisions related to Notary. Notary must be professional in every action in the implementation of Notary position by complying with all regulations of the Law aimed at serving the wider community in the best way. Click or tap here to enter text.

In Common Law, the term Notary Public is used in this case, which is a public official who is usually a legal expert. Notary Public in the United States can be appointed without requiring special education in advance with a maximum term of office of 2 (two) years and then after being re-appointed. The role of Notary Public in the United States which applies the Common Law legal pattern in this case, a Notary is someone who has been selected by the state apparatus (namely the lieutenant governor, governor, secretary of state and in some states that have legislative cases) has a main role, namely to provide services to the public and as a witness who is not biased towards anyone, when signing valuable documents.³⁵ There are several advocates who can be appointed, namely attorneys and counselors at law, who in this case can be used as Notary Public without needing special education as explained above.

The authority of a Notary Public in Common Law has the authority to state the truth when signing or in the case of a protest of a promissory note and to provide advice, up to compiling documents, especially files for the purposes of foreign agreements.

Then related to the authority of Notary Public in the United States is limited only in making certificates and its authority cannot be expanded. So in this case it can be concluded that the authority of Notary Public is related to the legalization of the date and stating the truth of the signature and related to the power of legal evidence. In addition, the duties of Notary Public in Article 135 of the New York Executive Law, namely having a limit only on "to administer oaths and affirmations" that in this case taking an oath or promise and making a certificate that explains something, then explained "to take affidavits and depositions", where it is explained that the deposition is a writing or statement or under oath or agreement that has been given by the witnesses, then in this case it is also explained "to receive and certify acknowledgements" which is given an explanation of the actual statement regarding the time and date, by a person and has signed a file. And the last one is "to demand acceptance or payment of foreign and inland bills of exchange etc" which means making a certificate explaining that the party has offered on the day and date on a bill of exchange and made a protest against a payment accompanied by certain information

³⁴Nadhif M. Alkatiri et al., *Op.Cit.*, p. 51.

³⁵Nadhif M. Alkatiri et al., *Op.Cit.*, p. 12.

that the payment has been rejected, etc.).³⁶

Although the duties of a Notary Public are limited, a Notary Public in the United States can also perform several acts not found in other jurisdictions, depending on the jurisdiction, in that they can take a deposition, verify all Petitions, appoint a third witness who is not present on the ballot, grant a marriage license without hindrance, perform a civil marriage ceremony, witness the opening of a safe deposit box and take an official inventory of its contents, and perform an act of rejection of an estate.³⁷

All Notary members in Indonesia must comply with the laws and regulations made and regulated by the government. Along with the development of technological advances in the current era, technology is increasingly being utilized in every activity in Notary services, one of which is in the making of deeds in Indonesia which is carried out by Notaries based on technology, which is then known as Cyber Notary.

Notaries have the authority as explained in the Notary Law in Article 15 paragraph (3) Notaries have other authorities as in paragraph (1) and paragraph (2), Notaries have authorities other than those in the statutory regulations. So the explanation related to the explanation is based on their authority to certify transactions electronically (Cyber Notary).

In the explanation above, it is a legal action carried out using special technology using a computer system, computer network and other special digital media related to the activities of a Notary in making a record of an activity carried out electronically and the record can produce a record in the form of a certificate or certain file.

Notaries in preparing authentic deeds are explained in the Notary Law in Article 15 paragraph (1) which explains, Notaries are authorized to make an authentic deed related to the making of the deed as a whole, agreements and a provision required by government regulations related to this matter or which have been given the will of a person who has an interest which aims to be stated clearly in the authentic deed and to ensure certainty on the date it was made, to store the deed, to provide a grosse deed, copies and extracts of the deed, all of which are as long as in making the related deed there is no assignment or exception to other officials or other parties regulated and decided by certain regulations.³⁸

The purpose of making a deed is to guarantee the legal certainty that has been written in a deed that has been prepared before or by a Notary. So the pouring of legal events, legal acts, or conditions of a person and the legal interests of a person that are written in the paper that has been written to strengthen the legal evidence of its creation as

³⁶Isis Ikhwansyah dan Indra Prayitno, "Dualisme Kedudukan Dan Tanggung Jawab Notaris Dalam Tatanan Sistem Hukum Nasional", *Jurnal Asy-Syari'ah*, Volume 21 Nomor 2 of 2019, p.162.

³⁷Nadhif M. Alkatiri et al., *Op.Cit.*, p.47.

³⁸Shinta Pangesti et al., "Konsep Pengaturan Cyber Notary di Indonesia", *Jurnal Rechtsidee*, Volume Tahun 2020, p.7.

written evidence and must also be accompanied by a signature, and a stamp to provide legal protection or a handle for a means of proof if later there is a dispute between the parties.

Signature in this case has the meaning of the arrangement of (letters) in the form of a written sign of the person who signed. The affixing of a signature indicates that the person has made a statement or information that can be individualized. Signing in the traditional way has a certain use, including as identification and a statement of will. With this, the person who has signed under a statement is considered that by signing it has identified himself and given the other party the opportunity to verify. In addition, the signature also states that the person is bound by the statement that has been made by him.³⁹

In every deed, especially in an authentic deed, the most important element in the deed as a strong evidence in it is certainly the signature of the parties, as proof that everyone in the deed knows and agrees to the contents of what has been made by them. Regarding signatures before the era of globalization like today which has used electronic media where authentic deeds still use the provisions in the Notary Law, in article 16 paragraph (1) letter m it is explained that Notaries while holding the position are required to read the deed by facing the parties directly with the witnesses who are also present, a minimum of 2 people or 4 special witnesses in the implementation of the making of a deed related to a will which is done privately and also signed directly at the same time by the parties, witnesses and Notary. (Article 16 paragraph (1) letter m of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary, 2014). The explanation of the article related to the signing of the deed that the signing has been regulated by UUJN, namely the signing of the deed is required directly at the time the deed is made before a Notary, because the reading and signing before a Notary is an integral part of one of the main points of the Deed's ratification.

In terms of signatures, often with the development of the technological era where the laws and regulations made by the government also have developments following the developments along with the dynamics and needs of society in the current technological era where there are also challenges that arise such as when the Covid-19 Pandemic emerged which made it necessary to have appropriate regulations following the dynamics of the needs of society where often technological developments and the emergence of electronic transaction methods need to be supported by regulations in accordance with these matters so that legal certainty can also be guaranteed regarding the elements contained in electronic transactions, aiming at protecting everyone in carrying out electronic transactions, then for these matters the government provides legal certainty through the creation of Regulations on Information and Electronic Transactions. The law was initially made with Law No. 11 of 2018 concerning

³⁹H. Budiono, (2016), *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan Buku Kesatu*, Bandung: PT Citra Aditya Bakti, p.220.

Information and Electronic Transactions and then there was the first amendment, namely Law No. 19 of 2016 concerning Information and Electronic Transactions then the second amendment, namely the one that is currently in effect is Law No. 1 of 2024 concerning Information and Electronic Transactions.

Regarding the making of an authentic deed by a Notary, there is one of the most important aspects, namely legal certainty, because if a loss occurs in the future to the parties and the loss does not have legal protection, then in this case the parties may experience a problem or case due to the occurrence of this, likewise in this case the Notary can also be caught in a legal case because there are no rules of legal certainty in making deeds electronically, so here the Notary needs a handle or guideline in working on deeds digitally.

The Law on Electronic Information and Transactions in Article 5 paragraph (3) related to electronic or digital documents can be legally recognized, if in its use it has been orderly following the provisions of the electronic system set out in the Law. Furthermore, in Article 13 of the ITE Law related to signing, it is mandatory to use services that organize electronic certification to create an Electronic Signature that must be used by everyone, and also in terms of ensuring a relationship between a digital Signature and the owner of the signature is the task of the organizer. The formation of the provisions of the Law on Electronic Information and Transactions, this can be said, digital signatures with wet signatures have the same position, so from a legal perspective, certified electronic signatures have the power of legal evidence before the court.⁴⁰ Because electronic transactions are high risk for the parties, it is hereby required and emphasized in Article 17 paragraph (2a) of the Law on Information and Electronic Transactions regarding Electronic Signatures to use electronic signatures that are electronically certified.⁴¹

So from the explanation of the comparative regulation regarding the Notary Position and the regulation related to Information and Electronic Transactions regarding the legal evidence of electronic deeds as authentic deeds, in terms of signing the deeds that have been described above, namely in the development of the technological era at this time for Notaries has brought its own benefits in the field of making deeds, has been regulated in the Notary Position Law, it is said that Notaries also have other authorities regulated by Law, So related to that is the authority to certify transactions electronically (Cyber Notary). And related to that, the government has regulated new regulations, namely by making the Law on Information and Electronic Transactions, after the entry of the Cyber Notary concept in Indonesia, then with the formation of these regulations, the use of digital signatures for transactions in electronic form has been permitted on

⁴⁰Anonymous, "Still Valid Without a Wet Signature", <https://www.hukumonline.com/berita/a/tetap-sah-tidak-tanda-tangan-basah-lt6405c2406c42e/?page=1>, June 18, 2024.

⁴¹Indonesia, Law No. 1 of 2024 concerning the Second Amendment to Law No. 1 of 2008 concerning Electronic Information and Transactions (State Gazette of the Republic of Indonesia 2024 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6905), Article 17.

the condition that the electronic signature used is certified and recognized by the organizer of electronic certification in Indonesia, then based on the legal perspective of electronic signatures that have legal force before the court. Therefore, the legal force of evidence for the electronic deed is guaranteed because in this case, the Law on Information and Electronic Transactions recognizes that both digital signatures and wet signatures in general have the same status and have legal force and legal consequences.

3.3. Solutions to face the challenges of digital development in the creation of notarial deeds in Indonesia

Digital development in making Notary deeds in Indonesia or commonly known as the application of Cyber Notary (digital Notary) is the use of technology to support the Notary's work process in civil law processes in Indonesia. The concept of Cyber Notary in Indonesia is not something new, because in fact the concept of Cyber Notary has been around since 1995 but its implementation in Indonesia did not go well so that in this increasingly modern digital era this concept was brought back by the Ministry of Communication and Information (Kominfo) to support digital development so that the State of Indonesia can continue to follow the development of the globalization era. However, until now its implementation in Indonesia still has various challenges.⁴²

Indonesia itself must continue to develop and continue to realize this as stated in Article 1 paragraph (3) of the 1945 Constitution, namely as a state of law, Indonesia must continue to provide legal certainty for all citizens amidst the challenges of technological developments with the main goal of achieving national progress and legal certainty. One example of the development of the legal system in Indonesia in this era of globalization is the ratification of Regulation concerning Electronic Information and Transactions Number 19 of 2016 concerning Amendments to Regulation Number 11 of 2008.⁴³

However, the development of positive law in Indonesia is not in line and tends to lag far behind, which is currently increasingly advanced and developing rapidly, so that legal certainty for the people of Indonesia is not realized. One real example is in the development of digital technology and information, this of course has an impact on the Notary profession.⁴⁴

Regulations on the Notary Profession as the basis for the notary profession in carrying out its professional duties, have challenges in carrying out its duties and authorities in this digital era, one of which is related to the regulations in the Regulations on the Notary Profession and the Regulations on Information and Electronic Transactions that conflict with each other. One of them is the application of electronic signatures used in authentic deeds and also the Validity of deeds signed digitally. This is a polemic that is

⁴² Sarah, Siti, (2021), *Hukum Digital dan Cyber Notary di Indonesia*, Bandung: Penerbit Alfabeta, p.123

⁴³Ibid, p. 124

⁴⁴Ibid, p. 125

often faced by Notaries in Indonesia.

3.4. Application of Digital Signatures in Authentic Deeds

With the development of the era that is always developing, of course it also has an impact on the development of a country's law, for example in the application of the use of electronic or digital signatures, the function and purpose of using digital signatures themselves are assessed in terms of economic aspects and also legal aspects. In terms of economic aspects, the use of this digital signature functions so that in signing an authentic deed it can be more efficient in terms of time, practical, and cheaper or affordable in terms of material, while when viewed from the legal aspect, the use of this digital signature can be strong legal evidence related to electronic evidence and also as real evidence of the implementation or application of the Regulation on Information and Electronic Transactions in Indonesia.⁴⁵

In carrying out their duties and obligations so far, Notaries still use conventional methods, but along with the development of this technology, Notaries are also forced to be able to transform from only using conventional systems to also being able to serve digitally or electronically. However, the challenge is the disharmony between the legal basis in Indonesia, namely:

- Article 15 paragraph (1) of the Regulation on the Notary Profession explains that the authority of a notary is to make authentic deeds related to all agreements, actions and applications required by law and/or those who are interested in wanting their wishes to be stated in the authentic deed. And in this article, the notary also guarantees the certainty of the date, storage of the deed, and provision of copies, unless the deed is not exempted to other officials or those who have been determined by the relevant Regulation. In paragraph 2 of the Regulation on the Notary Position, it is also stated that in addition to the authority as referred to in paragraph (1), a Notary also has the authority to "Validate signatures, determine the certainty of the date of private letters by registering them in a special book; Record private letters by registering them in a special book; Make photocopies of the original private letters in the form of copies containing descriptions as written and described in the relevant letter; Validate the conformity of the photocopy with the original letter; Provide legal counseling related to the making of deeds; Make deeds related to land; or Making a deed of auction minutes." In addition to those mentioned above, notaries also have authority other than that regulated in the regulation regarding the position of notary. The authority referred to is stated in Regulation Number 19 of 2016 concerning Amendments to Regulation Number 11 of 2008 concerning Regulations regarding Electronic Information and Transactions which indirectly Article 15 paragraph (3) of the Regulation regarding the Position of

⁴⁵Ahmad Zainuri, (2022), *Hukum Tanda Tangan Digital: Teori dan Praktik di Indonesia*, Jakarta: Prenada Media, 89

Notary states that Notaries are permitted to carry out their duties electronically.⁴⁶

- There are exceptions to the provisions regarding electronic documents and information, namely in this study electronic signatures, this is stated in article 5 paragraph 4 concerning the Regulations concerning Electronic Information and Transactions in 2008, which states that there are exceptions and may not be applied to letters that must be made in writing according to the relevant Regulations, and letters with documents must be made in a notary deed or made to other officials. If there are other provisions other than those in the article above, namely that electronic information must be in writing, it is still considered valid, as long as the information can be accessed, its integrity is guaranteed, displayed and can be accounted for.⁴⁷
- Article 1 number 7 of the Regulations concerning the Notary Profession explains that "a notarial deed, hereinafter referred to as a deed, is an authentic deed made by or before a notary in the manner and form regulated in this Law."

With that, the solution to face the challenges of digital development in the making of Notary deeds by implementing the Cyber Notary concept in Indonesia, one of which is the need to harmonize the alignment of related regulations regarding the duties and positions and authorities of Notaries, especially in terms of the use of electronic signatures for documents made by the notary profession which is expected to provide legal certainty and for the Indonesian people, namely the alignment between Regulation Number 2 of 2014 concerning Amendments to Regulation Number 30 of 2004 Concerning the Position of Notary and Regulation Number 19 of 2016 concerning Amendments to Regulation Number 11 of 2008 Concerning Information and Electronic Transactions so that their legal basis does not collide. The solution that can be done is by revising and harmonizing the Regulations concerning the Position of Notary and also the Regulations concerning Information and Electronic Transactions.⁴⁸

4. Conclusion

The deed made by a Notary is an authentic deed whose structure and arrangement have been determined by law. Based on Article 38 paragraph (1) of the Regulation concerning the Notary Profession, each deed consists of a deed head or beginning of the deed, a deed body, and an end or closing of the deed. In this case, it is related to the concept of Cyber Notary which is a concept that follows current technological developments in order to facilitate the work of Notaries. However, this must of course be reconsidered by paying attention to the current applicable law regarding authentic

⁴⁶Santoso, Budi, (2021), *Hukum Notaris dan Prakteknya di Indonesia* Yogyakarta: Penerbit Universitas Gadjah Mada, p. 112-115.

⁴⁷Rina Oktaviana, (2020), *Hukum Informasi dan Transaksi Elektronik di Indonesia*, Jakarta: Sinar Grafika, 77-80

⁴⁸Joko Suyanto, (2021), *Harmonisasi Hukum dalam Era Digital: Tantangan dan Solusi*, Bandung: Mandar Maju, p.145

deeds made by public officials. The concept of Cyber Notary in the initial part of the deed has no problems as long as the face-to-face meaning the Notary and the parties on the platform continue to be clearly visible, each of the Notary's and the parties on the platform. The body of the deed is a deed owned by the parties in which the will of the parties concerned is contained. Meanwhile, for the closing or end of the deed, the Cyber Notary concept cannot be applied because the signing must be immediately signed by the parties, witnesses and the Notary, so based on this, the deed is not an authentic deed but rather a private deed because the relevant law requires wet signatures after the deed is read.

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