

The Legality of Electronic Deeds in the Cyber Notary Concept in Indonesia

Fatma Irawati¹⁾ & Nanang Sri Darmadi²⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: fatmairawati@gmail.com

²⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Abstract. *This research aims to analyze: 1) Criteria for cyber notary principles that can be applied in Indonesia. 2) Legality of electronic deeds in the cyber notary concept in Indonesia. This type of research is normative legal research. The approach methods in this research are the statutory approach (statue approach) and the comparative approach (comparative approach. The type and source of data in this research is secondary data obtained through literature study. The research results are concluded: 1). The criteria for cyber notary principles that can be applied in Indonesia are that they must comply with existing regulations, such as UUJN and UUIE. Data security and privacy must be guaranteed through the use of encryption technology, document integrity and authentication must be maintained, accessibility and ease of use need to be considered, apart from that a clear legal and policy framework is needed to guarantee the validity and legal force of digitally notarized documents, collaboration with related institutions. However, it seems difficult for a Notary to realize cyber notary as long as there are no changes to the regulations in the UUJN. Moreover, the provisions in UUIE which regulate that electronic information and/or electronic documents are valid legal evidence, however, do not apply to letters and their documents which according to law must be made in the form of a notarial deed or a deed made by a deed-making official. 2) The legality of electronic deeds with the cyber notary concept is based on the legal substance of the Law on Notary Positions, UUIE and the Civil Code which regulates the mechanism for making authentic deeds, and the requirements for the authenticity of notarial deeds. It can be understood that the use of deeds made electronically by notaries does not meet Authentic deed authenticity requirements. The obstruction of the Cyber notary concept is caused by formal requirements which require the presence of the parties before a Notary Public so that this shows that the formal requirements for making a notarial deed are cumulative and not alternative in nature so they must be fulfilled.*

Keywords: Cyber; Electronics; Notary.

1. Introduction

The rapid development and progress of information technology has caused changes in life activities in various fields which have directly influenced the birth of new legal acts.¹The various conveniences offered by the development of telecommunications have enabled relationships between people to take place quickly and easily without taking into account aspects of space and time. On the other hand, notaries as public officials tasked with serving the community are expected not to be left behind in responding to these developments.²

The use and utilization of information technology must continue to be developed to maintain, preserve and strengthen national unity and unity based on laws and regulations for the sake of national interests, the use of technology must play an important role in trade and national economic growth to realize the welfare of society. Likewise with the concept of cyber notary which provides progress in the field of service. The concept of cyber notary can be interpreted as a notary who carries out the duties or authority of the position based on information technology related to the duties and functions of a notary, especially in making deeds.³

The manifestation of this series of progress is the birth of new technological products that combine the capabilities of information systems and communication systems based on computer systems which are then connected in an information system network which is then called an electronic system.⁴With these various advances, the government was encouraged to issue Law Number 11 of 2008 concerning Electronic Information and Transactions, which was later amended by Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law).

There needs to be a review of the Cyber notary concept when applied in a civil law country, synchronizing the ITE Law with the UUJN so that the Law can be implemented and a Deed with the Cyber notary principle can have legal force and have perfect proof like an authentic deed made by a notary. Regarding the implementation of cyber notary, some Articles have the opportunity for the implementation of cyber notary, some are against or have not been able to become the legal basis for cyber notary to be applied in Indonesia, because it must be admitted that the shift in role towards the Cyber notary era is certainly not as easy as turning the palm of the hand. This is due to several legal obstacles faced by Notaries in its implementation. The problem is about the validity or legality and the strength of its proof of electronic documents as products of

¹Emma Nurita and Raden Ayu, 2012, Cyber notary: Initial Understanding in the Concept of Thought, Refika Aditama, Bandung, p. 3.

²Rossalina, Z, 2016, The Validity of Notarial Deeds Using Cyber Notary as an Authentic Deed, Student Journal, Brawijaya University, Malang, p.1.

³Emma Nurita, Op.cit., page 4.

⁴Ibid., p. 3.

Cyber notary.⁵

The conflict of norms related to Cyber notary and UUJN is hampered by Article 1869 of the Civil Code concerning the essence of the meaning of the authenticity of a deed and does not meet the formal requirements for making a deed in accordance with the articles of UUJN. In addition, the concept of Cyber notary which utilizes communication tools with internet networks and electronic transactions allows users or parties to be anywhere/across territorial (borderless). So that it can cause conflicts related to the Notary's area of office. This also contradicts Article 18 of UUJN which determines that the Notary's domicile is in the district/city and the area of office covers the entire province from the place of his/her domicile. In fact, this arrangement of the area of office is useful for ensuring the legal certainty of the deed and preventing business competition between fellow Notaries.⁶

In addition to norm conflicts, there are other things that are still considered weak if the implementation of electronic deed making with the concept of cyber notary is applied in Indonesia because it is related to the user's personal data. This study provides information and knowledge needed to solve problems and provide input in making decisions regarding the Cyber notary concept that will be applied in Indonesia.

2. Research Methods

This type of research is normative legal research. The approach method in this research is the statute approach and the comparative approach. The type and source of data in this research are secondary data, obtained through literature studies. The analysis in this research is prescriptive.

3. Results and Discussion

3.1 Cyber Notary Principles Criteria That Can Be Applied In Indonesia

According to Emma Nurita, the concept of cyber notary can temporarily be interpreted as a notary who carries out his duties or authority based on information technology, which is related to the duties and functions of a notary, especially in making deeds.⁷ Then according to Brian Amy Prastyo, the essence of cyber notary currently has no binding definition. However, it can be interpreted as a Notary who carries out his duties or authority based on information technology. Of course, it is not the legality of using a cellphone or facsimile for communication between a Notary and his client. But it is related to the duties and functions of a Notary, especially in making deeds.⁸

⁵Krisyanto Tegas, 2019, *The Strength of Notarial Deed Evidence in the Perspective of Cyber Notary in Indonesia*, Andalas University, Padang p.10

⁶Intan Nur Baiti, 2023, *Urgency and Implementation of the Cyber Notary Concept during the Covid-19 Pandemic*, NOTARIUS, Volume 16 Number , p.550

⁷Emma Nurita, 2012, *Cyber notary, Initial Understanding in the Concept of Thought*, Refika Aditama, Bandung, p. xii.

⁸<http://staff.blog.ui.ac.id/>, accessed May 27, 2024, 22.00 WIB

The concept of cyber notary in Indonesia emerged after the enactment of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (amendments to UUJN) which regulates the authority to certify transactions carried out electronically, although it is only stated in the Explanation of Article 15 paragraph 3, namely what is meant by "other authorities regulated in laws and regulations", including, among others, the authority to certify transactions carried out electronically (cyber notary), make deeds of waqf pledges, and airplane mortgages.

Cyber notary is a concept that combines information technology with notary practices to improve efficiency, security, and reliability in the notarization process. In Indonesia, the application of cyber notary principles must consider several main criteria to comply with applicable regulations and legal contexts. Here are some criteria for cyber notary principles that can be applied in Indonesia:

1. Compliance with regulations is the main foundation, where cyber notaries must comply with the Notary Law (UUJN) and the Electronic Information and Transactions Law (ITE), as well as other related regulations.
2. Data security and privacy must be guaranteed through the use of encryption technology to protect client data and documents, as well as the application of digital signatures certified by a recognized authority.
3. Document integrity and authentication must be maintained with strong identity verification methods such as biometrics, as well as providing a verifiable audit trail for each digital notary transaction.
4. Accessibility and ease of use need to be addressed by developing user-friendly interfaces and providing training and counseling to notaries so that they are able to use this technology effectively.
5. In addition, a clear legal and policy framework is essential to ensure the validity and legal force of digitally notarized documents, as well as the implementation of clear standard operating procedures (SOPs).
6. Collaboration with related institutions is also the key to the success of implementing cyber notary, where there needs to be cooperation with the government, banking, and other financial institutions to integrate the cyber notary system with existing systems, as well as implementing effective monitoring and control mechanisms. By meeting these criteria, the implementation of cyber notary principles in Indonesia is expected to run smoothly, increase the efficiency and security of the notarization process, and ensure compliance with applicable laws.

The implementation of the rule of law in Indonesia can be interpreted that the state provides a guarantee of legal certainty for every act, event, and legal relationship (rights and obligations) that arise and are carried out by every member of society. Order will only exist if there is certainty and for legal certainty to exist it must be made in a definite form (written). Therefore, the

legal certainty in question must be realized through every law and regulation that exists and applies in Indonesia.⁹

Based on the theory of legal certainty, Gustav Radbruch stated that there are four things that form the basis of the meaning of legal certainty, including:¹⁰

1. Positive law is a law

Notaries can issue certificates electronically with the guarantee that the notary can provide legal certainty to the relevant parties. However, this is contrary to Article 16 paragraph (1) letter m of the UUJN which states that the reading and signing of the deed must be done in front of the parties and witnesses. This provision ultimately limits the work of notaries, because in carrying out their practices, notaries must use existing technology to assist their performance and improve the service provided to the community.

Notaries in order to realize cyber notary, especially those related to the obligation of Notaries in making minutes of deeds and storing them as part of the Notary protocol, seem difficult to do as long as there are no changes to the provisions in the UUJN. Moreover, the provisions in the UUIE which regulate that electronic information and/or electronic documents are valid legal evidence, but do not apply to letters and documents which according to the law must be made in the form of a notarial deed or a deed made by a deed-making official. The article does not provide further explanation, but it can be interpreted that letters and documents which according to the law must be made in the form of a notarial deed or a deed made by a deed-making official, must still be made in the form of a notarial deed or a deed made by a deed-making official. In other words, the information and/or documents must be written on paper, which is then signed directly by the parties, witnesses, Notary or deed-making official.

UUJN presents the concept of cyber notary but has not provided broad opportunities for the implementation of cyber notary. Regarding the authority of a Notary in making authentic deeds, for example, a Notary is limited by the form and procedures stipulated by UUJN, such as Article 38 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. Although Article 77 of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT 40/2007) in conjunction with Article 46 of Law JN 30/2004 allows the making of a deed of minutes of the GMS through electronic media, there are no technical regulations for the implementation of e-GMS. On the other hand, the obligation of a Notary to recognize the person appearing as mandated in Article 39 of UUJN, has also not opened up opportunities for the implementation of electronic introduction or through electronic devices. The obligation of a Notary to read the deed and sign the deed has also not been accommodated in UUJN to be done electronically. On the other hand, in the Explanation of Article 16 paragraph (1) letter m of Law JN 2/2014, it emphasizes

⁹Shinta Pangesti, 2020, The Regulatory Concept of Cyber notary in Indonesia, Rechtsidee, Vol 7, p.7

¹⁰ Radbruch Gustav, 1961, Einführung in die Rechtswissenschaft, Koehler Verlag, Stuttgart, p. 36.

the requirement for a physical meeting between the Notary, the person appearing and the witness. Another obligation that has not been supported by the Law JN and the Law ITE for the implementation of cyber notary is the obligation of the Notary to make minutes of deeds and store them as part of the Notary protocol. UUJN has not provided the possibility of making minutes of deeds and other Notary protocols in other forms. Moreover, UUIE has regulated and limited that letters and documents that according to the law must be made in the form of a notarial deed or a deed made by a deed-making official, must still be made in the form of a notarial deed or a deed made by a deed-making official. This explains that the implementation of the cyber notary concept cannot guarantee legal certainty because there is no positive law that regulates its implementation.

2. Law is based on established facts or laws.

Without a clear and definite legal basis, it is impossible for a Notary to dare to make minutes of a deed in a form other than that stipulated in the JN Law. It is not impossible that the existence of electronic archives and rapid technological developments will encourage a period, namely the period of media transfer from physical archives (conventional) scanned and stored in the form of electronic archives at each Notary's office. This transfer certainly requires further research, for example in terms of evidence, namely whether electronic archives will be equated with written evidence. In terms of archive storage security, it is necessary to review further regarding its storage, namely whether it will be stored by the Notary himself, or uploaded to a special database that will be managed by the State considering that the Notary protocol is a state archive. This idea is in line with the idea that deeds and letters made by a Notary as official documents are authentic and require security for both the deed itself and its contents to prevent irresponsible misuse. One of the efforts made in archival development is development focused on the implementation of an archive management system that can guarantee the management of archives in a complete, authentic, and reliable manner, both manually and electronically. Even in the Regulation of the Head of the National Archives of the Republic of Indonesia Number 20 of 2011 concerning Guidelines for Electronic Archive Authentication, a definition has been given for electronic archives, which are archives that are created (made or received and stored) in electronic format.¹¹

3. Facts must be formulated clearly, so as to avoid misunderstandings and be easy to implement.

The fact that there are obstacles for notaries in making deeds electronically is influenced by 3 (three) factors, namely legal substance, legal structure and legal culture of society. The legal substance that supports and becomes the legal basis related to the implementation of notary authority in making deeds electronically has not fully accommodated the legal problems that arise in the implementation of notary authority in making deeds electronically. The occurrence of

¹¹Ibid., p. 16

inconsistencies in the regulation of notary authority in making deeds electronically in the Law on Notary Position with the Law on Information and Electronic Transactions, and the Law on Information and Electronic Transactions with the Limited Liability Company Law is an obstacle for notaries in carrying out their duties and functions to make notarial deeds electronically. In other words, the legal substance that regulates the authority of notaries in making notarial deeds that currently exist has not been able to facilitate various interests of society. Therefore, the legal substance has not accommodated the interests of society and is unable to adapt to new things that have happened so that it cannot provide legal certainty.

4. Positive law cannot be easily changed.

One of the applications of legal certainty in order to guarantee legal protection for the rights of community members is the regulation related to evidence. In positive law, namely Indonesian civil law, 5 (five) valid evidence is recognized, namely written evidence, witness evidence, suspicion, confession and oath. Written evidence is divided into 2 (two), namely authentic deeds and private deeds. An authentic deed is defined as a deed made in a form determined by law by or before a public official who is authorized for that purpose at the place where the deed was made. Based on this understanding, an authentic deed made by or before an official who is not competent or not authorized or if the form of the deed is defective, then the deed is invalid or does not meet the formal requirements as an authentic deed, so that its evidentiary value is as a private deed. An authentic deed is the reason and basis underlying the importance of the existence of the profession of a public official who is authorized to make it. In this case, the public official in question is a Notary.¹²

Legal culture, in relation to the application of information technology in the making of notarial deeds that are currently developing in society is by making deeds conventionally. Where the parties directly face the notary, then the deed is made by the notary as well as the reading of the contents of the deed in front of the parties which is then signed by each party and witnesses. Meanwhile, the application of information technology in making deeds is very contrary to the legal culture that is currently developing in society and the practice of making deeds conventionally carried out by notaries.

Cyber notary institution is a legal breakthrough that is carried out to meet the legal needs of society, especially for Notaries in the era of globalization. With the provisions of Article 15 paragraph (3) of the Notary Law which in its explanation states that notaries have authority in the field of Cyber notary, it provides an opportunity for notarial deeds to be made using electronic media, in this case the notary plays a role in providing legal certainty (legal aspects) for an ongoing electronic contract. However, until now there has been no further explanation and there are no regulations that specifically regulate the technical

¹²Ibid.,

implementation of the notary's authority, resulting in unclear implementation.¹³

3.2 Legality of Electronic Deeds in the Cyber Notary Concept in Indonesia

Notaries play an important role in carrying out legal activities for parties who want to make transactions in Indonesia where Notaries as third parties are entrusted in a transaction. So that when Notaries as public officials carry out their duties and functions must follow technological developments. Notaries are required to be able to process, use and produce Authentic Deeds with the Cyber notary concept so that a more effective and efficient service to the community is created in order to be able to run in line with the rate of economic growth in the era of the industrial revolution 4.0.¹⁴

As a means of proof that is valid by the legal system in Indonesia, a notarial deed made by a public official who is given the mandate must serve by prioritizing the needs of the community in creating evidence that provides legal certainty to parties who have an interest in the deed. This is in line with the opinion of Soegondo Notodisoerjo, that a Notary who is a public official is appointed due to the authority and is already his main duty in making authentic deeds.¹⁵ Therefore, a Notary is one of the organs in the state that has been given authority by way of attribution to provide services to the general public, especially in providing services in the preparation of Authentic Deeds which are part of the field of civil law.

A notary as a public official who is authorized to make an authentic deed can be burdened with responsibility for his actions in connection with his work in making the deed. The scope of the notary's responsibility includes the material truth of the deed he makes.¹⁶ One of them is the hope that the deed produced is an authentic deed that has perfect evidentiary power. The General Explanation of Law Number 2 of 2014 concerning the Position of Notary (UUJN) states that to guarantee certainty, order, and legal protection, authentic written evidence is needed regarding acts, agreements, determinations, and legal events made before or by a Notary.¹⁷

The importance of an authentic deed is also stated in the Civil Code, especially Article 1868 of the Civil Code which states that an authentic deed is a deed made in a form determined by law by or before an authorized public official at the place where the deed was made. In addition, Article 1870 of the Civil Code states that for interested parties and their heirs or for people who receive rights from them, an authentic deed provides perfect evidence of what is contained therein.

Law Number 2 of 2014 concerning the Position of Notary (UUJN) provides a

¹³Dwi Tubagus Santoso, 2023, Legal Force of Deeds Made Electronically (Cyber Notary) in the Perspective of Legislation, Recital Review, Volume 5 Number 1, Page 162

¹⁴Ibid., p.202

¹⁵Soegondo, 1982, Notary Law in Indonesia: An Explanation, Rajawali Pers, Jakarta, p. 42.

¹⁶Emma Nurita, Op.cit., p.15

¹⁷Shinta Pangesti, 2020, The Regulatory Concept of Cyber notary in Indonesia, Rechtsidee, Vol 7, p.10

separate definition of an authentic deed made by a Notary, namely a Notarial Deed. This definition is found in Article 1 number 7 of the UUJN, which states that a Notarial Deed hereinafter referred to as a Deed is an authentic deed made by or before a Notary according to the form and procedures stipulated in this Law.

In Indonesia, Cyber notary has been implemented in the administrative aspects of Notary work through the use of digital bureaucracy (Making Indonesia 4.0), including Online Single Submission (OSS).¹⁸ Meanwhile, the digitalization of Notarial deeds in relation to the authority of Notaries to make authentic deeds is not regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, which is the basic guideline for Notaries in carrying out their duties.

The absence of regulations governing the digitalization of Notarial deeds has the consequence that digital-based Notarial deeds cannot be implemented in Indonesia and if implemented will have implications for the authenticity of the deed, namely being degraded as a deed under hand.¹⁹ In making a Notarial deed, Article 16 paragraph (1) letter m of the Law on the Position of Notary regulates the obligation to read the deed and sign the deed as a requirement for the authenticity of the Notarial deed. In practice, the application of the contents of this article is carried out before a Notary with the physical presence of the parties, witnesses and the Notary. Of course, this method does not accommodate the demands of the times which tend to eliminate physical links in various transactions accompanied by the physical presence of the parties.

Based on the legal substance of the Law on the Position of Notary and the Civil Code which regulates the mechanism for making authentic deeds, and the requirements for the authenticity of notarial deeds, it can be understood that the use of deeds made electronically by notaries does not meet the requirements for the authenticity of authentic deeds. So that the use of deeds made electronically by notaries is not in accordance with the function and purpose of making authentic deeds, namely to provide legal certainty and have evidentiary value.

Current technological developments make it possible to use conventional methods of reading deeds and signing Notarial deeds digitally as regulated in Cyber notary. However, reading deeds and signing deeds are not just technical matters in making Notarial deeds, but are related to the authentic strength of the deed. The physical presence of the parties before the Notary provides certainty that the parties are competent in carrying out legal actions to make deeds. Even in the Netherlands, one of the countries that adheres to civil law that has implemented the digitalization of Notarial deeds, it is still mandatory for

¹⁸Rita Alfiana, 2022, Notaries and Digitalization During the Covid 19 Pandemic, Nusantara: Journal of Social Sciences, Volume 9 Number (1), pp. 423-432

¹⁹Kadek Setiadewi and I Made Hendra Wijaya. 2020. "Legality of Cyber Notary-Based Notarial Deeds as Authentic Deeds", Journal of Legal Communication, Volume 6 Number (1), pp. 126-134.

the signing of deeds to be carried out before a notary. The following are some of the weaknesses of the legal substance of signing notarial deeds before the parties at this time:

1. There are no regulations regarding electronic deeds in the Law.

The concept of Cyber notary seems to face several obstacles in terms of its regulations which are not yet clear in regulating its implementation because the paradigm underlying the Law on the Position of Notary is built on conventional mechanisms. Therefore, the need for the function and role of notaries in the context of electronic transactions is very important to be studied in depth. Article 5 paragraph (1) of the ITE Law states that electronic information and/or electronic documents and/or printouts are valid legal evidence.

A deed is made with the aim that the deed has complete evidential force and validity, therefore a Notary is obliged to fulfill all the provisions of his position and other regulations.²⁰Other authorities in Article 15 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, there are provisions explaining the authority of a Notary, namely: A Notary is authorized to make an authentic Deed regarding all acts, agreements, and determinations required by laws and regulations and/or desired by the interested party to be stated in an authentic Deed, guarantee the certainty of the date of making the Deed, store the Deed, provide grosse, copies and extracts of the Deed, all of which are as long as the making of the Deed is not also assigned or excluded to other officials determined by law.

The government also gives new authority to Notaries to certify transactions carried out electronically through the explanation of Law No. 2 of 2014 concerning the Position of Notary, Article 15 paragraph (3). The following is the content of Article 15 paragraph (3) and its explanation, namely "In addition to the authority as referred to in paragraph (1) and paragraph (2), Notaries have other authorities regulated in laws and regulations."

The authority of a notary as regulated in Article 15 paragraph (1) in conjunction with Article 1868 of the Civil Code, if associated with the making of deeds electronically can basically be implemented by using video conference communication technology. However, the question is whether the authenticity of the notarial deed contained in Article 1868 of the Civil Code can be fulfilled. The problem that then arises in the making of authentic deeds electronically is related to the obligations that must be carried out by the notary for the deeds he makes, as regulated in Article 16 paragraph (1) of the Law on the Position of Notary, especially Article 16 paragraph (1) of the Law on the Position of Notary letters c, and m.

It is important to note that notary practices in Indonesia are different from Anglo

²⁰Siti Fauziah Dian Novita Sari, 2018, The Role of Notaries in the Process of Making Deeds of Establishment of Limited Liability Companies, Lex Renaissance, No. 2 Vol. 3, p. 416

Saxon countries, the United States in that country a notary is a deed maker, while in Indonesia as a follower, a notary has a function as a Public Official who is tasked with serving the general public in making deeds. The concept of Cyber notary is a form of concept that adapts the use of computers and the internet by notaries in carrying out their duties and authorities. This concept is widely used in common law countries because the notary legal system in common law countries allows for the application of the Cyber notary concept more widely. In Common Law countries known as a public notary, he is only tasked with carrying out the administrative process, namely providing a stamp or seal on an agreement.²¹Therefore, the application of the Cyber notary concept in the Common Law system will not affect the strength of the deed. While notaries in Indonesia use the Civil Law system in viewing that the deed made by and before a notary is an authentic deed. This is based on Article 1867 of the Civil Code that an authentic deed is a perfect evidence. A notarial deed can be authentic if it meets the requirements of the law, especially Article 1868 of the Civil Code. Based on the definition of an authentic deed in Article 1868 of the Civil Code, the creation of an authentic deed makes the application of the Cyber notary concept more difficult to apply. However, it is possible that in the future the application of the Cyber notary concept can be applied considering the need and acceleration of the creation of a deed is very necessary.

The making of an authentic deed essentially contains formal truth in accordance with what the parties have informed the Notary. Based on the authority and duties of a Notary in making a deed, the parties concerned must be present and appear directly before the Notary as in Article 16 paragraph (1) letter M of the Law on the Position of Notary which states that: "Reading the deed in front of the person appearing in the presence of at least 2 (two) witnesses and signed at that time by the person appearing, witnesses, and Notary". In fact, in the concept of Cyber notary itself, a physical meeting is not absolute. In the concept of Cyber notary, it actually eliminates the aspect of a physical meeting between the parties and the notary, but is still within the legal corridor.²²This means that if later in the amendment to the Law on the Notary Position, it should be stated that in addition to the conventional one, it can also be done cyber. In order to realize legal certainty for the parties and legal protection, even as an important indicator in realizing a perfect deed, minimizing negligence and accommodating the efficiency and effectiveness of prime notary services in the future, therefore the amendment to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position, becomes important and urgent.²³

2. Regulations for electronic signatures by Notaries do not yet exist in the

²¹Edmon Makarim, Op. Cit., p. 134

²²Ibid.,

²³Syamsir, Elita Rahmi, Yetniwati, 2019, Prospects of Cyber Notary as Supporting Storage Media Towards Notary Professionalism, Journal: Recital Review, Vol 1, Master of Notary, University of Jambi, p. 134

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In relation to conducting certification on electronic signatures as regulated in Article 11 of the Electronic Information and Transactions Law which provides legal certainty and legal consequences if the electronic signature meets the requirements. A signature means an agreement between parties who agree on something. However, there are obstacles regarding the implementation of electronic signatures, because in the explanation of Article 16 paragraph (1) letter m it is stipulated that notaries, witnesses and witnesses are required to be physically present at the reading and signing of the deed. This provision hinders the implementation of Cyber notary in the use of technology which should be able to provide convenience for notaries and parties in reading and signing the deed.

If in the making of the deed there are deviations made by the notary in his position to make an authentic deed, because there are no clear regulations regarding electronic signatures that are specifically regulated in the position of a notary, then administrative sanctions can be imposed in Article 85 of the Law on the Position of Notary, civilly linked to Article 1365, namely unlawful acts, if the parties who feel disadvantaged due to the electronic signature can prove otherwise from the contents of the deed. There are several consequences that can arise if the deed does not comply with the provisions, namely: the deed can be canceled, the deed is void by law, the deed is canceled due to a court decision that has permanent legal force.²⁴

The concept of Cyber notary itself, physical meetings are not absolute. In the concept of Cyber notary, it actually eliminates the aspect of physical meetings between the parties and the notary, but still within the legal corridor.²⁵ This means that if later in the amendment to the UUJN, it should be stated that in addition to conventional ones, it can also be done cyber. In order to realize legal certainty for the parties and legal protection, even as an important indicator in realizing a perfect deed, minimizing negligence and accommodating the efficiency and effectiveness of prime notary services in the future, therefore the amendment to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, becomes important and urgent.²⁶

So it is necessary to have an update to the Law on the Notary Position related to the implementation of making deeds, signatures and those related to Cyber notary. In addition, it is necessary to have a more specific understanding and definition of the notary's authority in carrying out certification using the Cyber notary concept both in making deeds, ratifying deeds, and carrying out electronic

²⁴Habib Adjie, 2011, Cancellation and Revocation of Notarial Deeds. Refika Aditama, Bandung, p.81.

²⁵Emma Nurita, Op. Cit., p. 40

²⁶Syamsir, Elita Rahmi, Yetniwati, 2019, Prospects of Cyber Notary as a Supporting Storage Media Towards Notary Professionalism, Recital Review, Vol 1, Master of Notary, University of Jambi, page 134.

signatures. This breakthrough that has been used by several countries and will now be implemented in Indonesia is a good step, because Indonesia should take advantage of increasingly advanced technology so that it can be more useful, especially to provide maximum service by notaries.

4. Conclusion

The criteria for cyber notary principles that can be applied in Indonesia are that they must comply with existing regulations, such as UUJN and UUIE. Data security and privacy must be guaranteed through the use of encryption technology, Document integrity and authentication must be maintained, accessibility and ease of use need to be considered, in addition a clear legal framework and policies are needed to ensure the validity and legal force of digitally notarized documents, collaboration with related institutions is also the key to the success of implementing cyber notary to integrate the cyber notary system with existing systems, and implement effective monitoring and control mechanisms. However, Notaries in order to realize cyber notary, especially those related to the Notary's obligation to make minutes of deeds and store them as part of the Notary protocol, seem difficult to do as long as there are no changes to the regulations in UUJN. Moreover, the provisions in UUIE which regulate that electronic information and/or electronic documents are valid legal evidence, but do not apply to letters and their documents which according to the law must be made in the form of a notarial deed or a deed made by an official making the deed. The article does not provide further explanation, but it can be interpreted that letters and documents that according to the law must be made in the form of a notarial deed or a deed made by a deed-making official, must still be made in the form of a notarial deed or a deed made by a deed-making official. The legality of electronic deeds in the concept of cyber notary in Indonesia is based on the legal substance of the Law on the Position of Notary, UUIE and the Civil Code which regulate the mechanism for making authentic deeds, and the requirements for authenticity of notarial deeds, it can be understood that the use of deeds made electronically by a notary does not meet the requirements for authenticity of authentic deeds. So that the use of deeds made electronically by a notary is not in accordance with the function and purpose of making authentic deeds, namely to provide legal certainty and have evidentiary value. The making of Authentic Deeds carried out electronically still has obstacles and barriers due to conflicting regulations. The obstacle to the Cyber notary concept is caused by formal requirements which require the presence of the parties before a Notary, so that this shows that the formal requirements in making a notarial deed are cumulative and not alternative, so they must be met. Article 16 paragraph (9) of the Law on the Position of Notary, "If one of the requirements as referred to in paragraph (1) letter m and paragraph (7) is not met, the Deed in question only has the power of proof as a private deed." Referring to the wording of the article which has expressly stated that if the deed is not read by a Notary as regulated by law, this will have an impact on its evidentiary power, thus making the deed a private deed.

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