

Review of the Problems and Legal Protection for Parties in the Implementation of Authentic Deeds Made Based on the Cyber Notary Concept in Indonesia

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Abstract. *In the ever-evolving digital era, information technology has had a significant impact on various aspects of life, including in the fields of law and notary. One of the important innovations that has emerged is the concept of cyber notary, which uses digital technology in making authentic deeds, replacing conventional methods. It is hoped that cyber notary can increase efficiency, transparency, and accessibility in notary services, as well as reduce bureaucracy that often takes time and costs. However, the implementation of the cyber notary concept in Indonesia faces various complex problems. One of the main issues is the legal validity of deeds made digitally, including the recognition of electronic signatures and the process of authenticating the identities of the parties. In addition, data security and privacy protection are challenges in ensuring that information stored and transmitted digitally is not misused or hacked. On the other hand, the current regulations do not fully accommodate cyber notary practices. Legal gaps and unclear regulations create uncertainty for notaries and the parties who use their services. This reinforces the urgency to examine more deeply the need for comprehensive and adaptive legal updates to technological developments. This study focuses on the analysis of the problems in the implementation of authentic deeds based on cyber notary and legal protection for the parties involved. With a normative legal approach, this study aims to identify the main challenges and provide recommendations for policy makers and legal practitioners to improve the existing legal framework. It is hoped that the*

solutions found can support digital transformation in the notary sector in Indonesia, creating a more efficient, secure, and reliable system.

Keywords: Authentic; Cyber; Deed; Protection.

1. Introduction

The development of the legal system in Indonesia so far follows the Dutch legal system, for approximately 350 (three hundred and fifty) years the Netherlands colonized Indonesia, the Netherlands was the longest country to colonize Indonesia until Indonesia finally became independent in 1945, so that it had an impact that all legal products applicable in the Netherlands also apply in Indonesia, such as the Indonesian legal system following the Dutch legal system, namely Civil Law and the Dutch legal book used in Indonesia, one of which is the Civil Code (*Burgerlijk Wetboek*).

The Civil Code is still used by the Indonesian people today, because the contents contained in the Civil Code are considered to be quite good in providing legal certainty to the Indonesian people regarding legal acts, especially in private law in Indonesia, although some provisions in the Civil Code are no longer used, because a regulation has been issued that specifically regulates certain matters.

The Civil Code also regulates public officials who are authorized to make an authentic deed, this public official is called a notary, a notary has a very important role in assisting the parties in carrying out legal acts and providing legal certainty, especially in the field of civil law, therefore the deed made by a notary is also included in formal evidence that can also be used as evidence in court, according to Article 1868 of the Civil Code which states that "an authentic deed is a deed in the form determined by law made by or before public officials who are authorized to do so at the place where the deed was made."¹This word reveals that a public notary was indeed an important person and shows the nature of a notary as a strong witness who is known in countries with a continental legal system (in English called the Civil Law Countries legal system).²

In addition to the Civil Code and the Civil Law legal system enforced in Indonesia, Indonesia through Governor General Jan Pieter Coen on August 27, 1620 appointed the first notary in Indonesia, namely Melchior Kerchem who was placed in Jakarta at that time called Batavia, after Kerchem was appointed as the first notary in Indonesia, a notary regulation was issued called De Notariswet to become a Notary.

Reglement or also called Notary Position Regulation (PJN) in Staatblad 1860 Number 3. PJN has been in effect in Indonesia for approximately 144 (one hundred and forty four) years and in 2004 PJN was replaced by Notary Position Law No. 30 of 2004, less than 10 years of this law, on January 15, 2014 there was a change to the law on the position of

¹R. Subekti dan R. Tjitrosudibio, (2022), *Kitab Undang-undang Hukum Perdata*, Balai Pustaka, Jakarta, p. 521.

²Tan Thong Kie, (2007), *Studi Notariat dan Serba Serbi Praktek Notaris*, Ichtar Baru Van Hoeve, Jakarta, p. 611.

Notary, as recorded in Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the position of notary (hereinafter referred to as "PUUJN").

A notary is an official who is authorized to make an authentic deed regarding all acts, agreements and provisions required by law that are desired by the interested party to be stated in an authentic deed. In practice, a notary is a public official who is given the task and authority by the state to be able to make authentic deeds for the legal interests of the community who carry out private legal acts. The work patterns and facilities in the work of a notary continue to be dynamic following the rapid development of the times, based on electronic information technology, and not fixated on the territorial and time limitations of a place.³

In this law, the government gives considerable authority to notaries, namely in accordance with the following articles:

- a. Article 15 paragraph 1 notary's authority: can make an authentic deed regarding an act, agreement and stipulation which is required by statutory regulations and/or which is desired by the interested party to be stated in an authentic deed, guarantees certainty of the date of making the deed, keeps the deed, gives grosse , copy and extract of the deed, all of this as long as the deed is not also assigned or excluded to another official or other person as determined by law;
- b. Article 15 paragraph 2 of the notary's authority: to validate signatures and determine the certainty of the date of private letters by registering them in a special book, to record private letters by registering them in a special book, to make copies of the original private letters in the form of copies containing descriptions as written and described in the letter in question, to validate the suitability of photocopies with the original letter, to provide legal counseling in connection with the making of deeds, to make deeds related to land and to make auction minutes deeds.

The notary has such great authority as recorded in the PUUJN, the implementation of the notary authority system currently still uses the system and/or principle of the "Tabellionis Officium Fideliter Exercebo" principle, in this principle it is stated that notaries can work and carry out all their duties and authorities traditionally, this principle means that notaries in making an authentic deed can provide legal certainty as previously stated that authentic deeds are included in formal evidence that can be accounted for and used in seeking justice and legal certainty in a case in court, but the intended evidentiary documents are not only based on authentic deeds, other documents which are also supporting documents as the basis for making an authentic

³Nurul Muna Zahra Prabu, Endang Purwaningsih, Chandra Yusuf, "Problematika Penerapan Cyber Notary Dikaitkan Dengan Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris", <https://openjournal.unpam.ac.id/index.php/SKD/article/view/3995>, 24 June 2024, 13.00 WIB.

deed by a Notary. *Tabellionis Officium Fideliter Exercebo* as a postulate that must be held firmly by notaries, that Notaries must work traditionally.⁴

In the development of notaries in several countries, many countries have used the system of functions and roles of notaries in conducting electronic transactions. Therefore, Indonesia must also stimulate the services provided by notaries through electronic transactions, even to the point of organizing electronic notary services. The development of information systems and technology in the current era of globalization is very rapid in providing an impact on aspects of Indonesian law.

Current technological developments require society to be able to adapt to changes in technology. In order to adapt to ongoing developments, the law must always keep pace with the times by making changes. The implementation of practices in this digital era is rapidly expanding to various professional industries. Currently, almost all professions in Indonesia require the use of computers, to be able to store work information in one system using technology, send letters, data information via the internet, electronic buying and selling and other activities with the help of technology.

Notaries in carrying out these things until now their duties are to carry out the traditional way, namely still holding meetings or face-to-face meetings in front of and/or facing him. Public notaries make document records, which are made and legalized in a physical document form. Notarial deeds are authentic deeds that have legal force for parties who need proof towards the direction of notarial services electronically starting from facing the reading of authentic deeds virtually, signing deeds digitally, affixing fingerprints digitally and storing documents, both minutes, copies of deeds and notary documents in carrying out their functions and authorities which can be known as Cyber Notary.

The development of the era in the current digital era has made the government review the principle of *Tabellionis Officium Fideliter Exercebo* as a basis for making an authentic deed by a Notary, whether the making of an authentic deed with a traditional work system can be transferred to a work system based on digitalization and/or made with the concept of making an authentic deed by Cyber Notary, where the provisions regarding Cyber Notary have been interpreted in Article 15 paragraph 3 PUUJN, the contents of which state that "Notaries have other authorities regulated in laws and regulations", so that with a sentence as simple as this it can be interpreted by the government and other parties as an entry point for making an authentic deed based on the Cyber Notary concept.

However, in reality, the law in Indonesia is often late in keeping up with developments that have occurred in society, as a result, legal regulations in Indonesia are often left behind so that there needs to be adjustments in various regulations that support a regulatory concept that is aspired to and dreamed of by the Indonesian government in

⁴Tim Penulis IKANO UNPAD (Zahra Cntana), *Cyber Notary dan Tantangan Notaris di Era Digital*, Refika, Bandung, 2023, p. 5.

advancing the development of the Republic of Indonesia, so that Indonesia can be aligned with other developing countries in the world, this certainly requires the persistence of the Indonesian people to advance the country of Indonesia, not only the government that is fighting to advance the country of Indonesia but the Indonesian people must also support all programs that are put forward by the government.

Various definitions of Cyber Notary presented by the author are the concept of utilizing technological developments used by notaries in carrying out or implementing their duties and authorities contained in the PUUJN, such as document digitization, electronic signing of deeds, implementation of General Meetings of Shareholders via teleconference, and others.⁵Cyber Notary is a general concept that is often used in various scientific works that mention the role of Notaries in electronic transactions or relationships, which are carried out via the internet.⁶ Cyber Notary is a concept that utilizes technological advances or developments for Notaries to create authentic deeds in cyberspace and carry out their duties every day, for example: in signing...electronic signing of the Deed and General Meeting of Shareholders by teleconference.⁷

So Cyber Notary is a process of making authentic deeds carried out by a notary public official using digital technological advances and can carry out his/her duties, authority and obligations in signing authentic deeds via teleconference, video call and other matters relating to the duties and authority of a Notary digitally. Other matters included in Cyber Notary include the storage of notary documents when the notary documents are submitted to the notary protocol holder, if the notary as a public official is no longer serving as a notary official in a region because he/she is no longer active, retired, the notary is dismissed by the Indonesian Notary Association through the Regional Supervisory Council (MPD), or the notary dies in accordance with the provisions contained in the PUUJN.

It is not easy to apply the Cyber Notary system or concept in making an authentic deed, because there is a relationship between the parties, witnesses and notaries and other parties included in the supporting documents in making an authentic deed, for example the identities of the parties contained in the deed in the form of an Identity Card (KTP), Passport if the party recorded in the deed is a Foreign Citizen (WNA), minutes of meetings, copies of certificates of ownership or building use rights and other documents which later supporting documents in making a deed will be stored in a

⁵Junita Faulina, Abdul Halim Barkatullah, Djoni S Gozali, "Kedudukan Hukum Akta Notaris Yang Menerapkan Konsep Cyber Notary di Masa Pandemi Covid-19 di Indonesia", <https://journals.indexcopernicus.com/search/article?articleId=3614860>, accessed June 23, 2024, at 10.00 WIB.

⁶Agung Fajar Matra, *Penerapan Cyber Notary di Indonesia Ditinjau dari Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*, Tesis Magister Kenotariatan Universitas Indonesia, Depok, 2012, p. 57.

⁷Emma Nurita, (2012), *Cyber Notary Pemahaman Awal dalam Konsep Pemikiran*, Cetakan 1, Refika Aditama, Bandung, p. 53.

warehouse at a notary's office.

With the concept of Cyber Notary in carrying out a notary's duties and authorities, various legal problems arise for notaries, starting from reading authentic deeds via Teleconferencing, Skype, Video Call via one of the applications on a mobile phone, signing authentic deeds electronically or the confidentiality of the identities of the parties, both notaries, appearing or witnesses and how the documents of the holder or recipient of the notary protocol in storing authentic deed documents submitted to the recipient of the notary protocol.

In relation to the description of the problems that the author has presented in the previous section, the author will analyze the effectiveness of the concept of making authentic deeds based on Cyber Notary so that the author can find answers to the questions in the following problems:

- a. What are the problems and/or issues faced by Notaries in implementing the creation of authentic deeds based on the Cyber Notary concept?
- b. What is the role of the government in providing legal protection for Applicants, Witnesses, especially Notaries in making authentic deeds based on the Cyber Notary concept?

In this study, the author uses 2 (two) research methods, namely Normative and Empirical, which is meant by normative here, namely the research is carried out based on primary legal materials, namely from various regulations such as Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Position of Notary (PUUJN), Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE), Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration and the Civil Code, also based on secondary legal materials in the form of books from various authors, articles, journals and other scientific writings.

While the method intended empirically is by obtaining real evidence, observation, experiments and also with various field data collection. Generally, real evidence is obtained from documents provided by various government agencies that pioneered Cyber Notary, observations in this method see several successful Cyber applications carried out in several agencies, for example the Pratama Tax Service Office (KPP) regarding the tax reporting program with E-Fin, the Ministry of Investment/BKMPM (Investment Coordinating Board) which has issued a product called Online Single Submission (OSS) for business owners, both legal entities and individuals, the Ministry of Law and Human Rights of the Republic of Indonesia in the ratification of an authentic deed, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (BPN) which issues <https://intan.atrpn.go.id> in checking land certificates, and other cyber systems that have been used in Indonesia.

The theory in this study uses the theory of authority and the theory of validity, where it

is recognized that a notary is a public official who is authorized to make and issue an authentic deed, as recorded in the PUUJN, namely that a notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this law or based on other laws.⁸

An authentic deed made by a notary has legal validity and certainty that can be accounted for answer by a notary, because an authentic deed is a means of evidence that can be recognized by the state in various cases, because it can also be used as evidence, therefore in this principle a notary must have a principle of caution in making an authentic deed so that the authentic deed in question does not become a deed of degradation or a deed under hand, if this happens then the notary must be responsible to the parties, for example to the notary association (INI) or to the state.

In several studies it is also mentioned that Cyber Notary in the future will facilitate the parties, especially notaries, in carrying out legal acts with an authentic deed with the concept of Cyber Notary. The difference with the writing in this study is that the author will analyze not only the system or method of making a deed with the concept of notary, but will also analyze the form of effectiveness of Cyber Notary and the holder of the Notary protocol.

Table 1. Journals That Are Almost the Same as the Research

Title level	Font size and style
➤ Problems of Implementing Cyber Notary Related to Law No. 2 of 2014 Concerning thick Amendments to Law No. 30 of 2004 Concerning the Position of Notary	
Legal Position of Notarial Deeds Implementing the Cyber Notary Concept During the Covid thick 19 Pandemic in Indonesia	
➤ Mayantara Notary Concept Facing Global Competition Challenges	thick

3. Results and Discussion

3.1. Problems Faced by Notaries in Implementing Authentic Deeds Based on the Cyber Notary Concept

In countries that adopt the Continental European legal system, the role and authority of Notaries are very different from Notaries in countries that follow the Anglo-Saxon legal system. Notaries in Continental European countries, also known as Latin Notaries, are a profession carried out by legal experts (yurists) who are appointed for life or until retirement. Latin Notaries provide advice to clients in preparing written documents. On

⁸See Article 1 paragraph 1, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position.

the other hand, Notaries in Anglo-Saxon countries are generally only responsible for document registration, in contrast to the role of *waarmerking* (registration of documents under hand) held by Notaries in Indonesia which follows the Continental European legal system. Notaries in the Anglo-Saxon system are not involved in making or determining the contents of documents or deeds. Therefore, in countries that adopt the Common Law System (Anglo-Saxon system), the concept of Cyber Notary can be widely applied. The situation is different in countries that follow the Civil Law System due to differences in legal characteristics, especially in terms of the notary system in the two systems.

The concept of Cyber Notary is an ideal and something that the government wants in the future in realizing the implementation of an authentic deed that has a digital nature, the arrangement of supporting documents for making the deed, of course, will have a very relevant legal certainty. It is said so because starting from the person appearing to provide an identity when an authentic deed will be made, the authentic deed is read, the notary reads the deed, the signatures of the persons appearing, fingerprints, all are done using a digitalization system called Cyber Notary. So that with the concept of making and signing a deed using Cyber Notary, the government hopes to be able to improve the Indonesian economy to be better and develop, especially domestically and the recognition of Indonesia in general in other countries in the world.

In the concept of Cyber Notary, there is no need for direct or physical meetings, but can use technology such as Teleconference or Skype without any regional or geographical limitations, as well as city or provincial limitations. Thus, Notaries carry out their duties by implementing them in transactions or relationships electronically via the internet as the main media for making Deeds. This leads to the transformation of Deeds that were originally made in paper form into Electronic Deeds or electronic documents.

Notaries have a lot of authority given by the government in carrying out their duties to make authentic deeds, but in fact the notary's duties are not only to make authentic deeds, but they are still responsible for the deeds made until the end of the notary's term of office, as stated in PUUJN Article 15 paragraph (1) the notary's authority is:⁹"Notaries have the authority to make all authentic deeds regarding an act, agreement and determination that is required by statutory regulations and/or that is desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide a grosse, copy and extract of the deed, all of this as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law. Meanwhile, paragraph (2) reads:¹⁰

- 1) Validate signatures and determine the certainty of the date of private letters by registering them in a special book;

⁹Ibid Article 15 paragraph 1

¹⁰Ibid Article 15 paragraph 2

- 2) Recording letters under hand by registering them in a special book;
- 3) Make a copy of the original private letter in the form of a copy containing the description as written and described in the letter in question;
- 4) Checking the photocopy to ensure it matches the original letter;
- 5) Providing legal advice regarding the preparation of deeds;
- 6) Making deeds relating to land; or
- 7) Making a deed of auction minutes.

The notary's authority as a public official in making an authentic deed for the parties to carry out a legal act is so great and in making this authentic deed the notary's responsibility is at stake, where the notary must be careful and thorough in making an authentic deed with documents provided in hardcopy from the parties who intend to make an authentic deed to the notary, in such cases the notary can check the evidence of the document directly to make a deed, but this is not the case with the making of an authentic deed carried out based on the Cyber Notary concept. In the authentic deed making system using Cyber Notary, it has not been determined how the notary can ensure if there are parties who are figures to be able to make an authentic deed, of course this can also be considered by the government in implementing Cyber Notary, because the notary's responsibility for the authentic deed is at stake until the notary does not serve as a notary, as the author has explained previously.

In the Cyber Notary concept, a notary in exercising his authority as a deed maker can be interpreted in accordance with PUUJN Article 15 paragraph (3) which states: apart from the authority as referred to in paragraphs 1 and 2, a notary has other authority as regulated in statutory regulations.¹¹With the provisions in the article, namely: "other authorities regulated in laws and regulations" there are different interpretations, some people say that the provisions can be interpreted as the starting point of the provisions regarding the implementation of the Cyber Notary concept in the formation of an authentic deed, but sadly in the PUUJN it has not been stated in detail regarding the certainty of making an authentic deed based on the Cyber Notary concept, also in this case there are no legal regulations that write about special provisions regarding Cyber Notary, although the ITE Law has been issued discussing digital identity, digital signatures, digital fingerprints, and other documents digitally, but this cannot be used yet, of course it must first be supported by other regulations such as laws or ministerial regulations derived from the PUUJN, so that if Cyber Notary is used by the government there is no more legal gray area regarding the creation of authentic deeds based on the Cyber Notary concept.

Article 16 paragraph 1 of Law No. 11 of 2008 concerning Electronic Information and

¹¹Ibid Article 15 paragraph 3

Transactions has been conveyed regarding notification of the requirements for the authenticity of an electronic system, where in this article it is stated that "as long as it is not determined otherwise by a separate law, every Electronic System organizer is obliged to operate an Electronic System that meets the following minimum requirements:¹²

- 1) Can re-display Electronic Information and/or Electronic Documents in their entirety in accordance with the retention period stipulated by statutory regulations;
- 2) Can protect the availability, integrity, authenticity, confidentiality and accessibility of Electronic Information in the implementation of the Electronic System;
- 3) Can operate in accordance with procedures or instructions in the implementation of the electronic system;
- 4) Equipped with procedures or instructions announced in language, information or symbols that can be understood by the parties concerned with the implementation of the electronic system; and
- 5) Having a continuous mechanism to maintain the freshness, clarity and accountability of procedures or instructions. The validity and authenticity of a deed made by a Public Official

Notaries in accordance with PUUJN Article 16 can be determined as follows:

- 1) Notaries in making authentic deeds in the form of deed minutes and deed minutes are stored as part of the Notary's protocol;
- 2) The notary can attach letters and documents as well as fingerprints to the minutes of the deed;
- 3) The notary reads the authentic deed in front of the presenter in the presence of witnesses. After the authentic deed is read, the presenter, witnesses and notary sign the minutes of the deed and after that the notary gives a copy of the deed to the presenter.

The implementation of the Cyber Notary concept is not as easy as imagined, the Cyber Notary concept as a form allows Notaries to make authentic deeds by storing documents such as Blockchain, Microchip, Microfilm, or other electronic media that can be printed as needed (generally done in developing countries), the parties whose names are recorded in the authentic deed such as the person appearing, witnesses and Notary, do not need to be present before the Notary to listen to the Notary reading the

¹²See Article 16 paragraph 1, Law Number 11 of 2008 concerning Information and Electronic Transactions in conjunction with Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions.

authentic deed or when signing the deed, all the Notary's authority can be done digitally, thus if this can be done, the Notary's office does not require a large room.

If Cyber Notary can be implemented in Indonesia, it is necessary to have certification of authentic deeds made based on Cyber Notary, perhaps it can be done by certification using Certification Authority (CA). CA functions as an independent party to provide verification or validation of a person's identity and provide digital certificates to qualified individuals. With an electronic deed attached with a certified digital signature, it can have the power of proof in court, this is because digital signatures are required to be registered with the CA body.¹³In addition to the things included in the CA as verification of the identity of the parties, in this Cyber Notary, notaries should also be given digital access to the Population and Civil Registration Office, so that notaries can check the identity data of the parties recorded in an authentic deed and can minimize the risk of parties such as figures as the author conveyed in the previous section, of course this will strengthen the role of notaries in a place in this country.

In general, the concept of Cyber Notary can be characterized according to the description above, but the implementation of the Cyber Notary Concept can be characterized as follows:¹⁴

- 1) The parties, in this case the witnesses and notaries, meet via electronic media, for example via the Zoom platform or via other digital platforms and do not meet physically, but rather in a different location;
- 2) The notary is required to read and explain directly to the parties electronically, for example via the Zoom platform or via other digital platforms;
- 3) Signature, initials, fingerprints in digital electronic format;
- 4) Electronic storage media for documents via "cloud or blockchain";
- 5) Notary protocols are stored electronically via the "cloud" or "blockchain";
- 6) Stamps and seals in digital form;
- 7) Minutes/copies/quotes/grosses are made and provided in the form of a QR code which is usually seen on a mobile phone or computer.

If it is said that the fulfillment of a requirement in an electronic system causes a deed to be authentic, then this is contrary to Article 1 paragraph 7 of the PUUJN, which states in the article regarding the definition of an authentic deed, namely "A Notarial Deed hereinafter referred to as a deed is an authentic deed made by or before a Notary according to the form and procedures stipulated in the law". The term "before a Notary" means that the person concerned comes to face or confronts the notary of his

¹³Published by: Publisher ...

¹⁴IKANO UNPAD Writing Team (Zahra Cntana), Op.cit., p. 13.

own free will, which is the real presence of the person facing the notary.

The meaning of real presence is that the person appearing is physically in front of the notary, the person appearing in question comes to the notary of his own free will according to the author, the conflict between the Explanation of Article 15 Paragraph (3) PUUJN with Article 1 Number 7 PUUJN occurs because of the difference in the application of the Cyber Notary concept in countries that follow the Common Law and Civil Law legal systems. The Cyber Notary concept is more commonly applied in Common Law countries, because in the common law system using judge's decisions and legal principles that have developed so that the application of Cyber is easier compared to Indonesia where the application of the legal system uses Civil Law which requires legal rules such as laws and other regulations as well as judge's decisions, therefore it is rather difficult for Cyber Notary to be applied in Indonesia, if it is still applied then the legal rules must really be recorded and clear so as to create legal certainty.

The making of authentic deeds based on the Cyber Notary concept in PUUJN has not been regulated in such a way when associated with the ITE Law, where there are still several legal problems regarding the confidentiality of the identity of the person appearing that need to be considered by the government in making a digitalization concept for an authentic deed, as well as the presence of the person appearing, witnesses in the implementation of the signing of an authentic deed, because in making an authentic deed based on PUUJN the person appearing and witnesses are present and/or face the Notary, but in making an authentic deed with the Cyber Notary concept the person appearing and witnesses are not required to be present and/or face the Notary.

So the problem that occurs in making a deed based on the Cyber Notary concept is when making an authentic deed based on the ITE Law as previously stated, the deed made becomes a degraded deed and/or a deed under hand, why is that because there is no synchronization between the PUUJN and the ITE Law, as has been stated that the PUUJN regulates the validity of an authentic deed with the parties and witnesses present and/or facing the Notary to sign a deed authentically, while the ITE Law regulates signatures and placing fingerprints on a document digitally.

Another problem is when submitting the Notary protocol to the recipient of the protocol. The Notary can submit the protocol to the recipient of the protocol according to Article 62 of the PUUJN due to death, the end of his term of office, asking for it himself, being unable spiritually and/or physically to carry out the duties of the Notary continuously for more than 3 (three) years, being appointed as a state official, moving to another area of office, being temporarily dismissed or being dishonorably dismissed.¹⁵

¹⁵See PUUJN Article 62 Op Cit.

The documents submitted to the protocol recipient are in the form of 1 set of Notary reporting books (deed register book, waarmeding book, legalization book, protest book and will book) including the document of the document in making an authentic deed, so that the Notary Public Official who receives the protocol can be given a hard copy of the documents. If an authentic deed is made with the Cyber Notary concept, then the protocol documents given by the Notary to the Notary Protocol Recipient are in the form of soft copies that have not been certified, meaning that there is no signature from the party who has the authority to sign the notary reporting books, so that it can cause legal uncertainty for the protocol recipient.

However, in life, there are still several obstacles that must be faced by Notaries in carrying out their duties, namely:¹⁶

- 1) Limited storage space for deeds and number of notaries;
- 2) Violation of the Notary's professionalism regarding authenticity requirements;
- 3) Weak supporting evidence for the authenticity of the legal subject's identity;
- 4) Conflict of interest of Notary in making Deed;
- 5) Breach of confidentiality;
- 6) Tax liability;
- 7) Weak control of tracing and guidance of related agencies.

3.2. The Role of Government in Legal Protection for Applicants, Witnesses, Especially Notaries in Making Authentic Deeds Based on the Cyber Notary Concept

Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia mandates that the Republic of Indonesia is a state of law. The concept of a state of law was previously only included in the Explanation of the 1945 Constitution. The implementation of a state of law in Indonesia today can be interpreted as the state providing a guarantee of legal certainty for every act, event, and legal relationship (rights and obligations) that arises and is carried out by every member of society. Therefore, the legal certainty in question must be realized through every law and regulation that exists and applies in Indonesia.

Notaries play a very important role in encouraging the realization of legal certainty and protection for the community. This is due to the strategic authority held by Notaries in the realm of civil law, namely proving and defending a right. Considering the importance of the notary profession in this case, the role, function and existence of notaries are regulated in laws and regulations, not only intended to provide legal certainty, but also

¹⁶Habib Adjie, Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global, <https://journal.unilak.ac.id/index.php/Respublica/article/view/1436>, accessed June 22, 2024, 14.00 WIB.

legal protection for notaries in carrying out their duties and responsibilities.

It can be said that the notary law provides additional authority for notaries, namely to certify transactions carried out electronically but without a more detailed explanation of the concrete form of this authority. On the other hand, there is a Regulation of the Minister of Communication and Electronic Transactions which actually refers to Notaries as one of the parties who can examine applications for electronic certificates. The unclear regulations regarding cyber notaries can cause anxiety and confusion for Notaries in exercising their authority to certify electronic transactions.

Several aspects used in the government's role in supporting the creation of authentic deeds based on the cyber notary concept, namely:

8) Regulation and Legislation.

The government needs to formulate clear and comprehensive regulations to be able to regulate the use of technology in making authentic deeds based on Cyber Notary, including laws governing minutes and copies of electronic deeds, electronic signatures, electronic fingerprints, digital authentication and identity verification and electronic document storage. Renewal of the notary law to be able to include provisions that allow the application of the cyber notary concept.

9) Technology Infrastructure.

The government needs to provide and develop adequate and secure technological infrastructure to support the implementation of Cyber Notary, which includes network systems, cyber security, so that there is no data theft from irresponsible parties and Ransomware that is currently attacking the data and information center (PUSDATIN), and a digital platform that can be accessed by notaries and related parties. The government also guarantees the availability and accessibility of information technology in all regions, including in remote areas in Indonesia.

10) Standardization and Certification

The government is also expected to create operational standards and procedures that must be followed by notaries in making digital deeds and the government will certify the software and systems used in the process of making authentic digital deeds to ensure their security.

11) education and training

It is necessary to organize education and training programs for notaries on the use of technology in making authentic deeds, including the use of electronic signatures and digital verification systems, and the government must be able to increase the capacity and competence of notaries in understanding and implementing new technologies.

12) Supervision and Law Enforcement

The government can form a supervisory body tasked with monitoring the implementation of Cyber Notary and ensuring compliance with applicable regulations. Provide an effective law enforcement mechanism to deal with violations or abuse in the process of making authentic deeds digitally.

13) Data Protection and Privacy

Develop policies that guarantee the protection of personal data and privacy of all parties involved in the process of creating digital authentic deeds (cyber notary) and implement rules related to the storage, processing, and distribution of digital data to prevent misuse and data leaks.

Notary as a public official who carries out part of the government's duties and obligations in making evidence to create legal certainty, order and legal protection for its people, then every deed he makes has the power of proof. Notarial Deeds have three types of evidentiary power, namely:¹⁷

- 1) The power of external proof;
- 2) Formal evidentiary force;
- 3) The power of material evidence.

The evidentiary power of authentic deed material is the certainty that the parties not only appeared and explained to the notary but can also prove that they have done what is stated in the deed material.

4. Conclusion

The implementation of authentic deeds based on the Cyber Notary concept in Indonesia offers the potential to increase efficiency and accessibility in the creation of legal documents. However, its implementation is faced with a number of very complex problems. The main challenges include the validity of minutes and copies of digital deeds, digital signatures, digital fingerprints, various types of digital statement documents, identity authentication, and data security. In addition, there is a lack of law and regulations that are inadequate to regulate Cyber Notary practices, because there is no legal regulation governing Cyber Notary, which can result in legal uncertainty for the parties involved, so that an authentic deed made based on the Cyber Notary legal concept can be degraded or a deed underhand. Legal protection for Applicants, witnesses, especially Notaries in the application of this concept still needs to be

¹⁷Dedy Pramono, Kekuatan Pembuktian Akta Yang Dibuat Oleh NOtaris Selaku Pejabat Umum Menurut Hukum Acara Perdata Di Indonesia, *Lex Journalica* 12, No. 3, 2015, <https://ejournal.esaunggul.ac.id/index.php/Lex/article/view/1225>, accessed on 18-20 June 2024, 17.00 WIB.

strengthened. This includes the development of clear and comprehensive regulations regarding the use of technology in the notarization process, improving cybersecurity to protect data and identity, and implementing strict standards for digital signatures. In addition, education and training for notaries and related parties on the use of technology in notarization practices are needed to ensure good understanding and proper use, with appropriate regulatory and policy updates, and support from various related parties, the implementation of Cyber Notary can be an effective solution for digital transformation in the notary sector in Indonesia. This will increase trust and security in technology-based legal transactions, as well as provide adequate legal protection for all parties involved such as applicants, witnesses and notaries.

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