

The Development of Technology and Information and Its Impact on Notarial Practice in Relation to Legal Certainty

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Abstract. *The development in the current digital era has certainly brought significant changes in various aspects of life, including in notary practice. Therefore, this journal discusses the impact of technology and information on notary practice, with a focus on the aspect of legal certainty related to the concept of Cyber Notary. While there are still concerns in the practical and ethical aspects of implementing Full Cyber Notary in Indonesia, therefore Through legal analysis and literature study, this journal highlights various problems of implementing Cyber Notary in Indonesia based on ethical and practical aspects such as the non-accommodation of Cyber Notary in laws and regulations, especially the Notary Law and the unpreparedness of the Cyber Notary implementation system including human resources and uneven distribution of infrastructure. Therefore, the Author Team provides a solution mechanism, namely the Cyber Notary practice method that reconciles laws and regulations related to Notaries in Indonesia reviewed based on progressive law. The Author Team provides a resolution mechanism with the implementation of Cyber Notary in a hybrid manner, which is a combination of current notary practices, namely conventionally with digital implementation, this is as the concept of progressive law which states that there are always weaknesses in the dynamics of law, as we know that existing laws will certainly always change and develop in society along with the social dynamics that occur. In implementing this hybrid system, it is important to adjust the laws related to Cyber Notary to the work area, the person appearing and reading the deed, signing to storing the deed, in addition, related parties such as the Indonesian Notary Association (INI) are also needed in the training and certification process specifically for notaries who will carry out Cyber Notary. Because in the context*

of implementing Cyber Notary, it is necessary to adjust the laws and regulations in order to provide legal certainty for Notaries and ensure the legality and authentication of electronic deeds are equivalent to conventional deeds, so that there is no overlap or ambiguity related to Cyber Notary in the formation or storage of an authentic deed.

Keywords: *Certainty; Cyber; Notary; Progressive.*

1. Introduction

A notary is a professional authorized by the state to provide notarial services to the public, ensuring legal certainty in various transactions by drafting and validating documents that formalize legal relations between the parties. Progressive law, which emerged as a critique of the existing legal system, focuses on human behavior and social goals, aiming to address the shortcomings of the law and adapt it to evolving needs. Liberation in the concept of progressive law is a reminder that there are always weaknesses in the dynamics of law, which expects the law to provide solutions to social problems.¹

In Indonesia, the role and responsibilities of notaries are regulated by Law No. 30 of 2004 which has been amended by Law No. 2 of 2014 (UUJN). The integration of digital technology in notarial practice has begun with online activities such as reporting and registering companies through the Legal Entity Administration System (SABH) of the Directorate General of AHU. This system increases efficiency by reducing service time and simplifying bureaucratic procedures, as well as encouraging transparency and good governance.

The Cyber Notary concept, driven by technological advancements, aims to modernize notarial practices by enabling electronic transactions and remote services. However, Indonesia faces challenges in implementing this concept due to legal constraints, including the physical presence requirement stipulated in Article 1868 of the Civil Code (KUHPerdara), which states that authentic deeds must be made by or before a public official in person.² While some countries have successfully adopted electronic notary practices, the law in Indonesia needs to be updated to fully support Cyber Notary practices. This study examines the existing legal gaps and assesses the impact and feasibility of implementing Cyber Notary in Indonesia.

2. Research Methods

The author uses the Normative-Empirical Legal Research method, especially non-

¹Satjipto Rahardjo, (2009), *Hukum Progresif*, Yogyakarta: Genta Publishing, p. 33.

²Subekti dan Tjitrosudibio, (2009), *Kitab Undang-undang Hukum Perdata*, Jakarta: Pradnya Paramita, p. 475.

judicial case studies, to explore a new legal concept, namely Cyber Notary, which still lacks a comprehensive legal basis in current positive law. The discussion of this concept will be accompanied by the development of technology and information and its impact on notary practices in relation to legal certainty. This study uses secondary legal data, both in the form of primary, secondary, and tertiary legal materials such as legislation, law books, articles, law journals and internet articles. The method of data collection/obtaining applied by the author to compile the research is through interviews and through literature research using the statute approach and case study approach and using qualitative data analysis methods. This was chosen because in analyzing a research object, this method is used to explain the data used. The data in question is in terms of explanations of interview data, legal regulations related to research problems, literature study data, namely literature related to research issues.

3. Results and Analysis

3.1. Problems of Implementing Cyber Notary in Indonesia Based on Ethical and Practical Aspects

The enthusiasm of practitioners and academics who proposed the implementation of Cyber Notary in Indonesia has attracted quite a lot of public attention. This is evidenced by the holding of national/international seminars and legal discussions that have been carried out by institutions such as universities, research institutions, and the Indonesian Notary Association which reviewed the concept of Cyber Notary in Indonesia. In fact, quite a few directly invited Notaries from abroad who have implemented the Cyber Notary concept as a comparative study. The results of most of the seminars and legal discussions approved the practice of Cyber Notary in Indonesia. One example of a discussion that discussed the implementation of the concept to the technical implementation of the Cyber Notary system was a legal research discussion conducted by the Legal Research Center of the National Research and Innovation Agency or BRIN entitled "Concepts of Cyber Notary in Indonesia: Opportunities and Challenges" on May 30, 2022.³In the discussion, the speakers were practitioners and academics who provided innovative concepts for implementing Cyber Notary in Indonesia.

The Writing Team conducted an interview with one of the notary practitioners and academics, namely Stefanie Hartanto.⁴He - as a Notary - expressed his hope that in the future notary services in Indonesia can implement the Cyber Notary concept, but until now there has been no legal standing or legal instrument that can accommodate the implementation of Cyber Notary in Indonesia. Notaries in carrying out their authority as public officials who are extensions of the government - in making authentic deeds that

³Humas BRIN, "Cyber Notary dapat Meningkatkan Fungsi dan Peran Praktik Hukum di Indonesia" Organisasi Riset Ilmu Sosial dan Humoniora Badan Riset dan Inovasi Nasional, May 30, 2022, accessed via <https://ipsh.brin.go.id/2022/05/30/cyber-notary-can-enhance-the-function-and-role-of-legal-practice-in-indonesia/>

⁴Results of an interview with Stefani Hartanto, Notary in Tangerang Regency, Teams - Online Meeting, Tangerang, June 20, 2024, 11.00 WIB.

are the strongest evidence in court - are always guided by laws and regulations, so the idea of implementing Cyber Notary in Indonesia must also be accompanied by changes in legal instruments that adjust the Cyber Notary concept. In addition, he also stated that the facilities and infrastructure in the implementation of Cyber Notary must also be a concern because until now Notaries do not have a system that can ensure the identity of the parties if the procedure for appearing is carried out electronically. When compared to Europe, he stated that the system for organizing electronic notary services is very capable because there is already a system that is able to authenticate the identity of the parties.

He also conveyed the limitation of the work area if Cyber Notary is carried out in Indonesia. Considering that the current conventional method gives the Notary the authority to make deeds whose objects or subjects come from outside the work area as long as the parties "appear" physically before the Notary. He is of the opinion that Notaries must also be adaptive to the development of the times, if there are already provisions governing the implementation of Cyber Notary, then Notaries must also be responsible and equip themselves to be able to compete with other Notaries. The government only provides infrastructure, facilities and laws, so regardless of the age and limited expertise of a Notary in implementing Cyber Notary, Notaries must inevitably adjust their steps to the development of the times.

In practice, a Notary carries out 3 (three) stages in making a deed, namely: a) making the form or format of the deed in accordance with the law; b) authenticating the document; and c) documenting the transaction as a legal confidence. In stage a), the Notary uses the format instructed by law, namely that a deed must be made in the physical form of paper. In stage b), the Notary must read the deed in front of the parties including 2 (two) witnesses so that the parties must be physically present before the Notary to affix their signatures which expressly state that the parties agree with the contents of the deed.⁵Stage c), The notary must archive the documents he has created as part of the notary protocol.⁶

The concept of Cyber Notary itself consists of 2 (two) types of meaning, namely referring to the actions or authority of a Notary - such as electronic transaction certification - and the method of implementing authority which is carried out by utilizing technology - namely the implementation of e-RUPS.⁷The presence of technology in this era provides a breath of fresh air for legal practitioners, including Notaries who are given the authority to make minutes of the General Meeting of Shareholders electronically or e-GMS. This provision is stated in Article 12 of the Financial Services Authority Regulation Number 16/POJK.04/2020 concerning the Implementation of the General Meeting of

⁵Article 16 paragraph (1) letter m UUJN

⁶Article 16 paragraph (1) letter b UUJN

⁷Eri Pramudyo, Ranti Fauza Mayana, Tasya Safiranita Ramli, "Tinjauan Yuridis Penerapan Cyber Notary Berdasarkan Perspektif UU ITE dan UUJN", *Jurnal Indonesia Sosial Sains Vol. 2 No. 8 August 2021*, Universitas Padjajaran, (DOI: 10.36418), p. 1253

Shareholders of Public Companies Electronically ("POJK 16"). The preparation of the e-GMS minutes is clearly not in line with the provisions stipulated in the UUJN, namely: 1) the GMS participants are not present before the Notary, where the Notary is only given a recording of the interaction during the meeting; and 2) the GMS minutes do not contain the signatures of the GMS participants, which is only proven by the electronic attendance list of shareholders. Positive law in Notary practice is that the parties - in this case the GMS - are present before the Notary. Usually, the Notary participates in the GMS and witnesses the interactions that occur directly and writes down the results of the GMS - the minutes. Due to the presence of a Notary at the GMS, he can directly prove that the GMS he witnessed took place in accordance with applicable legal provisions.

In addition, Notaries can also certify transactions carried out electronically as mandated in the explanation of Article 15 paragraph (3) of the UUJN. In electronic transaction certification, Notaries are present as trusted third parties.⁸ which validates a legal act carried out via a computer, computer network, and/or other electronic media.⁹ When associated with the provisions of Article 16 paragraph (1) UUJN as positive law Notary that the deed read out in the presence of the parties is made in the form of a physical sheet of paper which is then signed at that time. This is a document authentication step where the Notary and witnesses directly see - so that they are able to ensure - that the parties who appear are the ones who signed the deed without coercion, in a conscious state and without error. Then if the electronic transaction certification - the output of which is an electronic certificate - is carried out without the presence of the parties, the Notary cannot ensure that the parties who appear understand and have signed without coercion from anyone. So in the certification of electronic transactions, the Notary can only rely on the truth of the signature of the party who appears - that it is true that the one who signed is the party involved - and the date listed on the electronic certificate.¹⁰

From the 2 (two) examples above, Notaries have actually been supported by a small number of laws that utilize technology in carrying out their authority. However, the Writing Team needs to emphasize that the provisions related to the physical presence of the parties, witnesses and Notaries in reading the deed are absolute in the process of making an authentic deed by a Notary. This provision cannot be interpreted or adapted to follow the "times" by utilizing technology - such as teleconferences or online meetings. Similarly, the minutes of the deed made by a Notary, its confidential nature is ideally only stored physically. The common practice in storing minutes of the deed is that the Notary only stores the physical form of the minutes of the deed without a soft

⁸Fauzan Aziman Alhamidy, FX Arsin Lukman, "Legalitas Penggunaan Konsep *Cyber Notary* Dalam Prakteknya Di Indonesia", *Justicia Sains: Jurnal Ilmu Hukum Vol. 08, No. 01 June 2023*, Universitas Indonesia, p. 89 <https://doi.org/10.24967/jcs.v8i1.2304>

⁹Article 1 number 2 of the ITE Law

¹⁰Jamie Armadi Jaya, Mulyani Zulaeha, Suprpto, "Kewenangan Notaris dalam Mensertifikasi Transaksi Elektronik Ditinjau dari Undang-undang Nomor 2 Tahun 2014 tentang Jabatan Notaris", *Notary Law Journal Vol. 1 Issue 2, 2 April 2022*, Universitas Lambung Mangkurat, p. 137

file or copy in PDF format on his computer so that the contents of the deed are guaranteed confidentiality. On the other hand, Notaries generally provide copies of the deed which can be in the form of scans or copies in PDF format to the parties who need it. To apply for permission through government licensing systems such as OSS, Intrade and the like, documents in PDF format are required, including but not limited to authentic deeds which can be in the form of company establishment deeds, cooperative establishment deeds, and the like. So it can be concluded that the current practice is like two sides of a coin, in which in the process of making deeds, Notaries still uphold the values of UUJN - which has not fully regulated the mechanism for making deeds that utilize technology - and also clearly utilize technology in storing copies of deeds (in PDF format).

In essence, an authentic deed contains information from the parties that is written down in a medium - paper - by a Notary which is then read by the Notary in front of the parties concerned to ensure that the contents of the deed are in accordance with the will and can be used as a basis or basis for carrying out legal acts and has the strongest and most fulfilled evidentiary force.¹¹ The word "written" in the UUJN provisions does not explicitly state that the written referred to is on paper. In fact, the word "written" itself can be expanded to mean information that is poured into a tool in the form of software so that it becomes electronic information that can be stored in and displayed via a computer. The form of electronic information is in the form of electronic documents that are not printed on paper but documents that are created, forwarded, sent, received or stored in digital form that can be viewed, displayed, and/or heard via a computer.¹² However, the impact of the majority of Notaries' practices regarding the provisions of Article 16 paragraph (1) of the UUJN at the time the UUJN was formed - not yet supported by sophisticated technology like today - is that the parties are required to be physically present and sign the deed at that time so that the majority of Notaries use "paper" as a medium in making authentic deeds.

The optimism of the ITE Law that legitimizes several elements in authentic deeds - such as the contents of agreements that can be related to electronic information, electronic transactions and electronic contracts; wet signatures related to electronic signatures; forms of deeds related to electronic documents and electronic certificates - can be a stimulant for Cyber Notary practices in Indonesia. However, what must be of concern is the readiness of digital instruments in making authentic deeds which are currently still under the shadow of the provisions of Article 16 paragraph (1) letter m of the UUJN. The provisions in the UUJN are the basis for making deeds for Notaries, so that even though there are provisions that provide space for the use of technology, as long as the provisions of the UUJN still require physical presence, physical presence will continue to be carried out - including supporting elements such as the form of minutes of the deed printed on paper and direct signatures or wet signatures of the parties. The expansion of the elements of the deed regulated in the ITE Law such as electronic

¹¹Explanatory article of UUJN

¹²Article 1 Number 1 of the ITE Law

information, electronic transactions, electronic contracts, electronic signatures, electronic documents and electronic certificates is not yet in line with the provisions of the UUJN.

In contrast to neighboring countries that have implemented a combination and Cyber Notary in full starting from the Cyber Notary implementation system; procedures for appearing using teleconference; forms of deeds in the form of soft files; electronic signatures of the appearers; and storage of minutes of deeds using the cloud. As explained by Doctor Yanly Gandawidjaja in his open dissertation examination at Parahyangan University, Bandung on February 17, 2024, there are several countries that have implemented the Cyber Notary concept, namely: France, the Netherlands, Japan and Vietnam. France, the Netherlands, Japan and Vietnam have criteria, characteristics and implementation of authentic deeds that are similar to Indonesia, namely:

- a. The nature of an authentic deed;
- b. Making deeds using a computer;
- c. The nature of the deed that can be used as evidence in court;
- d. Obligation to appear before a notary;
- e. Obligation to read the deed;
- f. Wet signature obligation;
- g. Obligation to store deeds;
- h. A copy of the deed as evidence for the parties.

These five countries - including Indonesia - have similarities, but France and Japan themselves have implemented Cyber Notary in full, while the Netherlands and Vietnam have implemented a combination of Cyber Notary, namely using conventional methods that utilize technology.

In Japan, there is a CYNOS or Cyber Notary System which has been implemented since 2002 or is called *kooshoonin*. Authentic deeds are created electronically through the Cyber Notary system integrated by the National Notary Association of Japan.¹³ Not all Japanese Notaries can perform Cyber Notary, only those appointed by the Ministry of Law.¹⁴ The list of Notaries appointed by the Ministry of Justice of Japan can be accessed via the website of the Ministry of Justice of Japan ([List of Appointed Notaries](#)). In general,

¹³Noval Dwi Kurnia, Muhammad Sood, Hirsanudin, "Juridical Study of Arrangements for Authentic Deeds through Cyber Notary: Comparative Study with Japan", *Path of Science*, 2023, Vol. 9, No. 1, p. 3018

¹⁴Ika Yuli Agustin, Ghansham Anand, "Proposing Notaries Deed Digitalization in Indonesia: A Legal Perspective", *Lentera Hukum*, Vol. 8 Issue 1, 2021, p. 57

the making of authentic deeds in Japan is carried out in the following manner:

- a. The parties prepare electronic documents in PDF format and affix electronic signatures to the documents;
- b. The e-notary application is done online. This process involves the Ministry of Law providing a reception page on the Ministry's website for the applicants. The application is accepted, and the Notary transfers this page to the electronic notarization center for the implementation of e-notary;
- c. The notary downloads the electronic documents from the central server to the terminal in his office and checks sit-to-see whether they meet the requirements for the deed-making process.
- d. The Notary receives acknowledgement from the electronic signatories (i.e. the appearers). The appearers must be present in person before the Notary. This is because of the general doctrine regarding physical presence before the Notary submits an e-notary application.
- e. If the Notary is satisfied with the acknowledgment, the Notary will attach a deed of acknowledgment with his digital signature to the electronic document and save it on a CD or other media to be kept to be given back to the presenters.¹⁵

The practice of Cyber Notary in Japan can be a comparative study that can be aligned with the practical values of UUJN in Indonesia. Based on several similarities in the nature and function of authentic deeds as explained above, the Author Team concludes that the practice of making authentic deeds by Notaries in Indonesia actually has the "potential" to use the Cyber Notary concept like Notary practices in other countries.

The next thing to consider is how to ensure that the implementation of Cyber Notary in Indonesia is carried out evenly to realize legal certainty? Based on data from the Directorate General of AHU, the number of Notaries in Indonesia is currently around 19,380¹⁶ consisting of various layers of Notaries including those who have practiced for decades with the conventional UUJN method and are no longer young. When there is a transition from the conventional method to Cyber Notary, Notaries who are accustomed to conventional practices must change and adapt to the Cyber Notary concept. In a public lecture at the Faculty of Law, University of Indonesia on the topic of E-Notary in the Industrial Era 4.0 and Social 5.0: Needs or Threats, Mr. Santun Maspari Siregar, namely the Director of Civil Procedure, at the Directorate General of General Legal Administration (Ditjen AHU) of the Ministry of Law and Human Rights of the

¹⁵National Notary Association of Japan, "Electronic Notary", accessed via https://www.koshonin.gr.jp/notary/ow09_5 on June 22, 2024

¹⁶Kemenkumham Kantor Wilayah NTB, "Divisi Yankumham Kemenkumham NTB Koordinasi ke Ditjen AHU Bahas Sinkronisasi Data Notaris dan Pewarganegaraan", February 1, 2024, accessed via <https://ntb.kemenkumham.go.id/berita-kanwil/berita-utama/6050-divisi-yankumham-kemenkumham-ntb-koordinasi-ke-ditjen-ahu-bahas-sync-data-notaris-dan-pewarganegaraan>

Republic of Indonesia stated that senior Notaries who have practiced for decades need an alternative in storing authentic deeds. The results of Notary practice for decades - minutes of deeds in physical form - which in terms of quantity take up a lot of storage space. A Notary must have their own warehouse to store minutes of deeds and/or related documents. A concept that can help Notaries is the storage or archiving of deeds electronically. The benefits of storing deeds electronically are to help prevent loss of deeds due to floods or fires; save storage space; makes it easier to search for deeds, saves time and saves operational costs.¹⁷ On the other hand, storing documents electronically also has weaknesses such as the risk of viruses or corrupt data so that data is lost, data theft or hacking, data falsification and data modification.

In the 21st Plenary Meeting of the Asian Affairs Commission of the International Union of Notaries (CAAs-UINL) held in Yogyakarta, UINL President Lionel Galliez stated that: the role of notaries is even more important if they are able to take advantage of the momentum - digitalization. Related to the topic of the plenary meeting, Cyber Notary has the potential to create a digital divide between Notaries. The transition from conventional methods to hybrid methods will provide its own challenges for senior Notaries.¹⁸ Participants in the plenary meeting were optimistic that digitalization in the notary sector would create service efficiency, but this must also be accompanied by digital literacy that can help the senior Notary level - whose digital usage skills definitely require repeated refreshment. The main elements of digitalization are the internet and internet supporting infrastructure - including electricity and internet service systems. Based on data from the Indonesian Internet Service Providers Association (APJII), the number of internet users in 2024 will reach 221,563,479 people out of a total population of 278,696,200 Indonesians in 2023.¹⁹ From the data, it is explained that internet usage by Gen X (born 1965 - 1980) - senior notaries - is only 18.98% while by Gen Millennials (born 1981 - 1996) it is 30.62%. The author concludes that the survey conducted by APJII can be a reflection that shows the "digital divide" between Gen X - senior notaries - and Gen Millennials in general. In addition to the internet, another supporting infrastructure that must be a concern for the implementation of Cyber Notary is the availability of electricity. Based on the Press Release of the Ministry of Energy and Mineral Resources dated January 19, 2024, until the end of December 2023,

¹⁷Fakultas Hukum Universitas Indonesia, "FH UI Gelar Seminar Melihat Peluang dan Ancaman Notaris Siber di Era Digital", Universitas Indonesia, November 2, 2023, accessed via <https://www.ui.ac.id/fhui-gelar-seminar-bayar-peluang-dan-ancaman-notaris-siber-di-era-digital/>

¹⁸Dhimas Ginanjar, "Revolusi Industri 5.0 Mengancam Semua Profesi, Notaris Juga Perlu Adopsi Teknologi", *Jawa Pos*, July 26, 2023, accessed via <https://www.jawapos.com/berita-Sekitar-anda/011806797/revolusi-industri-50-mengancam-semua-profesi-notaris-juga-perlu-adopsi-teknologi>

¹⁹APJII, "APJII Jumlah Pengguna Internet Indonesia Tembus 221 Juta Orang", APJII, accessed via [https://apjii.or.id/berita/d/apjii-nomor-user-internet-indonesia-tembus-221-juta-orang#:~:text=Association%20Penorganizer%20Services%20Internet%20Indonesia%20\(APJII\)%20announce%20number%20of%20users%20internet,soul%20population%20Indonesia%20years%202023.](https://apjii.or.id/berita/d/apjii-nomor-user-internet-indonesia-tembus-221-juta-orang#:~:text=Association%20Penorganizer%20Services%20Internet%20Indonesia%20(APJII)%20announce%20number%20of%20users%20internet,soul%20population%20Indonesia%20years%202023.)

the number of households that have not received access to electricity reached 185,662 households. Meanwhile, the number of villages that have not received access to electricity is 140 villages. The villages that have not yet received access to electricity are dominated by eastern Indonesia, namely: 12 villages in Southwest Papua Province, 9 villages in Papua, 56 villages in Highlands Papua, 47 villages in Central Papua, and 16 villages in South Papua.²⁰

From the 2 (two) data above, it is implicitly shown that the concerns regarding the ethical implementation of Cyber Notary are the unpreparedness of Notaries - seniors - because they are still behind in technology as the main subject in organizing the creation of authentic deeds electronically and the distribution of electricity in Indonesia which has not reached 100% as a supporting medium for digitalization are determining factors in the implementation of Cyber Notary. If the implementation of Cyber Notary is still carried out but these 2 (two) things have not been fixed, then this will have an impact on the climate of competition between Notaries in Indonesia which is not ideal due to the uneven skills of Notaries in the use of technology and infrastructure supporting digitalization. Judging from the first reason related to the readiness of Notaries in using the internet, apart from the digital divide, the data actually shows that the total internet users in Indonesia have reached 80% of the total population of Indonesia. From the second reason, tips to meet the electrification ratio by the Government continue to be pursued, as seen from the increasing figures each year.²¹The data evidence above shows that the Indonesian population is quite adaptive to digitalization related to internet usage and the government is also aware of the importance of equalizing electricity usage throughout Indonesia. Therefore, in the opinion of the Author Team, the implementation of Cyber Notary in Indonesia is not a necessity.

In the Cyber Notary concept, starting from the procedure for "facing", reading the deed, affixing an electronic signature, storing authentic deeds and the form of authentic deeds shifts to digitalization. The stages of making authentic deeds by Notaries fully utilize technology such as teleconference. Of course, concerns arise if the Cyber Notary concept is implemented end to end in Indonesia. How to ensure that the parties appearing are the relevant parties; both the Notary and the parties appearing are in the Notary's work area; the validity of the electronic signature affixed to the deed; the validity of the form of authentic deeds in the form of soft files and storage of authentic deeds in the form of soft files that utilize the cloud. The Author Team proposes an ideal solution mechanism with clear limitations which are explained in the following discussion.

²⁰ Agus Cahyono Adi, "Penuhi Rasio Elektrifikasi 100%, Butuh Dana Rp 22 Triliun", *Kementerian Energi dan Sumber Daya Mineral*, January 19, 2024, accessed <https://www.esdm.go.id/id/media-center/news-archive/fulfill-the-electrification-ratio-100-needs-funds-of-rp22-trillion->

²¹Dwitri Waluyo, "Selangkah Menuju Indonesia Terang 100%", *Portal Informasi Indonesia*, January 28, 2024, accessed via <https://indonesia.go.id/detik/editorial/7926/seangkat-menuju-indonesia-terang-100?lang=1>

3.2. Cyber Notary Practice Method that Reconciles Notary-Related Legislation in Indonesia Reviewed Based on Progressive Law

Along with the development of the digital era, of course the use of information technology provides many benefits and conveniences including notaries as public officials. The implementation of Cyber Notary itself certainly has great potential to increase efficiency for notaries and the community. However, its implementation in Indonesia faces many challenges which include but are not limited to the lack of digital knowledge and skills supported by regulations that have not accommodated and tend to have legal gaps. Therefore, a solution mechanism is needed, namely legal harmonization within the framework of Cyber Notary implementation for legal certainty and authentication or validity of a deed.

When looking at the important authority of a notary as a public official who creates authentic deeds,²²It can be seen that an authentic deed is a perfect evidence as an inherent evidentiary force, this means that the proof is sufficient with the deed itself unless there is opposing evidence that can prove something else or otherwise from the deed. Binding in the sense that the judge is bound by the deed itself as long as the deed made is in accordance with the provisions. This is as stated in Article 1868 of the Civil Code "An authentic deed is a deed made in the form determined by law by/or before an authorized public official for that purpose, at the place where the deed is made." And according to Article 1869 of the Civil Code if the person who makes it is an incompetent or unauthorized official or the form is defective, then the deed has the power as a private writing if signed by the parties.

So it can be concluded that a deed can be called authentic if it fulfills 3 elements, namely: 1) made in a form according to the provisions of the law; 2) made by or before a public official; and 3) the public official must be authorized to do so at the place where the deed was made.²³In order to maintain the authenticity of the deed, the Author Team recommends that the implementation of Cyber Notary be carried out in a hybrid manner, namely the implementation of 2 (two) mechanisms of conventional and Cyber practices, due to the various problems that we have previously conveyed and the inability of the current state of Indonesia to implement full Cyber Notary. This is also supported by the results of our interview with a practitioner as a notary, namely Stefanie Hartanto. She supports the implementation of Cyber Notary as long as the provisions in the law and technology in Indonesia support the implementation, because

²²Article 1 number 1 UUJN: "A notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws."

²³Ajeng Hanifa Zahra, "Auction Minutes Deed as an Authentic Deed," Directorate General of State Assets, accessed June 20, 2024, Ajeng Hanifa Zahra, "Akta Risalah Lelang sebagai Akta Otentik," Direktorat Jenderal Kekayaan Negara, accessed June 20, 2024, <https://www.djkn.kemenkeu.go.id/article/baca/14819/Akta-Rilahan-Lelang-as-Akta-Otentik.html>.

in fact until now there are still often gaps and no legal certainty regarding Cyber Notary. The importance of legal certainty can be seen from two perspectives, namely certainty in the law itself and certainty by law. Certainty in law means that every legal norm must be formulated in a sentence that does not contain various different interpretations. This is important because it will determine whether or not someone complies with the law. In practice, various legal events often arise where the legal norms that regulate them are unclear or imperfect, giving rise to various different interpretations. As a result, this can lead to legal uncertainty.²⁴

As we know that existing laws will certainly always change and develop in society along with the social dynamics that occur, one of the theories that supports this study is the progressive legal theory which has the concept of change and transformation, Law as a process, law in the making, where law as an institution that continuously builds and changes itself towards a better level of perfection.²⁵ Progressive law chooses Karl Renner's concept of change and alteration which follows the mode of "the development of the law gradually works out what is socially reasonable", namely the gradual development of law, producing something that makes sense in society.

Therefore, in order to provide legal certainty, in implementing the Cyber Notary mechanism in a hybrid manner, various adjustments are required, both to the law and to the related parties, including:

1. *Area of Office, Appearing and Reading of Notarial Deeds*

In our interview results with a practitioner, namely Notary Stefanie Hartanto, in implementing the Cyber Notary concept, technology and adjustments to the settings are needed to ensure that online implementation can be carried out. In addition, it is also important to ensure that the implementation of Cyber Notary in the future does not violate the provisions of laws and regulations. Therefore, to ensure that the implementation of Cyber Notary does not violate the provisions of laws and regulations, the Author Team proposes hybrid provisions related to the implementation of Cyber Notary, the following are adjustments that must be made:

- a. As the results of the interview with a practitioner as a notary, namely Stefanie Hartanto, she stated that technology is needed to ensure that the party appearing is the appropriate party, because in field practice there are quite a lot of cases of inconsistencies between the person appearing and the identity provided, therefore one of the technologies that must be considered to prevent this is a facial or fingerprint scanner integrated with a teleconferencing application, this is to ensure that the identity documents with the person appearing in person match;

²⁴Supriyono, S.H., M.Hum, "Terciptanya Rasa Keadilan, Kepastian dan Kemanfaatan dalam Kehidupan Masyarakat," *Jurnal Ilmiah FENOMENA*, Vol. XIV, No. 2 (November 2017): 1567-1582.

²⁵Satjipto Rahardjo, (2009), *Hukum Progresif*, Yogyakarta: Genta Publishing, p. 30.

b. A revision is needed regarding Article 16 paragraph 1 letter m of the UUJN,²⁶ in the explanatory article, it is written and explained that the process of reading the deed must be carried out physically by a Notary in the presence of witnesses according to the provisions, therefore in implementing Cyber Notary, adjustments are needed where the process of appearing and reading the deed can be carried out either physically or through online meetings using video conferences with the provisions of applicable laws and regulations, as well as video conferences that must be integrated with the provisions of technology as stated in point a;

c. The Author Team suggests that the Cyber Notary provisions can be implemented as stipulated in Article 17 paragraph 1 letter a, where a Notary can only carry out his/her position according to the Notary's area of office, but there are no territorial restrictions on clients, so that online meetings can still be carried out as long as the Notary is in his/her area of office. Therefore, in order to ensure that the Notary does not carry out his/her position outside his/her area of office, it is necessary to check the validity of the Cyber Notary process, it is important to issue a Certification of Authority that attaches concrete evidence, such as an IP address, which shows the physical location, even to the Notary's time specifications when conducting a meeting with the client. This aims to ensure that the notary is truly within his/her legal jurisdiction when reading the Deed.

d. To strengthen the evidence of the deed-making process and as evidence of the presence of the relevant parties as stipulated in Article 16 paragraph 1 letter m, the notary, client and all witnesses must make a written statement stating that they acknowledge the validity and agree to the online meeting or teleconference as an official meeting.

Nevertheless, the Author Team acknowledges that there are challenges in implementing the Cyber Notary concept in remote areas that have limited access to technology. Therefore, it is still relevant to maintain the current conventional provisions as an alternative to facilitate an effective notarization process throughout the region, including areas with limited infrastructure and technology.

2. *Signature in Deed*

The application of a signature in a deed must be carried out directly as regulated in Article 16 paragraph 1 letter m and Article 44 paragraph (1) of the UUJN,²⁷ This results in digital signing being prohibited. Therefore, it is necessary to make adjustments by adding to the related explanatory article that the affixing of

²⁶Article 16 paragraph 1 letter m UUJN: "*read the Deed in front of the person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a private Deed of Will, and signed at that time by the person appearing, witnesses and Notary; and*"

²⁷Article 44 paragraph 1 UUJN: "*Immediately after the deed is read, the deed is signed by each person appearing, witness and notary, unless there is a person appearing who cannot sign and states the reason.*"

signatures can be done electronically. However, it is necessary to ensure that e-signatures are carried out legally by fulfilling the provisions of laws and regulations as stipulated in Article 11 paragraph 1²⁸ and the explanatory article²⁹ from the Law on Electronic Information and Transactions and Article 59 of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions.

Therefore, the Author Team recommends the use of an e-signature system that has met the permit from the Ministry of Communication and Information (Kemenkominfo), as well as a system that can assist authentication, such as one of the institutions that has met the permit to assist in implementing e-signatures, namely Privy.id, where the related system has provisions for a combination of at least two authentication factors, which are used as proof that the identity of the electronic signer is in accordance with³⁰This is to provide protection for the parties including the Notary.

3. Storage of Deeds

In carrying out his duties, a notary has responsibilities, one of which is to make a deed in the form of a deed minute and store it as part of the notary protocol in accordance with Article 16 paragraph (1) letter b of the Notary Law. The explanation in the article states that storing the deed minute as part of the notary protocol aims to ensure the authenticity of the deed. By storing the deed in its original form, the notary can easily verify the authenticity of the deed, so that if there is forgery or misuse of the grosse, copy, or extract, this can be immediately detected by comparing it with the original deed. However, the UUJN does not provide any detailed explanation regarding the method or procedure for storage.

²⁸(1) Electronic Signatures have legal force and valid legal consequences as long as they meet the following requirements:

- a. *Electronic Signature creation data relates only to the Signatory;*
- b. *Electronic Signature creation data during the electronic signing process is solely under the authority of the Signatory;*
- c. *any changes to the Electronic Signature that occur after the time of signing can be identified;*
- d. *any changes to the Electronic Information related to the Electronic Signature after the time of signing can be known;*
- e. *there are certain methods used to identify who the Signatory is; and*
- f. *There are certain ways to show that the Signatory has given consent to the related Electronic Information."*

²⁹Explanation of Article 11 paragraph 1 of the ITE Law: "*This Law provides recognition in terms of duty that even though it is only a code, an Electronic Signature has the same standing as a manual signature in general which has legal force and legal consequences. The requirements as referred to in this Article are the minimum requirements that must be met in every Electronic Signature. This provision opens up the widest possible opportunity for anyone to develop methods, techniques, or processes for making Electronic Signatures.*"

³⁰Sigar Aji Poerana, S.H., "Cara Kerja Tanda Tangan Elektronik," *Hukum Online*, accessed at June 20, 2024, https://www.hukumonline.com/klinik/a/cara-kerja-tanda-tangan-elektronik-cl3/#_ftn1.

Of course, the large number of documents that must be stored results in conventional storage actually having a very high risk such as being lost or even damaged by natural disasters. Therefore, an implementing regulation is needed to adjust electronic storage, namely:

a. Conducting revisions related to the third part of UUJN, that there needs to be an implementing regulation related to the protocol for storing electronic deed documents with the provision that electronic storage is carried out with the cloud or a notary's personal server in order to maintain the confidentiality of document data in accordance with current laws and regulations. As one example, hukumonline has issued an electronic data document storage system to integrate individual documents and a company called Exdoma. This system is also expected to be integrated with the government's central system in the future for efficiency and to maintain the security of each document.

This system itself is a concept that has been implemented by Notaries in Japan and Belgium, where these countries store electronic data in one data center, which can then be accessed, opened and stored only by the notary who made the deed.³¹

4. Certification or Training

Focus Group Discussion themed 'Comparative Study of Notary Authority in German and Indonesian Legislation,' which was held by the Central Board of the Indonesian Notary Association with YARSI University at the YARSI University Auditorium, Monday (29/4), stated that the authority in implementing Cyber Notary in a hybrid manner must be implemented by fulfilling various requirements. Where to hold the authority of Cyber Notary, a Notary is required to undergo training or certification. Therefore, the Author Team suggests that the authority for certification and training for Cyber Notary can be organized by the Indonesian Notary Association (INI). This is certainly to improve digital skills and public trust in the concept of Cyber Notary considering the current problems of Notaries who often experience a digital divide.

In fact, various regulations such as the digitalization of notarial practices such as the obligation of Notaries to register monthly reports, checking the registration of wills and other matters related to company registration in the AHU system, and the explanatory article of Article 15 paragraph 3 of the UUJN³² has actually implemented the Cyber Notary concept in the realm of authenticating an authentic deed. However, based on the results of our interview with a practitioner as a notary, namely Stefanie Hartanto,

³¹The FGD with the theme "Comparative Study of Notary Authority in German and Indonesian Legislation," was organized by the Central Board of the Indonesian Notary Association in collaboration with YARSI University, which was held at the YARSI University Auditorium on Monday, April 29, 2024.

³²Explanation of Article 15 paragraph 3 UUJN: "What is meant by "other authorities regulated in laws and regulations" includes, among others, the authority to certify transactions carried out electronically (cyber notary), make deeds of waqf pledges, and aircraft mortgages."

when looking at Article 77 of the UUPT³³ related to the GMS, it is not possible to implement it in real practice for closed companies. Where the provisions for making a deed in the e-rups can only be done by private deed, but in terms of making a statement, it is still required to appear physically.

In addition, Article 5 of the ITE Law even supports the implementation of Cyber Notary, because an electronic document has become valid in the eyes of the law, where the related article states:

“(1) Electronic Information and/or Electronic Documents and/or printed copies thereof constitute valid legal evidence.

(2) Electronic Information and/or Electronic Documents and/or printouts thereof as referred to in paragraph (1) constitute an extension of valid evidence in accordance with the Procedural Law in force in Indonesia.

(3) Electronic Information and/or Electronic Documents are declared valid if they use an Electronic System in accordance with the provisions stipulated in this Law.

(4) The provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) do not apply in cases regulated otherwise in the Law.”

Therefore, to realize Cyber Notary in the realm of authentic deed formation, a solution mechanism is needed that certainly does not have overlaps and ambiguities. This is so that the legality and authentication of an electronic deed can be on par with conventional deeds. So that the hybrid solution mechanism offered by the Writing Team is expected to provide legal certainty for Notaries, as the law always moves following social dynamics.

4. Conclusion

The enthusiasm of practitioners and academics towards the Cyber Notary concept has been going on for quite a long time, but until now Cyber Notary has not been implemented. The Author Team is of the opinion that until now there are still concerns regarding the practical and ethical aspects of the full implementation of Cyber Notary in Indonesia, namely: 1) it has not been accommodated by laws and regulations, especially the UUJN, where the provisions in Article 16 paragraph (1) letter m of the UUJN still require the physical presence of the parties before a Notary, and there is a legal vacuum in the UUJN regarding the application of the concept of the ITE Law in the implementation of the creation of authentic deeds electronically by Notaries; and 2) the Cyber Notary implementation system is not ready—including human resources and uneven distribution of infrastructure. All available concepts, ideas, alternatives, and possible applications of Cyber Notary ultimately lead to the need for adequate legal

³³Article 77 UUPT, "In addition to holding a GMS as referred to in Article 76, a GMS may also be conducted via teleconference, video conference, or other electronic media that allows all GMS participants to see and hear each other directly and participate in the meeting."

instruments. The implementation of Cyber Notary in Indonesia requires collaboration between institutions that have the authority in every stage of making authentic deeds electronically. The involvement of government institutions is very necessary to provide legal instruments that can facilitate the development of the era so that there is a legal basis for Notaries in exercising their authority to make authentic deeds electronically. In addition, an integrated system with encryption is needed, such as AHU online, which according to the Writing Team can be an ideal example of an online authentic deed creation platform. What is expected from government involvement in the process of making authentic deeds electronically is the existence of a database of the identity of the person appearing—who is an Indonesian citizen—so that it can facilitate authentication of the person appearing's identity. The role of INI (Indonesian Notary Association) in making authentic deeds electronically is also very much needed, for example in the form of digital literacy for all Notaries in Indonesia.

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Interview:

Interview with Mrs. Stefani Hartanto as Notary and PPAT Tangerang Regency, Teams - Online Meeting, Tangerang, on June 20, 2024, at 11.00 WIB.