



# ANALYSIS OF THE VALIDITY OF CYBER NOTARY-BASED NOTARY DEEDS IN THE PERSPECTIVE OF CIVIL LAW

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## ABSTRACT

The development of technology and information has brought significant changes in various aspects of life, including in the practice of the legal profession in Indonesia. This research is motivated by the development of the transformation of the notary world towards the digital era through the concept of cyber notary. Cyber notary is the notary's authority to certify transactions electronically. Although Article 15 paragraph (3) of Law Number 2 of 2014 concerning the Notary Position (UUJN) provides the opportunity for such authority, there is a discrepancy with Article 16 paragraph (1) letter m of the UUJN which requires the physical presence of the parties and the direct reading of the deed. This research is a type of normative legal research with a statute approach that is descriptive and analytical. The results of the study show that regulations regarding cyber notaries in Indonesia are still experiencing juridical insynchronization and ambiguity of meaning because the term is only included in the explanation section without a clear operational definition. From a civil law perspective, deeds made by the cyber notary method currently do not have the same legal certainty as conventional authentic deeds because the formality requirement of "physical presence" in Article 1868 of the Civil Code has not been met. The implication is that the deed risks degrading the power of proof into a deed under hand and losing its executory nature. Therefore, synchronization between the UUJN, the ITE Law, and the Civil Code is needed as well as clear technical regulations to ensure legal certainty for practitioners and the public.

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## 1. INTRODUCTION

Technology has become an important part of daily life so that it has changed the way humans communicate, learn, work, and do business. The development of technology provides convenience for the community in carrying out their activities in daily life, including in carrying out legal acts. This development also has an impact on the world of notaries. Notary is a noble legal profession (*officium nobile*).

Deeds that are the product of the work of a notary can be the legal basis for the status of a person's property, rights, and obligations. The UUJN makes the notary a public official, so that the legal consequences in the notary deed get an authentic position and have an executory nature. Along with the development of the times, the notary profession is also required to take advantage of existing technological developments in carrying out its duties and functions. In this case, the concept of cyber notary emerged as a form of adaptation of the notary position to the legal needs of modern society.

Cyber Notary has appeared in Indonesia since 1995, but this has been hampered by the lack of a related legal basis. However, since the establishment of Law Number 11 of 2008 concerning Information and Electronic Transactions, the cyber notary discourse has resumed. Cyber notary is intended to facilitate or accelerate the execution of the duties and authority of the notary in making an authentic deed regarding all acts or agreements or stipulations required by law or what the interested parties want to be stated in the authentic deed.

The opportunity for the implementation of cyber notary in Indonesia normatively has been opened through the explanation of Article 15 paragraph (3) of Law Number 2 of 2014 concerning the Notary Position (UUJN), which states that notaries have the authority to certify transactions electronically. This is also in line with Law No. 1 of 2024 concerning Electronic Information and Transactions which has provided legality for information, documents, and electronic signatures as legal evidence. Ethically and religiously, the urgency of recording these transactions is in line with the command in the Qur'an Surah Al-Baqarah verse 282, which emphasizes the importance of correct and fair documentation by a scribe in this case a notary, to guarantee the truth and avoid disputes.

But in practice, there is an overlap between Article 15 and Article 16 that hinders legal certainty. This raises legal problems, especially regarding the interpretation of the phrase "in the presence". If physical presence is replaced by teleconferencing media, then doubts arise whether the deed still qualifies as an authentic deed as stipulated in Article 1868 of the Civil Code. Based on Article 1868 of the Civil Code, there are 3 conditions so that the deed can be declared as an authentic deed, namely:

- a. That the deed must be made in the form prescribed by the Law. This means that the manufacture must meet the provisions in accordance with the Law. The deed will lose its authenticity if the requirements are not met.
- b. That the deed must be made in front of or by a public official. The intention of making it in front shows that the deed was made at the request of a person, while the making by a public official is due to an event, examination, decision and so on.
- c. That the deed must be made by or before a public official who has authority at the place where the deed is made.

In the concept of cyber notary, there are two aspects that are important, namely related to authority and technology. In relation to authority, notaries in carrying out their duties and positions are only allowed to carry them out within the area where they are located. Therefore, notaries are required to have only one office, in other words, it is forbidden to have branch offices, representatives, or other forms. In terms of technology, the existence of cyber notaries makes it very easy for both notaries and clients to overcome problems related to distance and time. In addition, the implementation of cyber notaries also helps increase the productivity of the notary office because the process is faster and more efficient, allowing notaries to serve more clients at the same time.

This inconsistency creates uncertainty for notaries; on the one hand it is driven to digital innovation, but on the other hand it is haunted by the risk of the deed becoming legally defective due to violations of physical procedures. Non-compliance with formal procedures (physical presence) risks causing the deed to degrade its evidentiary power into a deed under hand. This will certainly be detrimental to the parties and eliminate the main function of the notary as a provider of legal certainty.

Several previous studies, such as by Fabela Rahma (2023) and Putri Ainun (2025), have touched on the technical aspects of cyber notaries, but this study offers novelty by dissecting the implications of Law No. 1 of 2024 concerning Electronic Information and Transactions on the rigidity of Article 1868 of the Civil Code in more depth. Based on this background, this study aims to analyze the regulation, validity, and implications of the power of proof of cyber notary-based notary deeds in order to provide legal certainty for practitioners and the public

## 2. RESEARCH METHODS

This research is a type of normative legal research that is descriptive and analytical. Normative legal research is a research process to research and study law as norms, rules, legal principles, legal principles, legal doctrines, legal theories and other literature to answer the legal problems being studied. In this study, the author examines and analyzes the legal norms and laws and regulations that regulate cyber notaries and the validity of deeds or contracts made electronically. The nature of the research used is descriptive research. Basically, descriptive research is a form of research aimed at describing existing phenomena, both natural and man-made phenomena, those phenomena can be in the form of forms, activities, characteristics, changes, relationships, similarities, and differences between one phenomenon and another. In this study, the author uses a statute approach. This approach is carried out by examining all laws and regulations related to the legal issues discussed. The analysis used in this study is qualitative, namely by examining the legal materials that have been processed. The main

thing in qualitative analysis is the quality of the data and legal materials. Qualitative analysis does not only aim to reveal the truth, but also to understand the truth of the rule of law.

### 3. RESULT AND ANALYSIS

#### Regulation on Making Cyber Notary-Based Notary Deeds

Cyber notary is a form of adaptation of the way notaries work from what was originally done conventionally to digital, by adjusting to existing technological developments. In other countries, the application of cyber notary is widely known and used in notary institutions. One form of its application that has been widely recognized is the use of digital signatures. America is one of the countries that massively applies this technology.

The concept of cyber notary is a concept related to the implementation of notary authority based on information technology. The concept of cyber notary refers to the use of digital technology to authenticate and authenticate documents, transactions, and electronic signatures. The concept of cyber notary first emerged in Indonesia after the change in the UUJN.

Article 15 paragraph (3) of the Law on the Notary Position states that "In addition to the authority as referred to in paragraphs (1) and (2), the Notary has other authorities regulated in laws and regulations". Furthermore, in the explanation of Article 15 paragraph (3) it is explained that "What is meant by other authorities regulated in laws and regulations, among others, is the authority to certify transactions carried out electronically (cyber notary), make waqf pledge deeds, and aircraft mortgages".

Although it still looks narrow, the inclusion of cyber notaries in this legislation is a breath of fresh air for the development of cyber notaries in the future. The Law on the Notary Position only mentions "cyber notary" in the explanation of the article but does not provide a clear definition of what is meant by cyber notary and how to apply cyber notary in the implementation of notary duties so as to cause ambiguity in the meaning of the term cyber notary. This ambiguity has caused that there is no common perception about cyber notaries in Indonesia.

Article 16 paragraph (1) letter m of the UUJN states that "Notaries are obliged to read the deed in front of the audience in the presence of at least 2 (two) witnesses or 4 (four) special witnesses for the making of the will under the hand, and signed at the same time by the witness, witness, and Notary. This means the use of the words face, in front, and facing in a juridical sense, namely real presence. After the draft deed is completed, the notary will read the contents of the deed in front of the parties. This reading aims to ensure that all parties understand and agree to the contents of the deed before signing it. After the reading, the parties will sign the deed in front of a notary and two witnesses. This signing is proof that all parties have agreed on the content of the deed and that the deed is made legally.

Therefore, Article 16 paragraph (1) letter m when associated with Article 15 paragraph (3) is not in harmony, because in making a notary deed that is done electronically (cyber notary) the notary can read the deed online and sign electronically and without the presence of witnesses, so it does not meet the elements of Article 16 paragraph (1).

Edmon Makarim stated that there is a misunderstanding in interpreting the word "in front". Based on article 1868 of the Civil Code which is associated with cyber notary, the article discusses the reading of deeds carried out through teleconference media. However, in practice, this is not the case, cyber notaries have the same working principles as conventional notaries. In essence, the attendees come to the notary's office, but read the draft deed directly on their respective computers. After agreeing, the attendees signed the deed electronically. In other words, the deed is not created remotely via a webcam.

Law Number 1 of 2024 concerning Information and Electronic Transactions in Article 5 has provided clear certainty and a strong basis for the recognition of electronic deeds as legal and acceptable evidence in the evidentiary process in court, so that it is possible for the strength of evidence to be equated with documents prepared on paper. The presence of Law No. 1 of 2024 strengthens the legality of electronic documents as legal evidence. However, doctrinally, electronic evidence in the ITE Law is general, while authentic deeds are special (*lex specialis*)

In the explanation section of Article 5 paragraph (1) it is stated that the existence of electronic information and/or electronic documents is binding and recognized as valid evidence to provide legal certainty for the Implementation of Electronic Systems and Electronic Transactions, especially in proving and matters related to legal acts carried out through electronic systems.

The inconsistency between Article 15 paragraph (3) and Article 16 paragraph (1) letter m of the UUJN creates a conflict of norms, where one article provides opportunities for innovation while the other article locks it with classic products. Although Article 5 of the ITE Law has provided legality for electronic information and documents as valid evidence in judicial proceedings, this does not necessarily abort the formal requirements of authentic deeds in civil law.

But back to the definition of a notary deed according to the UUJN, a notary deed is an authentic deed made by or in front of a notary according to the form and procedures that have been stipulated in the Law. With such conditions, the law should bridge but on the one hand we must not forget that there is no legal basis that accommodates cyber notaries in a complex way.

On the other hand, the application of cyber notary also intersects with norms and professionalism as a notary. Notaries as general officials must ensure the integrity of documents even in the absence of physical presence from the parties involved, and participate in supervising the use of technology so as not to reduce the quality and prudence of service. Without strong regulations and adequate infrastructure, the implementation of cyber notaries risks creating new legal problems and making people doubt trust in digital notary services.

Cyber notary is very possible to be implemented in Indonesia but the relevant regulations must be strictly arranged. Civil Code, UUJN, ITE LAW, must be synchronized regarding qualifications and special education for cyber notary/electronic notary needed for the effectiveness of services. So that in its implementation, the three regulations do not contradict each other, but must support each other.

### **Legal Certainty of Cyber Notary-Based Notary Deeds**

Indonesia as a legal country adheres to the Continental European legal system/civil law, where the notary must be appointed by an official who has the authority to appoint him, which means that the notary even though he is not a civil servant, represents the state/government in terms of deed making services.

Deed is a written document that has an important role as evidence in civil cases. This is in the form of a letter that has been signed and contains information about something that is the basis of an agreement. There are two types of deeds, namely deeds under hand and authentic deeds. Authentic deeds are regulated by various regulations such as Article 165 of the Civil Code, Article 285 of the Civil Code. An authentic deed is a document made based on the provisions of the law or in the presence of a party who has authority at the place where the deed is made.

A letter under hand is a deed made not in the presence of an authorized official or notary. This deed is made and signed by the parties who made it. If a letter under hand is not denied by the parties, it means that they acknowledge and do not deny the truth of what is written in the letter under hand, so that in accordance with the provisions of Article 1857 of the Civil Code, the letter under hand obtains the same evidentiary force as an authentic deed.

Both the deed under hand and the authentic deed, both must meet the formulation of the conditions for the validity of an agreement based on Article 1320 of the Civil Code and are stamply binding on the parties who make it (vide Article 1338 of the Civil Code) as an agreement that must be kept by the parties (*pacta sunt servanda*).

The Notary Deed must provide certainty that an event and fact in the deed was actually carried out by the Notary or explained by the parties present at the time stated in the deed in accordance with the procedures that have been determined in the making of the deed. The legal force of a notary deed is a permanent or authentic legal force. The validity of the authenticity of a deed is not because the process of making the deed is based on a form that has been determined by law and made by or in the presence of an authorized official.

The validity of the deed means that the deed meets the formal and material requirements regulated by laws and regulations so that the deed has valid legal force and can be used as strong evidence in the trial. According to Law Number 2 of 2014 concerning the Notary Position, the validity of a notary deed depends on the fulfillment of several conditions, including:

- a. The Act must be made in the form prescribed by the Law
- b. The deed must be made by and in the presence of the authorized public official in this case, namely the notary
- c. The notary must read the deed clearly, briefly, and completely in front of the parties, including the opening and closing of the deed
- d. The deed must contain the time of creation, the identity of the parties, and the signatures of the parties and the notary responsible

These formal conditions are cumulative and not alternative, where if only one condition is not met, the deed is formally defective and can become a deed under hand or void for the sake of law. If the above conditions are not met, then the deed that has been made is considered a deed under hand and has weak legal force, this is stated in Article 16 paragraph (6) of the UUJN. As a public official authorized in the making of a deed, a notary holds great responsibility for every agreement made before him.

The application of cyber notary is also opposed by some notaries because they still adhere to the principle of *tabellionis officium fideliter exercebo* which means that notaries must work traditionally. Traditionally, this means that a notary must be present in the deed he makes. In addition to the notary, the parties who make a deed or an agreement must also be present along with the required witnesses. The replacement of physical presence with teleconferencing creates juridical doubt as to whether the authenticity requirements have been fully met.

In addition to having problems in signing deeds, the concept of cyber notary also has problems in terms of evidentiary power. If the UUJN has been revised, the evidentiary value of the electronic deed is the same as that of an authentic deed. When it enters the realm of legal proceedings, the notary deed turns into authentic evidence, meaning that the notary deed is a witness and a witness to prove the existence of a legal relationship between the two parties, and the attitude of denying the content of the deed is an act of default committed by the parties.

If the notary deed has met the formal, material, and external requirements, then there is no reason to declare that the notary deed does not have binding legal force. An invalid notary deed is related to validity because in the process of making it has violated the formal requirements in making a notary deed as specified in the UUJN. In the concept of cyber notary, the electronic signing process is often carried out without the physical presence of witnesses, so it is considered to have failed to meet the formalities set by law.

An authentic deed should have perfect evidentiary power outwardly, formally, and materially. However, if formal procedures such as "physical presence" (as stipulated in Article 1868 of the Civil Code) are not met, the deed is at risk of degradation and only has the power of proof as a deed under hand (Article 1869 of the Civil Code). If the deed is declared to be degraded to a deed under hand based on Article 16 paragraph (6) of the UUJN, then its legal force becomes weak. Although Article 1857 of the Civil Code states that a deed under hand can have the same evidentiary force as an authentic deed if it is not denied.

The deed may be "valid" as an agreement (based on Article 1320 of the Civil Code), but "defective" as an authentic deed. In this case, the notary must be sure that the deed made before and by the notary has met the material, formal, and external requirements. If the authenticity of a deed is lost due to the failure of the cyber notary procedure, then the right of the parties to obtain legal certainty and ease of execution without going through a lengthy lawsuit process will be lost.

In addition to paying attention to the legal aspects of the proof, it is also necessary to pay attention to the security of the identities of the parties related to the notary deed made electronically (Cyber Notary). This is because in the preparation of an electronic notary deed, the parties do not meet physically so there must be a certain mechanism that is able to guarantee the identity of the related parties to avoid fraud or cybercrime or other information and communication space crimes on the internet (Cyber Crime). Therefore, to ensure the security of the identity of the parties in the concept of Cyber Notary, there must be a third party or special authority that is authorized to check the correctness of the data, be independent, and trustworthy (trusted third party), which in this case is known as the Certification Authority (hereinafter referred to as C.A.).

Cyber notary-based deeds do not have perfect evidentiary power like authentic deeds. Until now, cyber notary-based deeds are only considered deeds under hand which are equated with electronic documents, letters, and certificates. Despite the validity of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, where the provisions in Article 15 paragraph (3) of the UUJN-P which states that "Notaries have other powers regulated in laws and regulations". In this case, what is meant by "other authority regulated in laws and regulations" is that the authority to "certify transactions" carried out electronically (cyber notary) is not the same as an authentic deed that still adheres to the provisions of Article 1868 of the Civil Code.

#### 4. CONCLUSION

Regulations regarding cyber notaries in Indonesia are currently still experiencing juridical insynchronization or norm conflicts between digital innovation opportunities and conventional procedural obligations. Although Article 15 paragraph (3) of the UUJN provides the authority for notaries to certify transactions electronically, this provision clashes with Article 16 paragraph (1) letter m of the UUJN which expressly requires the physical presence of the parties, the reading of the deed in person, and the signing immediately in the presence of the notary and witnesses. In addition, there is a vagueness of meaning because the term cyber notary is only included in the explanation section without a clear operational definition, so that there has been no uniformity of perception and adequate implementing rules for notary practitioners. From a civil law perspective, cyber notary-based deeds currently do not have legal certainty equivalent to conventional authentic deeds due to the non-fulfillment of the formality requirements for "physical presence" as stipulated in Article 1868 of the Civil Code. Non-compliance with physical procedures, direct reading of the deed, and the use of electronic signatures without the presence of real witnesses causes the deed to be at high risk of degrading the power of proof into a deed

under hand based on Article 16 paragraph (6) of the UUJN. The juridical implication of this condition is the loss of the executory nature of the deed, so that in the event of a dispute, the parties lose the guarantee of perfect legal certainty and have to go through a more complex evidentiary process in court.

The government and legislative institutions need to immediately synchronize between the UUJN, the ITE LAW, and the Civil Code to bridge the conflict of norms related to the requirement of "physical presence" in order to accommodate virtual presence in the making of deeds. In addition, it is necessary to establish clear technical regulations regarding cyber notary operations and electronic certification to provide legal certainty for notaries and prevent the risk of deeds being degraded into deeds under hand. There is a need for uniform information technology security standards and increased notary competence in the field of electronic notary so that it can minimize the risk of cyber crime in order to ensure validity and legal protection for the parties.

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