

Application of the Power of Proof Cyber Notary in Indonesia

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Abstract. *In the era of electronic technology advancement, the concept of cyber notary has challenged the traditional legal framework in making authentic deeds digitally. Updating legal regulations is crucial to ensure that Notary actions in the electronic sphere remain authentic in accordance with the times. Enforcing the validity of legal documents in the electronic context faces challenges, especially in terms of proving their validity and legitimacy in court. In court, legal regulations regulate the procedures for disclosing relevant facts, with valid evidence and special procedures playing an important role. The government has enacted regulations related to Electronic Information and Transactions, although security and regulatory issues are still a concern. The implementation of cyber notary in Indonesia faces a series of problems including the lack of comprehensive regulations, data security challenges, and technological and infrastructure readiness. However, the amendments to Law No. 2 of 2014 concerning the Position of Notary and Law No. 1 of 2024 concerning the amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions provide an important legal basis. Notaries in the provisions of Indonesian civil law have guidelines in the practice of authentic deeds, which are recognized as binding legal evidence and/or can be directly implemented without going through a court and are the final decision that binds all parties to follow it. However, the challenges in facing the implementation of cyber notary in Indonesia, including the lack of specific regulations, data security issues, technological readiness, and social and cultural constraints require joint efforts from the government, related institutions, and the community to create clear regulations, improve data security, and increase public awareness of the benefits and procedures of cyber notary. By overcoming these problems, it is hoped that it can increase the trust and effectiveness of the cyber notary system in Indonesia.*

Keywords: Cyber; Electronic; Notary; Proof.

1. Introduction

The expansion of information technology encourages society to adapt to these changes. In line with this, the law must continue to adapt to technological advances by paying attention to legal regulations such as legislation and other legal regulations. Although the legal field has developed along with this, in reality the law is often not in line. This lag has an impact on the legal profession, especially in the notary field. One example of legal uncertainty is in the making of authentic deeds by Notaries electronically, where there are clearly no regulations governing this process. Legal certainty is very crucial in the making of authentic deeds by Notaries because without such clarity, the parties involved can face various problems, and Notaries can be exposed to legal risks due to the absence of clear guidelines regarding electronic deeds. Notaries need legal clarity in carrying out the making of electronic deeds that include a legal framework that provides clear guidelines. This legal framework is generally in the form of rules issued by the authorities because legal certainty involves norms that Notaries must comply with in implementing these regulations.

The advancement of electronic technology has given birth to the concept of cyber notary which poses new challenges in the world of notary related to the creation of authentic deeds digitally. This requires an update of the legal framework that regulates the role of Notaries in providing services to the public through electronic methods. This update is very important to ensure that Notary actions carried out electronically still have authentication that is in accordance with the times.¹

Keeping up with the times, in the electronic context, the authenticity of written information such as a notarial deed can be compared with electronic data stored in a secured electronic system, to determine which is more authentic depends on several main factors, for example, it can be reviewed from the perspective of authenticity, security, legality and/or legal recognition, integrity and sustainability. Legal evidence made by a Notary produces an authentic document because it is prepared before a Notary in accordance with the provisions ratified by the Notary Law (UUJN). According to Article 1 Number 7 of the UUJN, the terms "facing", "confronting", and "present" legally refer to a real physical presence. This means that the party concerned must come directly to the Notary on his own initiative and will. Notarial deeds may be more recognized in traditional legal contexts, while electronic information excels in terms of accessibility and the use of modern security technology.

The most common legal issues found in the context of providing information and communication through electronic systems are challenges in validating the legality of such legal actions and/or their proof. Verification of the legality and validity of legal actions carried out electronically is often complicated by the lack of clear regulations,

¹Emma Nurita, *Cyber Notary Initial Understanding in the Concept of Thinking*, (Bandung: Refika Aditama, 2012), p. 7.

thus creating uncertainty and potential legal risks for all parties involved.²

Certification is the provision of written assurance about a product, process, or service because it meets the standard criteria that have been determined based on an audit by a third party and implemented based on the provisions that have been agreed upon. This process aims to ensure that the product, process, or service is in accordance with the requirements and quality that have been set, providing confidence to consumers and users.³The development of the cyber notary concept allows a Notary to carry out his duties and authorities using technology, such as preparing deeds electronically. The concept of this electronic document aims to facilitate and accelerate the Notary's process in preparing authentic documents in connection with all actions, agreements, and decisions required by law and desired by the parties to be processed into authentic deeds. For example, in a trial, for the proof itself involves a series of legal procedures that must be carried out in accordance with applicable regulations, to regulate the method of revealing the truth that is legally relevant in court. In this process, if the procedure is carried out correctly, then legally valid evidence can play a maximum role and can identify legal facts to reveal the truth.⁴

In order to improve work efficiency through digitalization, the government has issued regulations related to Electronic Information and Transactions, namely the presence of regulations regarding Electronic Information and Transactions "UU ITE." The application of digital technology connected to the internet provides many important benefits for Notaries because it accelerates, simplifies, and increases efficiency in the process of making deeds. In the era of free trade and the complexity of society that continues to grow, where everything must be completed quickly and precisely, the position of Notary is increasingly vital to society. Therefore, there is a strong urgency to complete the making of deeds quickly and accurately as part of the responsibilities that must be fulfilled for the sustainability of this profession. However, for some parties, the government and its legal framework are still considered unable to overcome the increasingly rampant crime problems, especially those related to potential vulnerabilities, namely digital electronic transactions. This emphasizes the importance of improving effective regulations and policies to maintain the security and welfare of all parties involved in digital transactions.⁵

The government has taken steps by providing services through certification authorities (CA) to verify digital certificates to ensure user security on websites. However, the existence of CA cannot replace the role of Notaries to create legally valid electronic deeds. Without the approval of a Notary, an electronic deed has the same value as a

²Budi Suhariyanto, *Information Technology Crime (Cyber Crime): Urgency of Regulation and Legal Loopholes*. (Jakarta: PT Raja Grafindo Persada, 2012), p. 3.

³Ibid., Emma Nurita. p. 7.

⁴ Based on the online book by Ali Imron and Muhammad Iqbal, 2019, "Law of Evidence, first edition" (Pamulang: Unpam Press, ISBN: 978-602-5867-39-2, 19), <https://jdih.go.id/files/414/HUKUM%20PEMBUKTIAN.pdf>.

⁵ Emma Nurita, *Op.Cit.*, p.27.

regular document. The basic concept of an electronic deed is to simplify, narrow the process, and the authority of a Notary regarding the preparation of authentic documents that include all actions, agreements, and decisions that must be carried out by law or required by the parties involved, so that they can be declared valid in an authentic deed. By utilizing digital technology, Notaries can actually carry out their work more effectively and carefully. For example, document digitization simplifies the process of storing, searching, and managing archives, thereby reducing the risk of data loss and increasing information security. In addition, the use of electronic signatures and digital verification accelerates the process of document authentication and validation, making transactions faster and safer. Technological advances also allow Notaries to provide remote services through online platforms, so that clients do not need to be physically present at the Notary's office. All these innovations not only increase operational effectiveness, but also increase client satisfaction through faster, easier and safer services.

The problem that arises is that the concept of cyber notary has not been fully accommodated in the regulations in Indonesia, thus affecting the power of proof of the legitimacy of Notaries with electronic format in cyber notary practice. Therefore, it is necessary to anticipate from the start so that the practice can be carried out in the best way, based on principles that prioritize security. Thus, both Notaries as officials and the community who use their services will not be harmed and the space for perpetrators who trick others is narrowed. Therefore, the author is motivated to create an article with the title: "Implementation of the Power of Proof of Cyber Notary in Indonesia."

2. Research Methods

The form of study applied in this writing utilizes normative techniques (legal research) centered on the Law as its approach. In normative legal research, law is considered a system of rules that are analyzed by utilizing library sources or secondary materials called bibliography.

3. Results and Discussion

3.1. Comparison of Notaries of Anglo-Saxon legal system and Continental European law

The history of Notaries in civil law and common law has different roots and reflects the fundamental differences in the two legal systems. In the civil law tradition, Notaries can be traced back to Roman times when a public official called a "notary" or "tabellio" was responsible for drafting and attesting legal documents. Notaries in the Roman era played a vital role in the creation of legal documents that were legally valid. In the modern civil law system, a Notary is a public official with broad authority to draft, attest, and maintain legal documents, marriage agreements, wills, and business contracts. The education and training to become a Notary in civil law is rigorous, involving formal legal

education and specialized training as well as a state exam.⁶

On the other hand, in the common law system, the role of Notary developed in medieval England, but with a much more limited scope compared to civil law. Notaries in common law are primarily tasked with authenticating signatures, authenticating copies of documents, and administering oaths, without the authority to draft complex legal documents. The education and training of Notaries in the common law system is generally less rigorous than in civil law, often requiring no formal legal education and only basic training. Documents authenticated by a Notary in common law also do not have the same legal force as in civil law.

The main difference between the two systems lies in the authority and responsibility of the Notary, where Notaries in civil law have greater authority and the documents they create have high legal force. Meanwhile, in common law, Notaries act more as administrators with more limited authority and the documents they certify have lower legal force.

In the modern context, the role of Notaries has also developed with the emergence of cyber notaries, later known as cyber notaries, namely Notaries who use digital technology to validate electronic documents. Cyber notaries allow the validation of documents via the internet, providing efficiency and convenience in electronic transactions. This is relevant to both civil law and common law systems, although its application may differ according to the characteristics of each legal system. Cyber notaries have the potential to overcome geographical boundaries and increase security and speed in the notarial process, marking a step forward in the adaptation of technology in global legal practice.

In general, cyber notary is a notary activity carried out through an electronic system. This concept actually originated from the initiative of the American Bar Association's Information Security Committee in 1992. This committee focuses on examining and analyzing legal, business, and technical aspects to ensure the confidentiality, integrity, and readiness of information. From this effort, a number of works were born that have a universal impact, including related files concerning electronic authentication, digital signing, and public key networks.⁷

The use of digital technology varies from country to country, as reflected in the comparison of its implementation in different legal systems. In general, there are two main dominant legal systems: the Anglo-Saxon legal system known as common law and the Continental European legal system known as civil law. In the common law context, as applied in the United States, court decisions have the force of law and are broadly

⁶Salim HS, *Remote Online Notary*, 1st Edition, (Bandung: Reka Cipta, 2023), p. 16.

⁷As in the American Bar Association article, https://www.americanbar.org/groups/science_technology/committees/information-security/.

applicable to similar cases.⁸The United States has developed a legal regulation known as remote online Notarization.⁹ Notaries in the common law structure, also known as public notaries, emphasize management that includes techniques for maintaining the security of documents (letters) as an integral element of the principles of a secure communication system. This includes maintaining confidentiality, integrity, authorization, availability, authentication, non-repudiation, and tracking of documents (CIAANA).¹⁰

In civil law, the main axis of the law is the law that has been recorded in writing, derivative provisions, and customs that are in accordance with written rules. Judicial decisions are generally not considered as the main source of law. Countries such as Germany, Belgium, and France have adopted the civil law system. In Germany, the regulations regarding the role of Notaries have been updated by modifying the requirements for electronic signatures in authentic documents. Meanwhile, France and Belgium have also updated provisions in their civil laws to accommodate the integration of electronic authentication.¹¹

Notaries in civil law countries have the duty and authority to make authentic deeds, verify the identity of the parties, validate signatures, and store certain records or documents. Deeds issued by authorized officials have perfect evidentiary power.¹²The perfect meaning refers to an authentic document issued by a Notary as valid formal and substantial evidence that has the force of law (can be applied without the need for legal action in court and is final) and requires the parties to comply with the relevant decision.¹³

Cyber notary enables the process of creating deeds or legal documents electronically with guaranteed security and validity. Electronic notaries can provide valid electronic signatures and certify these documents online. This reduces bureaucracy and speeds up the transaction process without sacrificing the legal validity of the resulting documents. In terms of efficiency and accessibility, using digital technology allows all processes to be carried out remotely. People no longer need to be physically present before a notary to complete transactions or sign documents. Greater flexibility is given to the parties involved. In the context of data security which is increasingly important

⁸Praise Siregar, 2022, "Comparison of Civil Law and Common Law Legal Systems in the Application of Jurisprudence Reviewed from Legal Politics", (Dharmasisya Journal, Volume.2, Number. 2, e-ISSN: 2808-9456, June 2022, 1028).<https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1241&context=dharmasisya>

⁹Salim HS, Op.Cit., p. 11-15.

¹⁰Rudy Siahaan et al, Indonesian Notary Law. Volume 1. (Bandung: Indonesian Science Media, 2022), p. 185.

¹¹Ranti Fauza and Tisni Santika, Acta Diurnal Journal of Notary Law and PPAT (2021) 4(2), Legality of Electronic Signatures: Possibilities and Challenges of Notary Digitalization in Indonesia, <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/517>

¹²Rudy Siahaan et al, Op.Cit., p. 183.

¹³Edmon Makarim, Notary and Electronic Transactions, Legal Study on Cyber Notary or Electronic Notary. 3rd Edition. (Depok: Rajawali Pers, 2018), p. 9.

in the digital era, electronic notaries can provide guarantees for the validity of documents and protect personal data and other sensitive information related to electronic transactions.

With the adoption of cyber notary, Indonesia can be at the forefront of global trends in digital law and support the sustainable growth of the digital economy. It will also strengthen public trust in online transactions and compliance with relevant laws. Cyber notary is a necessary solution to accommodate the need for speed, efficiency, and security in legal processes in the digital era. Proper implementation can make cyber notary a solid foundation in facilitating the development of the digital economy and improving the quality of legal services in Indonesia.

However, Indonesia still relies on the conventional system because there has been no rejuvenation of the rules related to cyber notary. In Indonesian civil law, a deed prepared by a Notary is considered to have legal evidence because of the authenticity of an authentic document stating An authentic deed is a document designed based on a format established by regulation, drawn up before a competent public authority in accordance with Article 1868.¹⁴Next, in 1869, documents that did not meet the criteria to be recognized as authentic deeds, because they were drawn up by individuals who were not appointed or designated, were considered equivalent to private deeds if they were agreed to in writing by all parties involved.¹⁵

The provisions of UUJN-P regulate legal evidence regarding notarial deeds in the legal system in Indonesia.¹⁶Authentic Deed has executive power because it is issued by a public official who is authorized by regulation in the context of evidentiary power. The evidentiary power based on UUJN is as follows:

a. Power of Authentic Proof

Notarial Deed is considered to be a perfect and authentic means of proof regarding what is stated in it. This deed has absolute evidentiary power regarding the truth of the statements of the parties and the facts described in the deed. This means that as long as it is not proven otherwise, the contents of the Notarial Deed must be considered true by the court and other interested parties.¹⁷

b. Binding Power

An authentic deed has binding power not only on the parties directly involved in its making, but also on interested third parties. The contents of a notarial deed are considered the truth that must be acknowledged and accepted by all parties involved, unless proven to be an error or mistake that can challenge its validity. This

¹⁴Civil Code.

¹⁵Civil Code.

¹⁶Law Number 2 of 2014 concerning the Position of Notary, 2014.

¹⁷Tampanguma, CI (2022). The Legal Power of Evidence in Deed Agreements Below Hand. *Lex Privatum*, 9(11).<https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/38368>

binding power provides important legal certainty in transactions and agreements authorized by a notary so as to protect the interests of all parties fairly and equally. A notarial deed is not only strong evidence in legal disputes, but also a guarantee of the validity and legal force of an act or transaction that has been carried out legally before the competent authority.

c. Executorial Power

Notarial deeds can also have executory power that allows them to be executed directly without having to wait for a court decision. A concrete example of a type of deed that has executory power is a Debt Acknowledgement deed that includes a clause regarding the transfer of direct execution rights. In this context, the deed gives the creditor the power to exercise the execution rights against the debtor's assets without having to go through an additional court process. This simplifies and accelerates the process of legally settling debts while also providing strong legal protection for the party holding the authentic deed itself. The executory power of a Notarial deed is one example of evidence of the many privileges that make the document a very effective legal instrument in resolving various legal problems related to the rights and responsibilities of the parties.

d. Validity of Procedure

The procedure for making a Notarial deed as regulated in UUJN-P plays a crucial role in ensuring the legality and validity of every deed made. Notaries are required to comply with all applicable legal provisions including reading the deed in front of the relevant parties, ensuring the presence of witnesses in accordance with the provisions set, and recording every transaction carefully in the Notary protocol. When all of these procedures are carried out correctly, the Notarial deed will have force and be recognized by law as evidence accepted in court proceedings.

However, if these procedures are not followed properly, this can have a serious impact on the validity of the deed made. Documents that do not meet all the formal requirements of a deed based on regulations are declared null and void by the court. Therefore, compliance with the procedures set out in the UUJN is the main guarantee for maintaining the integrity and trust in every Notarial deed obtained. Thus, Notaries play a key role in maintaining legal certainty and protecting the rights of the parties in various transactions and agreements carried out under their supervision.

e. Material and Formal Evidence

The evidentiary power of a Notarial deed includes two important aspects, namely material and formal. In terms of material, a Notarial deed functions to prove the truth of the contents or substance of the statement desired by the parties involved in the binding of the deed. In other words, a Notarial deed becomes valid evidence of an agreement, obligation, or right that is legally agreed upon.

In terms of formality, a Notarial deed also plays an important role in proving that the process of making it has complied with all applicable legal procedures. This includes requirements such as signing by the parties involved where the parties are present in front of the Notary and witnesses, as well as reading the deed clearly and carefully in front of them. Compliance with these formal procedures provides assurance that the Notarial deed meets the standards required to be considered valid and reliable as evidence in the eyes of the law.

The integration of material and formal evidentiary power in a Notarial deed not only ensures the validity of authentic document information, but also maintains trust and legal certainty for all parties involved in the agreement made under the supervision of the appointed Official.

The amendment to UUJN emphasizes the position of Notary documents as strong legal evidence, valid in the judicial process in Indonesia. This evidentiary force guarantees legal certainty and protection for all parties bound by an agreement or transaction entered into a Notary deed.

3.2. Power of Proof

a. Amendment to Law No. 2 of 2014, amendment to Law No. 30 of 2004 concerning the Position of Notary (UUJN-P).

Regularity, certainty and protection are the basis for drafting deeds as stipulated in the UUJN-P.¹⁸Based on Article 1 number 1 of UUJN-P, a Notary is a public official who is authorized to systematize authentic deeds and exercise other sovereignty in accordance with established regulations. Article 1 number 7 of UUJN-P describes authentic documents prepared by or before a Notary in accordance with the provisions stipulated in legal regulations. Meanwhile, Article 1 number 8 of UUJN-P states that minutes of a deed are the result of a deed in which there are signatures from the person appearing, witnesses, and Notary, which are then stored as part of the Notary protocol.

The philosophical basis of authentic documents is stated in UUJN-P which explains; “the authority of a Notary to prepare authentic deeds as required or needed in accordance with legal regulations.”

Article 15 of the UUJN-P states that the appointed official (Notary) has the following authorities:

- (1) A notary has the authority to prepare authentic deeds for all deeds, agreements and determinations in accordance with the provisions of applicable regulations or requests from the relevant person to be recorded on authentic documents. The notary is also obliged to ensure the certainty of the date the deed was made, keep the document, and provide grosses, copies and quotations of the

¹⁸Salim HS, *One Deed Making Technique*, (Depok: Rajawali Pers, 2015), p. 22.

deed to interested parties, unless this work has been entrusted to another official or individual as regulated by law.

(2) Notaries also have ability to:

- a. verify the signature and determine the certainty of the date of the private letter by recording it in a special registry;
- b. record letters under hand in a special registry;
- c. make a copy of the private letter which includes the contents as stated in the original letter;
- d. verify the authenticity of the photocopy of the letter with the original letter;
- e. provide legal consultations related to the preparation of deeds;
- f. prepare deeds relating to property or land; or
- g. prepare the auction minutes deed.

Article 16 paragraph (1) mandates that Notaries in carrying out their duties must affix the fingerprints of the person appearing on a separate form to be attached with the minutes of the deed, then the deed is read out in the presence of the interested parties along with the presence of at least 2 (two) witnesses, or 4 (four) witnesses (deed of appointment of guardian), according to article 16 paragraph (1) letter m UUJN. If the persons appearing ask not to read out the deed because they have read it themselves, know and understand its contents, the Notary must note this on the closing of the deed and on the page containing the signatures of the persons appearing, witnesses and Notary.

In addition to the authorities mentioned above, Notaries have other capacities that are designed in the statutory regulations, but are not explained concretely in Article 15 paragraph (3) UUJN regarding other authorities, therefore this can be interpreted broadly which can be interpreted as the capability of Notaries to validate the certification of transactions carried out digitally, known as cyber notary. However, the regulation that regulates the authority of Notaries regarding cyber notary is not supported by regulations. Cyber notary is a concept where Notaries utilize modern technology to create authentic deeds in a digital environment. This allows Notaries to carry out routine tasks such as making deeds digitally and arranging General Meetings of Shareholders via teleconference.¹⁹ So, it is interpreted in the concept of cyber notary as the implementation of the authority of a notary who uses information technology as the basis for its operations.

¹⁹Emma Nurita, Op.Cit., p. 53.

The procedure for making a Notarial deed consists of three components as stated in Article 38 of the UUJN. The first part is the head of the deed, which includes a title that identifies the type of deed, the name of the Notary who drafted it, and the place and date of the deed. The second part is the body of the deed, which contains complete information about the parties involved, including their identities, as well as complete details regarding the agreement or statement contained in the deed, along with the provisions or clauses agreed upon by the parties. The third part is the closing of the deed, which includes the signing by the parties, witnesses, and the Notary, as well as the date of signing. The closing of the deed also includes a statement that the deed has been read to the parties, and they understand and agree to the contents contained in the deed.

Then Article 39 UUJN-P stipulates that the person appearing must be at least 18 years old, have the legal capacity to perform legal acts, and be officially known by the Notary. This article aims to ensure that people who take part in the deed-making process have adequate legal capacity and an identity recognized by the Notary. Meanwhile, Article 40 UUJN-P requires that every deed issued by a Notary must be attended by at least two witnesses, unless otherwise specified in the laws and regulations, with the witnesses' identities clearly stated in the deed. This provision is important to ensure the validity and trustworthiness of the deed-making process in Indonesia.

Imperfect practice regarding the requirements stipulated in Articles 38, 39, and 40 of the UUJN-P results in documents being created that only have the consistency of private documents..This means that the document does not have strong evidentiary value like an authentic document drafted before a Notary by complying with all the requirements that have been set. Article 44 then stipulates that after an authentic document is read, it must be legalized with the signatures of the person appearing, witnesses, and Notary..Exceptions are permitted if the person appearing is unable to sign the deed, for reasons that must be clearly stated at the end of the deed.²⁰ This is the most important step to ensure that all parties involved in the making of the deed have legally agreed to its contents. However, if the person appearing cannot sign, the reason must be clearly explained at the end of the deed to maintain transparency and clarity of the ongoing legal process.

b. Amendment to Law of the Republic of Indonesia Number 01 of 2024 concerning amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions "ITE Law"

The government explains that through the implementation of regulations according to Article 5 paragraph (1) it states that Electronic Information (IE) and Electronic Documents (ED), including printed copies, are recognized as valid legal evidence. The

²⁰ Kerina et al, 2022. "Notary's Obligation to Read and Sign Deeds in Front of All Parties Jointly", (Lambung Mangkurat University: Notary Law Journal Vol 1 Issue 2 April 2022 P-ISSN: 2808-7860, E-ISSN: 2808-7348,159).<https://notarylaw.journal.ulm.ac.id/index.php/nolaj>.

"ITE Law" states that IE and DE, as well as printed copies, have validity as evidence that can be accepted in court. Furthermore, Article 5 paragraph (2) explains that this recognition extends to the applicable Procedural Law regulations in Indonesia, which determine the procedures for utilizing such evidence in the context of trials.

However, Article 5 paragraph (4) emphasizes that documents made in written form, including documents in the form of deeds made by authorized officials in accordance with statutory regulations, remain exempt from the general provisions regarding the recognition of electronic documents. (Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions, nd). This means that documents such as Notarial deeds or deeds that must be made in written form or notarial deeds, must still meet certain formal requirements and are not fully recognized if only in electronic form.

Digital Certification Providers can provide various services such as digital signatures, digital seals, digital time stamps, services for recording electronic shipments, website authentication, maintaining the authenticity of digital signatures or digital seals, digital identities, and other services that utilize electronic certification. In the context of making authentic deeds in the concept of cyber notary, validity as evidence can be assessed through three aspects, namely physical appearance, compliance with material formalities, and feasibility in terms of material substance.²¹

In accordance with the ITE Law, conveying a strong legal basis for electronic evidence according to the Indonesian legal system. Several points regarding the strength of evidence based on the "ITE Law":

a. Confession

The "ITE Law" recognizes that IE and/or digital documents and their printouts are solid legal evidence, meaning that digital documents have the same status as the means of legal evidence recognized in the Civil Code and Criminal Code in Indonesia.

b. The Evidential Power of Electronic Documents

Digital information and/or digital documents serve as legal evidence regarding the validity, integrity, and availability of information in the electronic document and can be recognized by the court if they meet the requirements stipulated in the "ITE Law".

c. Power of Proof of Digital Signature

Digital signatures that meet certain criteria are also recognized as valid signatures.

²¹ Emma Nurita, Op. Cit., 68-70.

Digital signatures are legal evidence comparable to conventional signatures.²²

- 1) Information regarding the time of signature creation is only available to the signatory.
- 2) During the signing process, information about the time the signature was made is only held by the signatory.
- 3) There is a mechanism to detect any changes to the electronic signature after the signing process.
- 4) There is a way to recognize any modifications to the electronic information associated with the electronic signature after the signing process.

d. The Power of Proof of Digital Transactions

The “ITE Law” recognizes that digital transactions have the same validity as conventional transactions. This includes electronic agreements made through electronic systems, provided that the agreement complies with the legal requirements as stipulated in the Civil Code. This regulation is designed to support the rapid advancement of information and communication technology, while maintaining the fundamental principles of civil law. However, the legal requirements for electronic transactions still reflect basic principles such as agreement between the parties involved, legal capacity to perform acts, clarity regarding the object of the transaction, and protection of the interests and security of the parties. This regulation is intended to provide a transparent and fair framework for the implementation of electronic transactions in Indonesia. This is expected to stimulate sustainable digital economic growth in a trusted and stable legal environment.

e. Guarantee of Integrity and Authenticity

The ITE Law provides strong guarantees for the integrity and authenticity of electronic information and electronic documents in Indonesia. Integrity means that electronic information or documents do not undergo unauthorized or unwanted changes during the process of creation, sending, receiving, or storing. Authenticity, on the other hand, guarantees that the information or document can be trusted as true and valid according to what it represents.

This guarantee applies if the electronic procedures used in the process meet the standards set by legal regulations. These standards cover various technical and procedural aspects such as system security, data security methods, access control procedures, and protection measures against unauthorized manipulation or changes

²² Bungdiana, D., & Lukman, A. (2023). Effectiveness of Implementing Cyber Notary by Improving the Quality of Notary Services in the Digital Era. *JISIP (Journal of Social Sciences and Education)*, 7 (1), 309-318. <https://ejournal.mandalanursa.org/index.php/JISIP/article/view/4216>

to data.

The implementation of this standard is important to ensure that electronic transactions and electronic communications are reliable and trustworthy in daily activities, whether in the context of business, administrative, or personal transactions. In addition, strict standards are intended to ensure protection for the interests of parties involved in electronic transactions from the risk of fraud, manipulation, or unauthorized information leakage. The ITE Law can be used as a solid legal basis for utilizing information and communication technology in Indonesia, with a focus on the integrity and authenticity of electronic information and electronic documents to support the growth of a safe and trusted digital economy.²³

The amendment to the "ITE Law" can also be used as a legal basis for the use of digital information and documents in legal processes in Indonesia, including clear recognition of legal evidence of documents and digital signatures, the validity of electronic transactions, can significantly increase legal certainty in the digital era.

However, the implementation of cyber notary and/or cyber notary in Indonesia faces a number of challenges that need to be addressed. Among these problems is the lack of comprehensive regulations specifically regulated in cyber notary practices. This ambiguity creates legal uncertainty that can affect trust in electronic Notary documents. Without clear guidelines, the process of proving deeds done digitally by Notaries is vulnerable to legal disputes that can slow down the judicial process.

Then, data security and integrity become serious issues that must be addressed in cyber notary practices. Threats such as cyber attacks and potential data manipulation can damage the validity of electronic documents and reduce public confidence in their evidentiary power. So, it is a priority for authorities and related institutions to realize strict regulations and strong security systems to protect the integrity of electronic documents and ensure that cyber notaries can function effectively and reliably in the context of Indonesian law. Thus, this effort will support the development of a safe digital economy and provide the necessary legal certainty for the Community that requires the implementation of digital transactions.

Technological and infrastructure readiness is another obstacle in implementing cyber notary. Many notaries may not be ready with adequate technological infrastructure, while web servers and/or the internet that are not widespread throughout Indonesia are also a problem. Adequate legal protection also needs to be strengthened to ensure that the rights and obligations of all parties are protected in electronic transactions. Then social and cultural obstacles such as strong trust in the conventional notary process and the lack of standardization and interoperability between electronic systems, are also challenges that must be overcome in implementing cyber notary in

²³ Bella Fardela. (2024). The Validity of Electronic Signatures in the Making of Notarial Deeds in the Perspective of Positive Law in Indonesia (Doctoral Dissertation, Sultan Agung Islamic University, Semarang). <https://repository.unissula.ac.id/33498/>.

Indonesia.

By addressing these concerns, it is hoped that the trust and effectiveness of the cyber notary system in Indonesia can be increased. Joint efforts are needed between the Government, the Indonesian Notary Association (INI), data security institutions, and other related parties to create clear regulations, improve data security, improve technological infrastructure, and foster public awareness and education regarding the benefits and procedures for using cyber notary.

c. Legality of Authentic Documents "Cyber notary"

Article 1 paragraph (4) defines that electronic documents refer to all types of electronic information that can be designed, sent, received or stored in various formats such as analog, digital, electromagnetic, optical or similar forms.(Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions, nd). This document can be accessed, displayed, or heard through a computer or electronic system. It contains text, sound, images, maps, designs, photos, letters, signs, numbers, access codes, or symbols that have meaning and can be examined by individuals who have the ability to understand them. This definition confirms that electronic documents are recognized as legal evidence in accordance with Article 5 paragraph (1).²⁴

In the context of granting authority to a Notary to carry out legality using a cyber notary, the printed results of the ratification process can be considered as an electronic authentic document. Digital authentic documents must meet the standards set by the Civil Code, which explains that an authentic document is a document created in a format determined by regulations, from an official appointed based on his/her domicile and in his/her presence.(Civil Code, nd). It is emphasized that to ensure the authenticity of the document, the document must have a signature and additional information such as the name, residence, and occupation of the author, as well as stating the time the document was created. This mention of time is important because it is one of the elements that determines the validity of the document.

The method for printing documents conventionally involves the following stages:

- a. The parties to the creation of authentic documents come to meet the Official in his office to convey their intentions which are then expressed in the authentic document.
- b. The official understands the intent and purpose of the person appearing to take appropriate steps for legal interpretation regarding the documents that will be needed to create an authentic deed in accordance with the law.

²⁴ Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions.

- c. Then, after understanding the intentions of the parties, the Notary makes an authentic document with the appropriate format and method as set out in Article 38.²⁵

A notarial deed is valid if it includes the requirements set out in the article above, while the notary's obligation to read authentic documents is regulated in accordance with Article 16 paragraph (1) letter m of the UUJN-P. Article 16 paragraph (7) raises a different viewpoint regarding the notary's obligation to read the deed, where there is no obligation for the notary to do so if the parties wish to read it themselves according to their own intentions and wishes.²⁶

However, Article 16 paragraph (8) of the UUJN-P emphasizes that the Notary still has the obligation to read the deed head, comparison, explanation of the main points of the deed clearly, briefly, and the closing of the deed, even though the parties wish to read it themselves. If the Notary violates the obligation to read the authentic document related to Article 16 paragraph (9), then it will lose its authentic power and only have the power as a private document. Therefore, the Notary still reads the authentic document that he made so that it remains authentic, even though the parties wish to read it themselves. In addition to considering the benefits of reading authentic documents, reading authentic documents is one of the obligations, responsibilities of proof of integrity from the Notary for the Community who rely on it represented by the parties who make the authentic document.

The reading of the deed by the Notary is beneficial for the Notary and also provides benefits to the parties appearing. This process allows the Notary to identify and correct errors that may not have been previously detected. The reading is the last opportunity for the Notary to authenticate the authentic document created. Another additional benefit is that the parties appearing can also use this opportunity to clarify unclear information in the contents of the deed and the reading of the deed provides an opportunity for the Notary and the parties appearing to mutually launch an evaluation before the deed is legalized through signing by all parties involved. From the perspective of the theory of authority and validity, the Notary has the authority of attribution given directly by the regulation to create authentic documents, including reading them.

Based on Article 1868 of the Civil Code, an authentic document, including a Notarial deed, must comply with the format regulated and compiled by regulations before an authorized official at the place where the deed is made. Thus, a deed can only be considered valid as an authentic deed if it meets the requirements of the form that has been determined and compiled by a public official who has the authority in accordance with applicable regulations. However, problems arise related to the signing of deeds using a cyber notary. Article 1 numbers 7 and 8 and Article 16 paragraph (1) letter m of

²⁵Law Number 2 of 2014 concerning the Position of Notary (UUJN).

²⁶UUJN.

the UUJN-P emphasize that the deed must be read in front of the person appearing and at least 2 (two) witnesses, and the Notary must be physically present to sign the deed before the person appearing and witnesses. The use of the term "physically present" creates a conflict with technological developments such as cyber notary, where the notarization process is carried out electronically. From this explanation, the author analyzes that although the Notary has the authority as a public official to make deeds, he is not a Certification Authority (trusted third party). In addition, The obligation to attach fingerprints can increase the evidentiary power of an authentic deed because fingerprints are unique evidence and cannot be forged.

Fingerprints as evidence of the physical presence of the person appearing provide certainty that the person appearing was actually present when the deed was made. Thus, when the fingerprints are attached to the minutes of the deed, this shows that the person appearing was directly involved in the process of making the deed. The uniqueness of fingerprints makes them strong evidence in law, considering that no two individuals have identical fingerprints.²⁷ The obligation to attach fingerprints can increase the validity and trust in authentic deeds, strengthening the evidence of the presence of the person appearing when the deed was made.

Therefore, it is necessary to update the UUJN-P, especially regarding the procedure for making deeds in general and the regulation of making deeds using electronic notaries in particular. The definition of certification involving cyber notaries or making deeds with this technology needs to be explained clearly so that Notaries can use technological advances to develop efficiency and services to the community by implementing the provisions of applicable laws and regulations that regulate the implementation of their duties.

Based on the conceptual theory of authority, authority derived from statutory provisions is obtained through three mechanisms as explained by HD Van Wijk/Willem Konijnenbelt, as follows.²⁸

- a. Attribution/Attributive is the process of granting government authority by lawmakers to government organs. In this context, lawmakers determine the limits of authority and responsibility of each government organ. This attribution regulates how and in what cases a government organ can act, and provides a legal basis for carrying out its duties.
- b. Delegation is the act of transferring government authority from one government organ to another government organ. Delegation occurs when the government organ that has the initial authority (delegator) decides to transfer some of its authority to another organ (delegatee) to carry out certain functions. In this

²⁷ Jodhi Restu Pamungkas, Suryadi, Ayu Efridadewi, Analysis of Legal Certainty of Deeds Regarding Notary Authority in Electronic-Based Services (Cyber Notary), 2021 Volume 2, <http://repositori.umrah.ac.id/1778/>

²⁸ Sovia Hasanah, Understanding Attribution, Delegation, and Mandate, 2016. <https://www.hukumonline.com/klinik/a/pengertian-atribusi--delegasi-dan-mandat-lt5816ab6ea74a7/>.

case, the delegator remains responsible for supervising and controlling the implementation of the delegated authority.

c. Mandate occurs when a government body authorizes another component to exercise its authority on behalf of the mandating organ. This mandate theory is often related to situations where a government organ is unable or does not have the resources to carry out its own duties and so allows another organ to act on its behalf. In this case, the mandating organ retains control over the actions taken by the mandated organ.

This mechanism is important in determining the structure and function of government in a legal system. They regulate how government power is divided, delegated, and managed to ensure effectiveness, accountability, and fairness in public services and the protection of citizens' rights. Thus, the authority of a Notary is a type of attributive authority, meaning that the authority comes from certain regulations or legal regulations, as stated in the UUJN-P. As a separate position, a Notary holds the authority that is directly permitted by law.

So in the process of making an authentic deed by a Notary, the validity of transaction certification through a cyber notary can draw three conclusions, namely:

- a. Documents made by a notary are authentic deeds drawn up by or in front of a notary in accordance with the procedures and formats regulated in this legislation, in accordance with Article 1 paragraph (7) of the UUJN-P.
- b. If the certification described is aligned with the legalization of a private letter by a Notary, then the legalization process cannot be considered an authentic deed. This is because in the legalization process, the Notary is obliged to provide certainty regarding the date and signature of the parties or the parties appearing. The meaning of the words "present, facing, facing" in Article 16 paragraph (1) letter m UUJN-P means direct physical presence, not via electronic devices. Therefore, the Notary has the responsibility to ensure the validity of the date and signature made by the parties or the parties appearing.
- c. If the certification has the same connotation as a private letter received and signed by a Notary (waarmerking), then the certification also cannot be considered an authentic deed. In this case, even if it is done through a cyber notary, it will not cause problems because the Notary is not responsible for the certainty of the date, time, content, and structure of the letter prepared by the parties or the parties.

Thus, in the context of making notarial deeds and certifying transactions through cyber notary, it is important to consider the definition and responsibilities of a notary in ensuring the authenticity and validity of documents in accordance with applicable regulatory provisions.

Preparing comprehensive evidence means avoiding any conflicts between the various

types of evidence used. Verification procedures in civil cases, as stipulated in Article 164 of the *Herziene Indonesische Reglement (HIR)*, 284 of the *Buitengewesten Reglement*, and Article 1866 of the Civil Code, include the use of letters, witnesses, suspicions, confessions, and oaths. However, the development of the use of evidence in trials has now expanded to include electronic documents such as CDs, VCDs, DVDs, posts on social media, and various other electronic devices. Although it provides certain advantages, the use of electronic evidence also brings its own challenges in the process of proof in court.

In Indonesia, unlike civil law, Notaries are appointed and then dismissed by the Ministry of Law and Human Rights to meet the needs of the general public. The role of a Notary is very important because the authentic documents prepared become very strong legal evidence. The deed states that the facts stated therein are true and cannot be sued by the parties involved. Therefore, a deed made before a Notary is considered an authentic deed. If there is a violation of the limitations of the authenticity of a Notarial deed as stipulated in Article 1868 of the Civil Code, the evidentiary force of the deed may be disrupted. Regulations strictly regulate this in Article 1869 of the Civil Code and in various provisions and regulations governing the position of Notary itself.

Article 1869 of the Civil Code explains that an authentic document does not meet the requirements as an authentic deed, for example because it was made by an unauthorized official, is incompetent, or has a structural defect, has the same evidentiary force as a private deed if signed by the parties involved. To assess whether a notarial deed has the same evidentiary force as a private deed, it is necessary to examine the contents of the various articles that clearly regulate the actions that violate the Notary's actions. Therefore, determining the evidentiary force of a deed, whether as an authentic deed or as a private deed, can be adjusted to the provisions contained in Article 84 UUDN-P. So it is emphasized in the article, which stipulates that the evidentiary force of a deed can be determined based on the provisions governing violations committed by a Notary in carrying out his duties. The evidentiary process in court regarding a Notarial deed involves consideration of the validity and adequacy of the procedures carried out by the Notary in preparing and validating the document. The presence of a Notary in the Indonesian judicial system provides a guarantee of the validity of legal documents, but still follows strict procedures so that the evidentiary force provided is in accordance with legal standards.

The above articles clearly state that if a Notary commits misuse, the deed he/she made can be considered a private deed. However, if the related article does not explicitly state that the deed has the power of proof as a private deed, then a number of other articles that regulate violations according to Article 84 of the UUDN-P will cause the deed to be declared null and void by law.

The "ITE Law" has given strong recognition to electronic deeds as strong legal evidence and can be accepted as a proof process in Court. This results in authentic electronic documents having the same legal force as conventional documents that are usually

made on paper. This concept concerns the nature of electronic information and electronic documents that can be easily transferred to various printed forms and are considered equivalent to physical documents made on paper. The expansion referred to in paragraph (2) of the Article refers to the addition of evidence that has been regulated in civil procedure law (*Herziene Indonesische Reglement*) and Article 1866 of the Civil Code in Indonesia. This expansion allows electronic information to be used as valid evidence in Court and its evidentiary force is equivalent to documents made conventionally.

However, to ensure the legality of the use of IE and/or electronic documents as legal evidence, the procedure for organizing electronic concepts must meet the minimum verification as stipulated in Article 16 of the "ITE Law". IE must be able to prove that the electronic system has ensured that information remains available, intact, authentic, confidential, and accessible by implementing adequate steps. Testing of the minimum requirements set by law also needs to be carried out before the information or electronic documents are used as evidence.

Verification and testing of electronic information and documents can be carried out by an independent institution such as a certification authority. This institution has the authority to guarantee the validity of third parties independently and reliably, so that its validity can be accounted for. This concept is in accordance with the legal principle that evidence submitted in court must meet comprehensive formal and material requirements commensurate with the Law in order to be valid and acceptable as evidence. However, the "ITE Law" also stipulates that the regulation of electronic systems will be regulated in more depth through Government Regulations. Article 6 of the "ITE Law" stipulates that the concept of an electronic system causes original information to be indistinguishable from its duplicate so that the difference is no longer relevant. With the provision, IE and DE are considered legally valid as long as they meet the formal and material requirements required to be valid legal evidence in court.

According to this article, there are specific requirements that must be met for certain electronic evidence to be legally recognized. For example, documents such as birth certificates must be made by a Civil Registry officer, marriage certificates must be issued by a Religious Affairs Office Officer, or land certificates must be issued by the National Land Agency. This shows that there are exceptions that apply to Notaries to create authentic documents in digital form.

The exception relates to the provisions stipulated in Article 1868 of the Civil Code, which requires an authentic deed to be made in a form that complies with the requirements stipulated by law, by or before a public official authorized to do so, at the location where the deed is drawn up. Therefore, the making of a deed, whether based on the provisions of the Civil Code or the regulations governing the Notary Office as stated in Article 16 paragraph (1) letter i, letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 of the UUN-P, must comply with the requirements that have been set. In short, the making of electronic deeds or deeds

made by Notaries using electronic methods faces challenges in their implementation in Indonesia. This obstacle is related to the strict requirements in making deeds in accordance with the rules of the Civil Code and the regulations governing the Notary Office. Therefore, the idea of cyber notary may face difficulties if implemented in Indonesia because it must comply with strict provisions regarding the format and procedures for making deeds regulated by civil law and applicable legislation, especially in the context of the position of Notary.

4. Conclusion

The development of the era requires flexibility in the time and location of the signing of deeds prepared by a Notary so that it requires further regulation in the legal regulations that govern it. The implementation of cyber notary is influenced by the regulations that have been set, which vary depending on the legal system policy in each country. For example, in Germany, the regulations on Notaries have been changed to modify the requirements for electronic signatures on authentic deeds. Meanwhile, in France and Belgium, changes were made in the provisions of their Civil Law. Considering the progress in several countries that implement common law and civil law patterns, most of them have strengthened the role and function of Notaries in electronic transactions. The policy of renewal in the implementation of cyber notary must also include increasing awareness and security in the use of technology by Notaries. The need for clear standards and procedures in cyber notary practices will help reduce the risk of misuse and increase public trust in digital Notary services. Thus, this renewal aims to create a conducive regulatory environment, where technological innovation can support efficiency, speed, and security in the notarization process, while better protecting the rights and interests of the Indonesian people.

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