

## Legal Gaps in the Implementation of the Cyber Notary Concept Based on Indonesian Civil Law

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**Abstract.** *Implementation Cyber Notary cannot be separated from the legal system that supports it. Indonesia still uses the legal system Civil Law which originated from the Dutch era, especially in civil law. Indonesia still uses Bugerlijk Wetboek Voor Indonesia (BW) in 1848 which was translated into the Civil Code (KUH Per). KUH Per regulates perfect evidence as an authentic deed. This authentic deed is made based on the provisions in KUH Per. Then the lack of regulation regarding public officials which made it stated in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (UUJN). The law states about Cyber Notary in his explanation. Further developments, the Indonesian government has not made implementing regulations. In this study, the author aims to discuss the need to develop the concept of notary into a broader concept draft Cyber Notary what is meant in the explanation of Article 15 paragraph (3) UUJN is connected to the concept International Union of Notaries (UINL) in 1994 in a Civil Law country. In the discussion, the importance of the concept Cyber Notary is related to the application of the concept Cyber Notary in Indonesia which supporting the goals of the ASEAN Economic Community and AFTA. So far, Indonesia still follows the concept of authentic deeds regulated in the Civil Code, even though the UUJN has mentioned about Cyber Notary. This study uses a normative approach, which includes conceptual and legislative approaches. The urgency of implementing the concept Cyber Notary in the digital era and Society 5.0 in Indonesia needs to be applied immediately. Following the global development of the ASEAN Economic Community, as well as the obligations as a member UINL since the Indonesian Notary Association (INI) officially joined as the 66th UINL member on May 30, 1997 in Santo Domingo, Dominica. So the author sees that it is very urgent for the Implementation of Cyber Notary to be implemented in Indonesia to support the goals of the MEA and Embodiment the UINL Conventions as a country with a Civil Law system. In conclusion, Indonesia must follow the*

*development of the Cyber Notary concept from countries bound by UINL so that Indonesia is not left behind in world developments.*

**Keywords:** Civil; Cyber ; International; Notary.

## 1. Introduction

The evolution of the notary world in the digital era and Society 5.0 is moving towards electronic services known as *Cyber Notary* . This is supported by the formation of the ASEAN Economic Community where the free trade system is carried out by all ASEAN member countries with the aim of increasing economic stability in the ASEAN region and is expected to be able to overcome various economic problems or issues and be able to compete globally.<sup>1</sup>Many countries have implemented it *Cyber Notary* This certainly requires notaries to immediately implement it for the advancement of the notary profession in Indonesia in carrying out their duties and providing the best service to the community.

Bambang Soesatyo, Chairman of the Consultative Assembly (MPR) stated:<sup>2</sup>

" Cyber Notary is not a disruption to the existence of conventional notaries. Cyber Notary actually enhances the function and role of conventional notaries in the digital era. Cyber Notary has even become an important part of national cyber security and resilience."

However, considering that Indonesia is a country of law with a Civil Law system, any changes must be accompanied by changes to the provisions of laws and regulations in Indonesia (principle of Legality).

Currently, most of the world has entered the Industrial Revolution 5.0 Era, which affects all sectors of work, both in the service sector and management, including the main duties of a notary or advocate. In Indonesia, notaries carry out their duties based on Law No. 30 of 2004 in conjunction with Law No. 2 of 2014 concerning the Position of Notary. However, the implementation of these duties is still very conventional, both in the making of deeds, the *verlijden* process, which consists of compiling, reading, and signing<sup>3</sup>, as well as protocol storage and maintenance.

In the era of the Industrial Revolution 5.0, almost all countries have entered the era of

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<sup>1</sup>Verelladevanka Adryamarthanino, Widya Lestari Ningsih, Masyarakat Ekonomi Asean (MEA) : Pembentukan, Tujuan, dan Manfaat. (Kompas.com – 06/01/2022, 12.00 WIB). <https://www.kompas.com/stori/read/2022/01/06/120000179/masyarakat-ekonomi-asean-mea---pembentukan-tujuan-dan-manfaat>

<sup>2</sup> Detikfinance, "Ini Pentingnya Digitalisasi untuk Dunia Usaha", <https://finance.detik.com/berita-ekonomi-bisnis/d-7136178/ini-pentingnya-digitalisasi-untuk-dunia-usaha>, accessed June 24, 2024.

<sup>3</sup>Iwan Erar Joesoef, (2022) "Pembuktian Rapat Umum Pemegang Saham Secara Elektronik Berdasarkan Kaedah *Verlijden* dan *Wilsverklaring*", *Acta Diurnal*, Vol. 5 No.2, p.176

free trade, and there is a need for the implementation of a free trade system in various fields. This has an impact on the need for transaction process efficiency in terms of time, distance, and cost. In other words, the Industrial Revolution 5.0 requires a digital service system that supports transaction process efficiency in terms of time, distance, and cost.

Indonesia is a member country of the International Notary Association (UINL). The Indonesian Notary Association (INI) officially joined UINL on May 30, 1997 as the 66th member and is a member of the 1994 Cyber Notary Convention held in Santo Domingo, Dominica, and a member of the 1994 ABA Information Security Committee.<sup>4</sup> There are two terms used in providing Notary services via the internet. The first is the provision of electronic notary services known as Cyber Notary. The second is the provision of Notary services called Electronic Notary, which was introduced by the French delegation at the TEDIS legal workshop forum at the EDI Conference, organized by the European Union-Brussels 1989..<sup>5</sup>

In Indonesia, notary services still use the conventional system. As per the provisions Article 1 paragraph (1) of the Notary Law and Article 1868 of the Civil Code, namely in essence, a Notary is a public official who is authorized to make authentic deeds and is made before a public official who is authorized to do so at the place where the deed is made. This causes notaries in Indonesia to lag far behind notaries in other countries that adopt the same legal system, namely Civil Law. Based on the reality in the field and the explanation of Article 15 paragraph (3) of Law No. 2 of 2014, the implementation of the Cyber Notary concept in Indonesia is currently limited to digital file processing through the online Ditjen AHU site.

There are no restrictions on online transactions, and as long as you have a smartphone or computer that can connect to the Internet, you can use a search engine (browser) to search for what you want or communicate via video call. Anyone can meet in person and make electronic payments (electronic money and electronic payments). In other words, online buying and selling has the advantage of being more practical, easier and of course much cheaper. As one of the parties legally appointed as a registrar, a notary is part of the electronic notary system and carries out duties as a participant notary.<sup>6</sup>

Along with the development of digital, digital technology has become an important tool in various fields, including the legal field with the emergence of legal technology, and is also widely used to carry out the duties and positions of PPAT such as Notaries and Guardianship. Applications for legalization of the establishment of legal entities and companies connected to the online registration system of the AHU Directorate and the creation of electronic KPR through online SABH (Legal Entity Management System) and

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<sup>4</sup> [https://mkn.usu.ac.id/images/Notaris\\_dan\\_Trust\\_Services\\_compressed\\_1.pdf](https://mkn.usu.ac.id/images/Notaris_dan_Trust_Services_compressed_1.pdf)

<sup>5</sup> Luh Anastasia Trisna Dewi, (2021), "Legal Aspects of Cyber Notary in Indonesia", *Journal of Digital Law and Policy*, Vol. 1 No.1, p.39.

<sup>6</sup> Jamie Armadi Jaya, Mulyani Zulaeha, Suprpto, (2021), "Kewenangan Notaris dalam Mensertifikasi Transaksi Elektronik Ditinjau dari Undang-Undang nomor: 2 Tahun 2014 tentang Jabatan Notaris", *NoLaj*. Vol. 1 Nomor 2, p.134.

online SABU (Business Entity Management System).<sup>7</sup>

In addition to the rapid development of information and electronic technology, electronic media is widely used as a means of supporting communication, coordination, implementation of teaching and learning processes, implementation and implementation of various types of work, activities, commercial transactions. Viewed from the possibility of using electronics (electronic signature) / digital signature (digital Signature), the status of the Notary who signs the legalized deed, especially the position regarding its authenticity and legal consequences, based on the amendment to Law No. 2 of 2014 Number 30 of 2004. Cyber regulations for Notaries have existed for a long time, but until now they have not been able to compile comprehensive implementing regulations that can find harmony as a principle of proportionality in the implementation of the Notary's position.

Thus, the concept of cyber notary for electronic transaction notaries is contained in the Explanation of Article 15 Paragraph 3 of Law No. 2 of 2014. Regarding the status of notaries, the laws and regulations are still unclear and there are many legal issues. Therefore, here it is necessary to study more deeply the regulations regarding electronic transaction certification from various laws and regulations related to the concept of the International Union of Notaries (UINL) in civil law.

## 2. Research Methods

This study uses a normative approach, which includes conceptual and legislative approaches. Based on the explanation above, the author focuses on the legal gap in the introduction of cyber notaries and identifies the gap based on the principle of legality through the provisions of laws and regulations in force in Indonesia, including international agreements made and agreed to be implemented by Indonesia.

## 3. Results and Discussion

### 3.1. Conceptual Gap *Cyber Notary* as referred to in the Explanation of Article 15 paragraph (3) of Law No. 2 of 2014 is connected with the concept *International Union of Notaries* (UINL) in Civil Law countries.

Indonesia is a country of law that adheres to the civil law system. Therefore, the position and authority of a notary in Indonesia is called in Latin *notaris* or civil notary. A notary in the field of civil law is a person who works in the field of civil law who is authorized by the state to sign and issue legalized deeds, including legal statements, to interested parties. Powers that notaries do not have in common law countries. In countries that apply civil law, the status of a notary and the ratification of notarial deeds are strictly regulated by law.

A notary is a public official whose appointment, implementation of duties, authority,

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<sup>7</sup>Ranti Fauza Mayana, dan Tisni Santika, (2022), "Legalitas Tanda Tangan Elektronik : Posibilitas dan Tantangan Notary Digitalization Di Indonesia", *Acta Diurnal*. Vol. 4 No.2, p.245.

and form of legalized deed must meet certain requirements in order to maintain the credibility of the notarial deed as a legal instrument. Therefore, changes and adjustments to technology in the field of notarial civil law will not occur as quickly as the current developments.

According to research conducted by Dr. HC Rolf Knieper from the University of Bremen entitled "The Economic Relevance of Notarized Documents", authentic notarial deeds provide greater legal certainty for the community, making them more effective in the long term in terms of economic value.<sup>8</sup> This is in accordance with Article 1868 of the Civil Code. Article 1 number 1, Article 15 number 1, Article 18 numbers 1 and 2 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary Public, Especially the Validation of General Deeds Documents have direct evidentiary value in the form of completeness and binding.<sup>9</sup>

Based on the principle of the supremacy of law, the principle of legality adopted in Indonesia, government power is derived from statutory regulations.

In theory, the government obtains power through legal regulations in three ways: attribution, delegation, and devolution.<sup>10</sup> HD Van Wijk/Willem Konijnenbelt defines the three ways as:<sup>11</sup>

- a. Attribution is the granting of government authority by lawmakers to government organs.
- b. Delegation is the transfer of government authority from one government organ to another government organ.
- c. A mandate occurs when a government organ allows its authority to be exercised by another organ on its behalf.

Based on HD.

Van Wijk/Willem Konijnenbelt defines the three methods above as obtaining a power of attorney so that a notary is legally recognized to carry out his profession as a public official who can validate legalized deeds. This granting of power is included in the granting of power by attribution. In this case, the state's assignment to the position of Notary includes the implementation of notary electronically in accordance with the instructions of Article 15 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (Concept) Cyber Notary ).

The concept of cyber notary, especially Article 15 paragraph (3) of the 2014 Notary Law,

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<sup>8</sup>[http://lawlibrary.info/ge/books/Economic\\_Relevance\\_of\\_Notarial\\_Authentic\\_Instruments.pdf](http://lawlibrary.info/ge/books/Economic_Relevance_of_Notarial_Authentic_Instruments.pdf)

<sup>9</sup><https://kabarnotariat.id/2022/11/12/membedah-batasan-pejabat-umum-dan-akta-otentik-dalam-ruu-hukum-perdata-bag-2/2/>

<sup>10</sup><http://restuningmaharani.blogspot.com>, accessed August 1, 2011.

<sup>11</sup>Ridwan HR, (2006), *Hukum Administrasi Negara*, Jakarta: PT RajaGrafindo Persada, p. 7

explains that the concept of cyber notary includes electronic notary; in this case, Article 15 paragraph (3) of the Electronic Notary Law is explained in detail in the description. UUJN Article 15 paragraph (3) of 2014 means "other authorities regulated by law", among others, to authenticate transactions carried out electronically and issue Deeds of Waqf Pledge, including the authority to impose mortgage rights on aircraft. This is in line with the Cyber Notary Concept or the Concept of Digitalization of services provided by Notaries since 1989 (International Convention, *International Union of Notaries* (UINL)), and has developed until now.

The development of the concept of digitalization in the 19th century can be seen as follows:

Cyber Notary 1994	Electronic Notary
ABA Information Security Committee 1994	French Delegation, Trade EDI system (TEDIS) legal workshop, EDI Conference, EU-Brussels 1989
This conference proposes that various industry associations and related bodies (State Institutions, Notary Associations) can act as "Electronic Notaries" to provide	Certification Authority (T3P) UETA +Electronic signature => Electronic notary
An independent record of electronic transactions.	Cyber notaries can authenticate documents
Independent electronic transactions between the parties	Validating its legal content Validating digital signatures Validating the identity of the signatory Validating the signatory's capacity Validate the signing authority, and digital certificate validation

Based on the table, notaries can have supporting functions in the field of ICT.B. As a T3P (for example in the Netherlands) by enabling the storage or storage of source code, legalizing or validating traditional IDs before receiving digital certificates from CSPs, and providing notary services through digital certificates. A system for the general public. Electronic Certificate of Authenticity (Notaries can have supporting functions in the field of ICT as a T3P, namely facilitating the storage or storage of source code (for example in the Netherlands), to provide traditional certificates before receiving electronic certificates from CSPs (registration authorities for legalization or validation of ID cards). Providing notary services to the public through electronic systems in connection with electronic public documents. The concept of the ABA (American Bar Association,

Information Security Committee) which popularized the term Cyber Notary <sup>12</sup>The use of this term refers to the function and role of CA/CSP which is considered as a Notary in cyberspace, therefore it is called Cyber Notary .<sup>13</sup>

In Indonesia itself, Cyber Notary has emerged since 1995, and since the enactment of Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions which has now been changed by Law of the Republic of Indonesia Number 2016 concerning Amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE). The discourse of Cyber Notary has re-emerged along with the development of society related to electronic transactions in various fields. So that Notaries in carrying out their duties and functions cannot be separated from technological advances as developments in society based on Article 15 paragraph (3) of the 2014 UUJN which is meant by "other authorities regulated in laws and regulations", including, the authority to certify transactions carried out electronically. The concept of cyber notary above is in line with the 29th International Conference of the Indonesian Notary Association (INI) and the International Notary Association (UINL) which was held in Jakarta on November 27-30, 2019 discussing the following three topics:

#### **a. The Validity of Notarial Principles in the 21st Century**

Changes in the 21st century include globalization, digitalization, and data protection. When a legal system faces change, it is important to review the principles underlying that legal system and determine whether the new changes are consistent with existing principles.

Information technology innovation is now important in all fields and has become an important work tool for Notaries. The question is: Can the traditional principles of notaries be maintained in the long term, or do they need to be adapted, and if so, how?

#### **b. Relationship and Role of Notaries with Individual Legal Subjects**

Whatever the social changes, however comprehensive, humans remain at the center of every problem. Robots and blockchain cannot replace humans as the protagonists of social and economic life. This topic illustrates the importance of notary intervention as a guarantee of legal certainty at every stage of human life. Peaceful legal practice, accessibility, stability and predictability are real needs of society.

#### **c. Legal Certainty Aspects in Doing Business in the Industrial Revolution 4.0 Era**

Rapid advances in technology have enabled the world to implement automation

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<sup>12</sup>Andi Nur Annisa Meilany, (2020) *Cyber Notary: Protokol Notaris Yang Disimpan Dalam Bentuk Elektronik*. Banyumas: Pena Persada.

<sup>13</sup>Ibid.



and digitalization on an unprecedented scale. The world is now abuzz with talk of the start of the Industrial Revolution 4.0. Every change brings two things: challenges and opportunities. It is wise to understand what changes will occur in the practice of the Industrial Revolution 4.0 and how this will impact professionals, practitioners, and legal officials. Empirically, Indonesia is a country of law whose civil law system is based on the 1945 Constitution, so that the position and authority of Indonesian Notaries are called Latin Notaries or Civil Notaries. Notaries are civil law officials who are sent by the state to make and issue legalized deeds, including providing legal explanations to interested parties. Therefore, the provisions of the Cyber Notary Law apply in Indonesia based on laws and international agreements on the status of notaries, and Indonesia, represented by the Indonesian Notary Association, is the 66th member country of UINL. Since May 30, 1997 Santo Domingo, Dominica: There are Obstacles to the Implementation of the Concept of Digitalization of Notarial Deeds in Indonesia.<sup>14</sup>

The civil law system began to apply in Indonesia in the early 17th century, based on historical research during the "United Republic of the Netherlands". During that period, a man named Melchior Kerhem was appointed as the first notary in Indonesia. The origin of the Latin notary school was in northern Italy. This company then founded the Vereenigde Oost Indian Company (VOC) and expanded from northern Italy to France, the Netherlands, and Indonesia. Countries participating in the civil law system include European countries and their former colonies such as the Netherlands, France, Luxembourg, Germany, Austria, Switzerland, Scandinavian countries (Denmark, Sweden, Norway), Italy, Greece, and Spain. This system includes the UK, US, Canada, Australia, and South Africa.<sup>15</sup>

In countries that adopt the continental European legal system, the powers of a notary are significantly different from those of a notary in countries that adopt the Anglo-Saxon legal system. Notaries in countries that are members of the European legal system or also called Latin Notaries are a profession carried out by legal professionals (jurists) who are imprisoned for life or until retirement. Latin Notaries can advise clients on the preparation of written evidence. The authority of a Notary in countries that adopt the Anglo-Saxon system is generally only in the registration of deeds, but for Indonesian Notaries who adopt the continental European legal system, it is *waalmerking* (personal registration of letters), notaries only register documents. In Anglo-Saxon, the Saxon legal system does not play a role in creating and determining the contents of letters and deeds. To become a Notary, in countries that adopt the Anglo-Saxon system, on average you do not need to complete education as a legal professional (lawyer), but you must first work as a Notary for a certain period of time. Deeds notarized by a Latin Notary have formal and important evidentiary value, and have the power to enforce

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<sup>14</sup> <https://www.Hukumonline.com/berita/a/yuk-pahami-kompet-notaris-dalam-civil-law-dan-common-law-lt59d9f5002c20c/>, accessed June 24, 2024.

<sup>15</sup> Supriadi, (2006), *Etika & Tanggung Jawab Profesi Hukum di Indonesia*, cet. 1, Jakarta: Sinar Grafika, p. 50.



certain legal acts. The power of written evidence in the form of authentic documents occupies the highest, strongest and most complete position, or the most complete evidentiary power, in the continental European legal system. This means that the position of a notary in the continental European legal system is very important considering his duties and authorities in making authentic deeds.<sup>16</sup>Therefore, although the application of the Cyber Notary concept in the common law system does not affect the power of the deed, Indonesian notaries who use the civil law system do not consider that the deed they make is an original deed. Therefore, the Cyber Notary concept is widely applied in countries with a common law system.

Therefore, a civil law notary as a public official whose appointment, implementation of office, authority and form of authentic deed must follow certain requirements and provisions in order to maintain the authenticity of the notarial deed as a legal instrument. As Article 1 paragraph (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary:

*A notary is a public official who has the authority to make authentic deeds and other authorities as referred to in this Law.*

Article 15 paragraph (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary states that:

*Notaries have the authority to make authentic deeds regarding all deeds, agreements and provisions required by statutory regulations and/or which are desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, store the deed, provide grosses, copies and quotations deeds, all of which as long as the deeds are made are not assigned or excluded to other officials or other persons as determined by law.*

That the Cyber Notary Concept in Indonesia began with the enactment of the Explanation of Article 15 paragraph (3) Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary, that is:

*What is meant by "other authorities regulated in laws and regulations" includes, among others, the authority to certify transactions carried out electronically (cyber notary), make deeds of waqf pledges, and aircraft mortgages.*

Although the application of the cyber notary concept in the common law system does not affect the power of the deed, Indonesian notaries who use the civil law system do not consider the deeds they make to be original deeds. Therefore, the cyber notary concept is widely applied in countries with a common law system.<sup>17</sup>From a notary's

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<sup>16</sup>Herlien Budiono, Akta Otentik dan Notaris pada Sistem Hukum Anglo-Saxon dan Sistem Hukum Romawi, Percikan Gagasan Tentang Hukum Ke-III, Kumpulan Karangan Ilmiah Alumni FH Unpar, (Bandung: Mandar Maju, 1998), p. 104

<sup>17</sup>Zainatun Rosalina, "Keabsahan Akta Notaris Yang Menggunakan Cyber Notary Sebagai Akta Otentik," Jurnal Fakultas Hukum Universitas Brawijaya (Universitas Brawijaya, 2016).

perspective, the word "certification" refers to the appointment of a notary as a certification body (a trusted third party) so that the notary can issue a product in the form of a digital certificate to the interested party to do so. Another feature is authentication. This refers to the legal aspects that must be met in conducting electronic transactions.<sup>18</sup>

Explanation of Article 1 Paragraph 2 of Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions provides an understanding of electronic transactions. This means that electronic commerce is a legitimate activity. Carried out using computers, computer networks, and/or other electronic media. Transactions carried out electronically are contracts made between parties through the exchange of information to carry out a transaction via electronic media (computers).<sup>19</sup> Electronic transactions, commonly referred to as online contracts, are actually contracts or legal relationships that are carried out electronically, and are contracts or legal relationships that are carried out electronically and connected to a computerized information system network and network-based communication systems and telecommunications services (telecommunications-based) which are a combination of This is due to the existence of a global Internet computer network (Network of Networks).<sup>20</sup>

According to Edmond Makarim, the concept of cyber notary (Notaris Mayantara) will facilitate the implementation of the main tasks of the office, including the duties of a notary, especially the duties of a notary to record deeds carried out. It is said that there is a possibility. However, Edmund assessed that there needs to be a follow-up to the clarification of Article 15(3) regarding the authority to authenticate transactions carried out electronically. Do notaries need to wait until government regulations are issued, or are existing ministerial regulations sufficient to facilitate this?

The concept of cyber notary, specifically Article 15(3) of the 2014 Notary Law, explains that the concept of cyber notary also includes electronic notary; Learn more about the 2014 Notary Law.

The Notary Law still has an unclear meaning or is also called a Vague Norm<sup>21</sup> and has not provided a clear understanding. In the matter of authority to certify transactions carried out electronically ( Cyber Notary ), it must first be understood about the issue of certifying, electronic transactions and cyber notary. The terminology used in the Explanation of Article 15 paragraph (3) of the Notary Law itself uses the term

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<sup>18</sup>Agung Fajar Matra, "Penerapan Cyber Notary Di Indonesia Ditinjau Dari Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris" (Fakultas Hukum Universitas Indonesia, 2012).

<sup>19</sup>Edmon Makarim, (2003), *Kompilasi Hukum Telematika* (Jakarta: Raja Grafindo Persada

<sup>20</sup>Ibid

<sup>21</sup>Deddi Diliyanto, Zainal Asikin, and Amiruddin, "Perluasan Wewenang Praperadilan Pasca Putusan Mahkamah Konstitusi Nomor 21-Puu-Xii-2014," *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum* 3, no. 1 (2018): 33, <https://journal.unsika.ac.id/index.php/jurnalilmiahhukumdejure/article/view/1884>

certification. In the Big Indonesian Dictionary, the definition of certification is "certification which means a process, method, making a certificate", the result of the certification is a certificate which has the meaning of "a sign or written or printed statement (statement) from an authorized person which can be used as proof of ownership or an event".

The new authority granted to notaries to notarize electronic transactions based on the 2014 UUJN reflects the position of notaries and is a welcome change in the advancement of technology that is rapidly impacting various fields, including the legal field. Humans are not only moving information, but also some of their activities from the physical world to cyberspace. Online transactions are borderless, and anyone with a smartphone or computer connected to the Internet can search for what they want through a search engine (browser) or communicate via video call. You can meet in person and pay electronically (electronic money or electronic payment). In other words, online trading has advantages because it can be said to be easy and of course saves a lot of money

Notary as one of the parties legally appointed as Notary is part of the e-notary regulatory system and carries out duties as Notary. Therefore, the author can conclude that the provisions regarding electronic transaction authentication are contained in the provisions of the laws and regulations in force in Indonesia, namely: Explanation of Article 15 Paragraph 3 of the Amendment to Law No. 2 of 2014 Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN). Article 24 of Law No. 25 of 2009 concerning Public Services: Documents, certificates, and others, both in the form of electronic and non-electronic products in the implementation of public services, are declared valid in accordance with the provisions of laws and regulations. However, this rule still conflicts with other rules. Namely: The Notary Status referred to in Article 1 UUJN has the following meaning: "Article 1(1): A Notary is a public official who has the following qualifications: Has the authority to issue legalized deeds and other authorities regulated in this law.

Article 1868 of the Civil Code states that:

*An authentic deed is a deed made in a form determined by law by or before a public official authorized to do so at the place where the deed is made.*

Notaries as officials who are authorized to make authentic deeds are regulated in statutory regulations. The authority of a notary is regulated in Article 15 paragraph (2):

*The authority contained in Article 15 UUJN is not only limited to making authentic deeds, but also provides other authority as stated in Article 15 paragraph (2) UUJN, namely:*

*a) validate signatures and determine the certainty of the date of private letters by registering them in a special book;*

- b) record letters under hand by registering them in a special book;*
- c) make copies of the original private letters in the form of copies containing descriptions as written and described in the letter in question;*
- d) verify the conformity of the photocopy with the original letter;*
- e) provide legal advice regarding the preparation of deeds;*
- f) make deeds relating to land; or*
- g) make a deed of auction minutes.*

Article 17 paragraph (1) letter (a) states that:

*"Notaries are prohibited from carrying out their duties outside their area of office."*

The obligations of a notary are regulated in Article 16 paragraph (1) of the UUJNP and Article 3 of the Notary Code of Ethics. 2004 concerning the Position of Notary. As mentioned above, Indonesia is a country of law. In the provisions of Cyber Notary, it has also been regulated in the Explanation of Article 15 paragraph (3) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN), so it can be concluded that the legality of Notaries in implementing Cyber Notary can be implemented in Indonesia.

However, if we look again at Article 16 Paragraph 1 Letter m of Law No. 2 of 2014 concerning the Position of Notary, which states that in making an authentic deed, a notary has the following obligations:

*"Reading the Deed in front of the person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a private will Deed, and signed at that time by the person appearing, witnesses, and Notary." The elements of this article provide an explanation that the notary is required to read the deed in front of 2 witnesses or 4 witnesses for making a private will Deed, and must be signed at that time by the person appearing, witnesses, and notary.*

Explicitly the concept of "before" if interpreted in a broad sense in the Digital Era can be done Digitally through Video Conference, Zoom or other media that support the concept of "before a notary" digitally. So that the Notary as one of the parties appointed as the registration authority by Law on a system of Electronic Certification Implementation can carry out obligations as a party involved in digital certification.

The implementation of cyber notary in Indonesia is based on the Cyber Notary Concept according to the International Convention, namely:

- a. UNCITRAL (United Nation Commission on International Trade Law) has long provided recommendations regarding the legal value of electronic information

and/or documents through the 1996 Model Law on E-Commerce.<sup>22</sup> Model Law on E-Signatures 2001,<sup>23</sup> United Convention on the Use of E-Communication in International Contracts in 2005 10 and Promoting Confidence in E-Commerce: Legal Issues on International Use of Electronic Authentication and Signature Methods in 2009.<sup>24</sup>

b. The concept of the ABA (American Bar Association, Information Security Committee) which popularized the term cyber notary<sup>25</sup> The use of this term refers to the function and role of CA/CSP which is considered as a notary in cyberspace, therefore it is called a cyber notary.<sup>26</sup>, that is:

*Storing or facilitating escrow of source code (e.g. Netherlands), Registration Authority for legalization or verification of conventional IDs before they have an electronic certificate from CSP Providing Notary services through electronic systems to the public regarding electronic authentic deeds).*

c. The 29th International Congress on 27-30 November 2019 in Jakarta, by the Indonesian Notary Association (INI) and the International Union of Notaries (UINL) which carries three discussion topics as follows:

- 1) The Validity of Notarial Principles in the 21st Century
- 2) Relationship and Role of Notaries with Individual Legal Subjects
- 3) Legal Certainty Aspects in Doing Business in the Industrial Revolution 4.0 Era

Looking at the problems in Indonesia regarding the obstacles to implementing Cyber Notary in making digital deeds in Indonesia, in the author's opinion, this is the result of 3 points. The 29th International Congress on 27-30 November 2019 in Jakarta, by the Indonesian Notary Association (INI) and the International Union of Notaries (UINL) which carries the three discussion topics as mentioned above.

So it is not only the Harmonization of Provisions of Legislative Regulations that must be enforced in Indonesia to support the Implementation of Cyber Notary , namely as follows:

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<sup>22</sup>United Nations, *UNCITRAL Model Law on Electronic Signatures with Guide to Enactment 2001*, United Nations Publication, New York: 2002

<sup>23</sup>United Nations, *United Nations Convention on the Use on Electronic Communication in International Contracts*, United Nations Publication, New York: 2007.

<sup>24</sup>United Nations, *Promoting Confidence in Electronic Commerce: Legal Issues on International Use of Electronic Authentication and Signature Methods*, United Nations Publication, New York: 2009.

<sup>25</sup>Andi Nur Annisa Meilany, (2020). *Cyber Notary: Protokol Notaris Yang Disimpan Dalam Bentuk Elektronik* Banyumas: Pena Persada

<sup>26</sup>Meilany, Andi Nur Annisa. (2020). *Cyber Notary: Protokol Notaris Yang Disimpan Dalam Bentuk Elektronik*. Banyumas: Pena Persada

a. Expansion of the meaning of "Notarial Deed, namely Authentic Deed", namely:

Article 1 number 7 UUJN	Article 1868 of the Civil Code
<i>Notarial Deed, hereinafter referred to as Deed, is an authentic deed made by or before a Notary according to the form and procedures stipulated in this Law.</i>	<i>an authentic deed is a deed made in a form determined by law by or before a public official who is authorized to do so at the place where the deed is made.</i>

b. Expansion of the Meaning and Provisions regarding the Phrase “before” in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary

Article 1 number 7	Article 16 paragraph (1) letter m
<i>Notarial Deed, hereinafter referred to as Deed, is an authentic deed made by or before a Notary according to the form and procedures stipulated in this Law.</i>	<i>reading the Deed before the person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a Deed of Will privately, and signed at that time by the person appearing, witnesses and Notary;</i>

c. The embodiment of the Cyber Notary Concept in the Explanation of Article 15 paragraph (3) of the UUJN in the Implementing Regulations of the Law so that the technical provisions for the implementation and limitations of the cyber notary concept can be understood firmly and clearly.

This will also have an impact on the consequences of implementing cyber notary in the application of digital notarial deeds and the power of notarial deeds made digitally as evidence that has perfect legal force as stipulated in Article 24 of Law No. 25 of 2009 concerning Public Services Documents, deeds, and the like in the form of electronic or non-electronic products in the implementation of public services are declared valid in accordance with statutory regulations.

There are several authors who have explained that the application of cyber notary to notarial deeds that are processed and created digitally does not constitute an Authentic Deed considering the provisions of Article 15 paragraph (9) which reads:

*If one of the conditions as intended in paragraph (1) letter m and paragraph (7) is not fulfilled, the relevant Deed only has evidentiary power as a private deed.*

In the author's opinion, this is a broader meaning of the phrase "faced" and "signed by the submitter, witnesses, and notary at this time" in letter "m" in Article 16 Paragraph 1 of the UUJN. From a legal perspective, there is no reason to use a cyber notary.



Indonesia is a constitutional state. However, if we talk about the concept of a cyber notarization system, for example the legality of an electronic signature system, then the general understanding of "signature" is a signature in the form of a contract (letter) or written. The person who signs. This allows for the individualization of the person who provides the statement/information. According to Tan Thong Kie, a signature is the signature of the signatory on a deed to indicate that he wants the deed to be considered valid as his. In Indonesia Introducing Cyber Notary. Regarding electronic transactions themselves, the legal provisions of both the Civil Code and Law No. 11 of 2008 concerning Electronic Information and Transactions, as well as Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions are applied at the national level. Electronic Information and Transactions ("Electronic Information") are contained in the Electronic Law (UU ITE), while internationally, regulations regarding electronic transactions are regulated by the United Nations Convention on the Use of Electronic Communications in International Treaties/Electronic Communications Convention/EEC 2005. The formulation of the application of the concept of cyber notary or e-notary in Indonesia is an electronic signature on a notarial deed.

In practice, the existence of electronic signatures, electronic information, and electronic document authentication methods involve the use of electronic certificate providers, which are hosted by third parties (certificate service providers) as the bearer of the trust order. This began with the Hague Convention on the Exemption of Legalization of Foreign Documents of 1961, which requires every authorized official, including notaries, to simplify the form (apostille) to identify the origin of official documents such as birth and standardization certificates, marriage certificates, death certificates, court orders or notarial deeds. Apostille is a proposal from the Council of Europe and was further developed by the Hague Conference on Private International Law (HCCH), in particular through the Hague Convention of 5 October 1961 which exempts foreign public documents from legalization, known as the Completed Apostille Convention, eliminating the requirement for diplomatic or consular legalization and facilitating the use of official documents across borders.

In this context, signature authentication becomes an important point. Basically, there are three approaches that regulate the electronic signature authentication procedure:<sup>27</sup>

- a. Minimalist approach/functional equivalence approach based on the UNCITRAL Model Law on Electronic Commerce (1996) and the UNCITRAL Model Law on Electronic Signatures (2001). Adhere to the principle of technological neutrality and emphasize at least two key features of e-commerce. Electronic signature. This means identifying the signatory and indicating the signatory's intent regarding the information signed. The requirements for the validity of transactions using

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<sup>27</sup>Edmon Makarim, *Modernisasi Hukum Notaris Masa Depan: Kajian Hukum Terhadap Kemungkinan Cyber Notary di Indonesia*, Op. Cit.

electronic communication/information for international contracts are regulated in Article 9 of the ECC, where transactions must meet the requirements.

b. Specific technological approach, namely the electronic signature regulatory paradigm. This refers only to the use of digital signatures using a specific type of technology: public key infrastructure (PKI). This is considered the most perfect technology to meet the following needs: Secure communications. This technological approach requires synergy with other related infrastructures, in particular e-Government and e-ID management (European Union), as well as integration between these systems. Regarding this approach, UNCITRAL suggests three models. The self-regulatory model, the limited government role (with limited government participation), and the optimal government role in leading the public key infrastructure process (through a government-led process).

c. The two-layer or two-path approach classification, namely the two-network approach widely adopted in European Union (EC) countries based on Directive 1999/93/EC on electronic signatures, namely electronic signature authentication.

The European Community provides standards for the recognition of electronic signatures in regular and extended categories supported by accredited certification bodies.

The discussion on The Notary and Electronic Contracts became one of the important discussions in the International Congress of Latin Notaries 2004 regarding the possibility of making authentic deeds and signing electronically as a meeting point between Notary Common Law and Civil Law in the context of the Hague Convention Abolishing The Requirement of Legalization For Foreign Public Document 1961.<sup>28</sup>one of the main objectives of which is to simplify the series of authentication procedures that require various forms of seals/marks to be placed on documents by eliminating various processes in the series so that documents that have been certified/legalized through the Hague Legalization Certificate can be accepted in various countries where the treaty applies without requiring other types of authentication.<sup>29</sup>In the context of notary, the Hague Convention 1961 gave rise to 2 (two) concepts of the role of Notaries in realizing the effectiveness of electronic transactions, namely Cyber Notary and Electronic Notary. Cyber Notary was originally an idea of the American Bar Association Information Security Committee in 1994. This concept is widely implemented in Common Law countries such as England, the United States, Canada and Australia,<sup>30</sup>where the Notary is known as a Public Notary who is not appointed by an

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<sup>28</sup>Naskah Urgensi: Pengesahan Convention of 5 October 1961 Abolishing The Requirement of Legalisation For Foreign Public Documents (Konvensi 5 Oktober 1961 Tentang Penghapusan Persyaratan Legalisasi Terhadap Dokumen Publik Asing), Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia Direktorat Jenderal Administrasi Hukum Umum, Jakarta:February 2019.

<sup>29</sup>The Hague Convention Abolishing The Requirement of Legalization For Foreign Public Documents 1961.

<sup>30</sup>Information Security Committee of the American Bar Association, Section of Science and Technology., [accessed 12/21/2020].

authorized official so that he is not bound by the requirement for a certain form/format of deed regulated by law. In the context of Cyber Notary, the task of a public notary is more about carrying out administrative processes combined with security technology as part of the implementation of the CIAANA Principle of Secured Transaction<sup>31</sup> by giving a stamp/seal on a document/agreement as a form of administration or registration of letters and does not play a role in making the contents of the letter/deed therefore a public notary is not a position that is always held by a legal expert (jurist) which is based on the main principles of the American Bar Association Information Security Committee 1994 regarding Cyber Notary which consists of: (a) Trust when transacting between parties over the internet (b) the security of the transmission (c) the integrity of the content of the communication; and (d) the confidence that such transactions will receive legal recognition that a binding contract is enforceable., Electronic Notary (E-Notary) as a proposed concept was initiated by the French Delegation in the TEDIS (Trade Electronics Data Interchange System) Legal Workshop - European Union 1989 in Brussels where the essence of the Notary is placed as a party that presents an independent record of an electronic transaction carried out by the parties.<sup>32</sup>

This difference is rooted in the authority of Notaries in Continental European countries or what is also known by the Latin term Notary as a profession held by legal experts (jurists) who produce products in the form of authentic deeds that have perfect evidentiary power in the Continental European legal system.<sup>33</sup>

Notary as a position that carries out part of the state's authority in the private legal realm that is closely related to aspects of public service and the economy in general, of course, should not be viewed as a rigid and static position, but must strive to adjust to actual phenomena, continue to support the government in overseeing the direction of development in an orderly, safe and legal manner. This needs to be supported by the proactivity of the Notary himself so that he is always in line and relevant to the development of the times and technology through fast, precise and efficient service so that he can support the acceleration of the economy.<sup>34</sup>

In response to the development of electronic transactions, various countries have responded to the role and function of notaries as Trusted Third Parties (T3P) and as providers of notarial services. Several countries have taken strategic steps in the form of regulatory changes and technological aspects as part of their implementation.

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<sup>31</sup>Leslie G. Smith, *The Role of the Notary in Secure Electronic Commerce*, Information Security Institute Faculty of Information, Queensland University of Technology, p. 1. 23

<sup>32</sup>Leslie G. Smith, *The Role of the Notary in Secure Electronic Commerce*, Information Security Institute Faculty of Information, Queensland University of Technology, p. 1. 23

<sup>33</sup>Herlien Budiono, (1998). *Akta Otentik Notaris Pada Sistem Hukum Anglo Saxon Dan Sistem Hukum Romawi*, Percikan Gagasan Tentang Hukum Ke-III, Kumpulan Karangan Ilmiah Alumni FH Unpar, Mandar Maju, Bandung: p. 104

<sup>34</sup>R.A. Emma Nurita, (2012), *Cyber Notary: Pemahaman Awal Dalam Konsep Pemikiran*, Refika Aditama, Bandung: p. 17

The role of a notary as a Trusted Third Party (T3P) can be found in countries that adopt the Cyber Notary approach, while in countries that use the Electronic Notary (E-Notary) approach, notaries function more as providers of notarial services, with various roles that can generally be divided into 2 (two), namely minimal and maximal roles.

In the minimal role of a notary as a Registration Authorities/Certification Authority, namely a party that verifies and legalizes a person's legal identity before the person concerned is given an Electronic Certificate from an Electronic Certificate Provider (PSE), while in the context of a larger/maximum role, a Notary carries out his/her services electronically (including in the provision of Notary products).

In its implementation, countries that adhere to Civil Law respond by establishing their own CA (Certification Authority)/CSP (Certified Service Provider) technology to support the use of Electronic Signatures/Digital Signatures from Notaries who are members.<sup>35</sup> This is implemented in Italy, Spain, Germany, Belgium and France, among others, so that notaries can submit copies of deeds made by notaries electronically. France and Belgium have changed their legal systems to accommodate authentication by changing the rules in their Civil Code, while countries such as the Netherlands and Germany have changed their regulations/laws governing the position of notaries, especially provisions related to authentic deeds that open up the interests of the validity of electronic signatures by emphasizing a minimalist approach (functional equivalent approach) for electronic signatures and a technological approach through cryptography, namely as long as it meets the identification requirements (the electronic signature can be identified), there is no objection to the contents of the document (content approval) and a guarantee regarding the integrity of the document (content integrity).<sup>36</sup>

In Indonesia, the Government has started to implement E-Government as an initial step for the digitalization of Registration Authorities/Certification Authorities through the implementation of E-KTP, Establishment of PT through SABH, namely a fast, accountable and transparent public service system for establishing limited liability companies towards e-Government Indonesia.

However, access problems *Cybernotary can authenticate a document, validating its legal contents, validating the digital signature, validating the identity of the signer, validating the capacity of the signer, validating the authority of the signer, and validation of the digital certificate not yet integrated with an account or system can be accessed by the Notary.* (self-translation "Notaries can have supporting functions in ICT as T3P: Storing or facilitating escrow of source code (e.g. Netherlands), Registration Authority for legalization or verification of conventional IDs before they have an electronic certificate from CSP Providing Notary services through electronic systems to

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<sup>35</sup>Article 7 Convention of 5 October 1961 on Abolishing the Requirement of Legalization for Foreign Public Documents (Apostille Convention).

<sup>36</sup>Joshua Sitompul, Cyberspace, Cybercrime, Cyberlaw, Tata Nusa, Jakarta: 2012, p.20

the public, Electronic authentic deeds)

This is the basis of the problem of implementing cyber notary in Indonesia which cannot be implemented apart from harmonization of implementing regulations for implementing cyber notary.

In Indonesia, digital authentication systems have been integrated with E-Government Programs such as:

- Registration Authority for legalization through <https://apostille.ahu.go.id/>.
- ID verification such as E-KTP, NPWP before the signing of the Deed by the Parties, there is no system specifically for Notaries in the ID verification process of the parties as stipulated in Article 15 paragraph (2) letter d UUJN.

It can be concluded that notaries do not need to wait for the issuance of government regulations to implement Cyber Notary in Indonesia. as stipulated that the Civil Law State requires the principle of legality in implementing the Implementation of Cyber Notary in Indonesia. In this case, there are regulations governing Draft *Cyber Notary* as referred to in Article 15 paragraph (3) of Law No. 2 of 2014 is linked to the concept *International Union of Notaries* (UINL) in Civil Law countries.

However, there are still problems in its implementation, considering the support system needed to realize the cyber notary concept, namely: *Notaries can have supporting functions in ICT as T3P: Storing or facilitating source code escrow (e.g. Netherlands), Registration Authority for legalization or verification of conventional IDs before they have an electronic certificate from CSP Providing Notary services through electronic systems to the public, Electronic authentic deeds.*

### **3.2. Problematics on Implementation of the Concept Cyber Notary in Indonesia insupporting the Goals of the ASEAN Economic Community and AFTA is linked to the Notary Law as part of Indonesia's agreement to comply with the 1994 UINL Convention regarding the concept of digital authentic deeds.**

Indonesia has great potential to become the largest digital economy in Southeast Asia. This potential is driven not only by its large population and favorable demographics, but also by rapid technological developments and increasing internet penetration. To realize this ideal, *Indonesia Must Be Ready to Compete to Become the Largest Digital Economy Country in Southeast Asia* by taking the right strategic steps. These efforts will contribute significantly to improving the economy and welfare of the Indonesian people in the future.

#### **Definition of ASEAN Economic Community (AEC)**

The ASEAN Economic Community (AEC) is an ambitious initiative aimed at deeper economic integration among ASEAN member states. Officially launched in 2015, the AEC aims to make ASEAN a competitive manufacturing hub within a single market,

allowing the free flow of goods, services, investment, skilled labor, and capital. The initiative focuses not only on enhancing economic competitiveness, but also on building a stable, prosperous, and inclusive region.

The ASEAN Economic Community (AEC) 2015 has several important interrelated goals:

- a. Domestic market and production base: The AEC aims to remove barriers to trade and investment among ASEAN member states by integrating regional markets. This will allow goods and services to flow more freely and increase regional efficiency and productivity.
- b. Free movement of goods and services: The elimination of tariff and non-tariff barriers to trade is an important step towards achieving the free movement of goods and services. This includes harmonizing product standards, simplifying customs procedures, and removing other technical barriers to intra-ASEAN trade.
- c. Free flow of investment: The AEC is committed to creating an attractive and open investment environment. Member countries seek to harmonize investment policies and lift restrictions on foreign investment in various economic sectors.
- d. Free flow of skilled labor: One of the key elements of the AEC is the mobility of skilled labor within ASEAN. These efforts include cross-border recognition of professional qualifications and the development of frameworks that facilitate the free movement of skilled workers.
- e. Freer capital flows: Creating conditions that allow for freer capital flows is an important step in advancing economic integration. This includes liberalizing financial services and capital markets, and strengthening financial cooperation among member countries.

The AEC is a landmark initiative designed to create deeper economic integration among ASEAN member states. With the ultimate goal of making ASEAN a single market and production base, the AEC seeks to enhance the flow of goods, services, investment, skilled labor, and capital flows. Despite the challenges, the AEC has made significant progress since its launch in 2015. Deeper and more equitable economic integration is expected to contribute significantly to the economic growth and well-being of ASEAN peoples. Continued efforts to address regulatory barriers, economic disparities, and socio-cultural challenges will be critical in achieving the AEC's ambitious goals.

The MEA creates deep economic integration in ASEAN, including implicitly encouraging MEA Member States to carry out digital integration of Public Services

#### **ASEAN Free Trade Agreement (AFTA)**

The ASEAN Free Trade Area (AFTA) is trade block agreement by the Association of Southeast Asian Nations supporting local trade and manufacturing in all ASEAN countries, and facilitating economic integration with regional and international allies.



(translated itself, ASEAN Free Trade Area (AFTA) is a trade bloc agreement of the Association of Southeast Asian Nations that supports local trade and manufacturing in all ASEAN countries and facilitates economic integration with regional and international allies)

The Indonesian government has taken various reform steps to become more competitive and attractive to investors. In addition, in 2020 the government made Indonesia the largest user of the digital economy and is ready to produce a thousand technopreneurs.

With the digital economy in ASEAN, it can significantly increase the ability to compete in the global market. ASEAN's economic growth, especially Indonesia, in 2015 reached 4.8 percent and was above world economic growth.

This fact is a positive indicator for foreign investors to play their role as Investors in Indonesia. Minister of Trade Thomas Lembong emphasized that Indonesia must be ready to compete in order to realize its ideals as the largest digital economy country in Southeast Asia. These efforts will contribute significantly to improving the economy and welfare of the Indonesian people in the future.

The government has taken initial steps to realize this ideal, namely through reforming Indonesia's economic policy to be more competitive and attract more investment. One of the efforts made is E-Government to Business (G2B), namely transactionselectronicwhere the government provides various information needed by businesses to transact with the government. Leading to marketing products and services to the government to help the government become more efficient through improving business processes and data management.electronic. E-Government to Business services, such as:

- a. The AHU.ONLINE.GO.ID service from the Ministry of Law and Human Rights, namely the AHU Online Directorate General Service, is a real effort by the Directorate General of General Legal Administration of the Ministry of Law and Human Rights to realize excellent service to the community in building good governance towards a clean government by prioritizing professional, fast, precise, efficient, cheap and free from extortion services. The Directorate General of General Legal Administration, Ministry of Law and Human Rights has several legal services to the community, agencies or institutions, namely: Registration of Fiduciary Guarantees, Ordering of PT Names, Approval of Establishment, Amendments to PT Articles of Association, Approval of Foundations, Approval of Associations, Notary and Registration of Wills.
- b. The OSS.GO.ID service from the Investment Coordinating Board (abbreviated as BKPM) is an investment permit service and is integrated into a one-stop licensing system.
- c. And there are still many e-government to business such

as [https://inatrade.kemendag.go.id/\(kementerianTrading\)](https://inatrade.kemendag.go.id/(kementerianTrading)), <https://customer.beacukai.go.id/>.

On the other hand, Notaries are closely related to providing services to the community as public servants, more precisely as servants, therefore, as public servants and government partners in the field of public services, in supporting government programs have an important role in the business sphere. Clarity and legal accuracy are also needed outside the business world. As a general rule, companies rarely touch existing legal norms and regulations, thus ensuring legal clarity in these regulations. The position of the UUJN illustrates legal clarity, meaning the rules for issuing public letters that are in different forms and require clarity in terms of proving clear offers. For example, it must be written on a deed and submitted as a signature to a notary.

The emergence of the Ease of Doing Business Regulation (EODB) and Efficiency Regulation launched and developed by the World Bank encourages all countries to strive and take policies to increase the efficiency of the requested business scope. The Business Freedom Index rates this country well in terms of investment development. In 2019, Indonesia announced that it was ranked 73rd out of 190 countries surveyed.

Reference materials that are related and closely related to the authority of a Notary are reference materials in the preparation for the formation of a company (establishment of a company) and will be described through further research.

There are 3 (three) reasons why the implementation of cyber notary is very crucial for Indonesia. The first reason is that the government is trying to get Indonesia ranked in the top 40 EODB standards according to the international notary congress and later the notary will make adjustments to existing developments. Another reason is in the formation of a Limited Liability Company (PT) which is the standard used to explain the EODB standard.

Notaries in this case as public officials have duties and functions regulated by the state in issuing deeds of establishment of PT must know the provisions related to UUJN and must know the things in a series of PT issuances. In addition, in the provisions of Article 22 UUJN it is explained that the establishment of notaries can be opened through the assumption of 3 things, namely the implementation of the business world, equality of society, comparison of deeds issued by notaries each period.

The inclusion of basic standards for the implementation of the business world as a reference explaining the maximum notary required in a region explains the position of notary related to the business world. Thus, Notaries are required to follow the development of the times and strive to always adapt to technological advances by saving time for the series of deed issuances. Among them are things in the issuance of deeds that are more efficient and precise which is by implementing a meaning of the existence of a cyber notary based on UUJN.

The issue of its regulation with the provisions at present there is no explanation of the

meaning of the cyber notary regulation even though in its development there has been a provision in Article 15 paragraph (3) of the UUJN. This regulation has an effect on cyber notary where it cannot be done then it is related to the existence of efficiency standards in business. Thus, the Importance of Implementing Cyber Notary as an Effort to Create Security in Business Practices in Indonesia<sup>37</sup> the present and the true meaning of cyber notary to increase business efficiency in Indonesia as an optimization of the role of Notaries in the Government Program towards the ASEAN Economic Community and AFTA is associated with the concept of digital authentic deeds, so need to understand how the use of advances in information technology through notaries to exercise their authority and new regulatory determinants (*ius constitutum*) and community needs (*ius constituendum*) operate in order to determine what is more practical and effective.

The position of a notary's job has the task of providing services carried out electronically (e-commerce) and will later require the interests of electronic deeds (Sukarmi, 2008). The work of a notary usually provides services for the business world until the UUJN explains the many types (needs) of notaries in certain areas. Regulated according to a series of steps in the business world. For example, Jakarta is the capital city of the country where it is a collection of the Indonesian economy regulated by Permenkumham Number 27 of 2016 concerning the Formation of Notary Positions and Determination of Regional Categories. The understanding of the existence of an area that obtains category A from the government is an area whose economic center is one step ahead of other areas. In the real world, and in connection with the need for real evidence, there is also time efficiency and convenience in the process of making reliable certificates. According to research, Online manager registration, electronic HT registration, and online company name ordering prove that the business world wants time efficiency and convenience in all legal aspects. The problem is, notaries in carrying out their duties must follow the UUJN. Notaries who do not determine the handling according to the UUJN guidelines can change it to something else. In the interpretation of Article 15 paragraph (3) of the UUJN, a paradigm is determined for cyber notaries. The authority to certify electronic transactions (cyber notaries), mortgages of waqf and aircraft mortgages refers to "Other legal authorities." The consequences of other legal powers raise further problems, such as the need to issue certificates and non-certificates.

The function of a notary according to this reference concerns matters relating to starting a business. For example, in the series of company establishments (Limited Liability Companies) it is considered based on the reference series of company establishments until the company can run its business. According to this, it can be explained regarding the reference procedures, time, costs and minimum basic capital for establishing a PT which are considered equivalent to the reference that can describe the effectiveness of the business. The meaning of cyber notary is something that is

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<sup>37</sup>Simon Reinaldo Marlin, Mohamad Fajri Mekka Putra, "The Importance of Implementing Cyber Notary as an Effort to Create Security in Business Practices in Indonesia", *Journal of Social Sciences and Education (JISIP)*, Vol. 6, No. 3, (July 2022).

bound by the use of faster time. Thus, the description of the implementation of cyber notary is intended for the reference procedures and time, while the costs and basic capital used are based on other laws and regulations. The meaning of the development of offline to online (cyber notary) must later be able to solve three things related to the development of the duties and functions of a notary, which in this case is to provide support for the effectiveness of business in Indonesia. In addition, get the development of the duties and functions of a notary does not shift the understanding of authentic deeds and can the reference for the security of deeds issued in the electronic system provide certainty. The main thing is that a person must review the functions and duties of a notary to issue a deed based on UUJN. In its application, the position of a notary is divided into three stages, namely pre-making a deed, making a deed and post-making a deed.

The steps before making a deed are usually called legal document analysis. For example, a review of the subject matter and subject matter and all documentation requirements needed to issue a deed is carried out. This step often requires the experience and legal analysis of a notary. In addition, further development of existing methods cannot reduce the effectiveness of authentic documents. This opinion arises because the work of a Notary requires wet ink and paper (traditional method).

In addition, there is a reference that explains that notaries are required to carry out their duties traditionally, commonly referred to as the principle of *Tabellionis Officium Fideliter Exercebo*. However, if referring to the meaning of an authentic deed, it is issued by an authorized party, issued according to the law, the party is tasked with issuing it within its territory, so that the development from offline to online methods cannot reduce the validity of the meaning of an authentic deed as long as it is stipulated in the UUJN. Another thing is related to the security aspect with electronic creation, can it provide a guarantee. The authentic aspect in law is closely related to the understanding of the existence of comprehensive evidence. The meaning of comprehensive evidence is that the judge does not need to examine the reality stated in the deed without providing evidence to the contrary and the party who does not recognize the deed must provide evidence. This function is related to the trust and security of authentic deeds.

The steps for issuing an authentic deed are arranged in various ways so that they can provide certainty for someone through the deed, which will later be different from the steps for issuing a deed under hand, the steps for issuing which are flexible and not regulated by laws and regulations. In relation to the security reference for the deed, therefore, based on the author's opinion, the steps for signing through the electronic method of its implementation greatly guarantee security compared to the traditional method. Several experts have put forward an explanation regarding cyber notary in developing countries that can increase security (improving the level of security). The circulation of provisions related to the mechanism for using electronic signatures can guarantee legal certainty compared to legal references and security references. Based on Article 60 of Government Regulation Number 71 of 2019 concerning the

Implementation of Electronic Systems and Transactions, it is explained that electronic signatures include certified electronic signatures and uncertified electronic signatures. Certified electronic signature is a signature that must include categories including sufficient clarity of legal validity and the legal impact of electronic signatures which are regulated in Article 59 paragraph (3) of the PP a quo, namely using an electronic certificate issued through the services of an Indonesian electronic certification organizer, issued using a certified electronic signature issuing device. Based on the explanation above, notaries can later use certified electronic signature tools to create a sense of clarity and certainty as well as security in the use of a deed.

Therefore, optimizing the role of notaries in supporting the achievement of the government program to realize the objectives of the MEA in Indonesia requires a system provided by the government as a notary partner to provide an integrated system to form a special notary system that includes:

- a. The Indonesian citizen identity identification system is integrated with all government products E-KTP, NPWP.
- b. Certified electronic signature identification system and/or creation of certified electronic signatures on a special Notary system
- c. The system for issuing authentic deeds electronically, including the identification system for authentic deeds that have been created by a notary.
- d. The electronic Notary Protocol Storage System as stipulated in Article 1 number 13 of the UUJN, namely the Notary Protocol is a collection of documents which constitute state archives which must be stored and maintained by Notaries in accordance with the provisions of laws and regulations.

In addition, there is a need for Legislation that regulates in more detail the system and limitations of the cyber notary system that will be implemented in Indonesia. As well as Harmonization of each Article in the UUJN to support the implementation of Cyber Notary .

#### **4. Conclusion**

The provision of notary services that utilize technological advances in creating authentic deeds in cyberspace ( Cyber Notary ) is possible for notaries in Indonesia based on the explanation of Article 15 Paragraph (3) of the new UUJN, however, many authors have researched that the provision of Cyber Notary still conflicts with one law and another, so that it does not provide a guarantee of legal certainty. However, in the author's opinion, there is a need to expand the meaning of the phrase "before" both in the UUJN and Article 1868 of the Civil Code. Before in the digital era like today, it should be interpreted broadly, namely Before through the use of electronic media as has been implemented through the Video Conference application (Article based on Article 77 paragraph (1) of the Law on Limited Liability Companies) and the E-Government

application in the OSS system. Legal certainty over the power of an Authentic Deed can be achieved through the UUJN Law in conjunction with the new UUJN, Law No. 40 of 2007 concerning Limited Liability Companies, Law No. 25 of 2009 concerning Public Services and the Law on Information and Electronic Transactions or Law No. 11 of 2008. The legal status of the deed of minutes of the GMS carried out through electronic media can be said to be an authentic deed and can be used as valid evidence in court because it uses the principle of *lex specialis derogate lex generali* and extensive interpretation. Notaries are afraid to provide their services that utilize technological advances in making authentic deeds in cyberspace ( Cyber Notary ) is an interpretation in the narrow sense of the phrase "before". However, besides that, the implementation of cyber notary should be supported by more detailed laws and regulations and an electronic Notary system that has a security system and covers all lines of notary services as public officials.

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