

The application of Cyber Notary in Indonesia

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Abstract

The aim of this research is to analyze cyber notary practices in civil law countries and the nature of cyber notary in terms of evidentiary value. This research needs to be conducted due to technological developments and their relation to notary practices using cyber notaries. This research is carried out using a normative legal method by studying the regulations that apply in notarial practice with the aim of seeking legal proceedings based on positive law, supported by legal regulations regarding the position of notaries and legal regulations regarding legal matters, formal and transactional electronic, and the results of the legal experts can provide an overview of the requirements that apply in notary cyber practices. The civil law system places authentic deeds as perfect evidence because they are made based on legal regulations, where notaries, as public officials, have the authority to carry out the task of making deeds. In the development of technology, many developments have occurred in the legal system, especially regarding the leeway of notaries, which has created opportunities for notary cyber concepts. The potential for notary cyber in Indonesia needs to be considered, bearing in mind that there is not yet a legal umbrella that directly regulates notary cyber in the execution of authentic deeds that have an impact on evidence. The value of proof of an authentic deed in the notary cyber concept cannot yet be put into practice because the law on the position of notary does not yet accommodate this provision, remembering that the preparation of an authentic deed must comply with the applicable provisions in order to have authentic value.

Keywords: Authentic Deed; Cyber Notary; Notary; Evidence

1. INTRODUCTION

Indonesia is a legal state that consistently relies on rules to establish legal certainty. One aspect of legal certainty is evident in the existence of evidence. In Indonesian civil law, the formal proof system remains subject to specific evidence, including written evidence, witnesses, presumptions, acknowledgments, and oaths, as stipulated in Article 1866 of the Civil Code. Considering the hierarchy emphasized in Article 1866 of the Civil Code, it indicates that written evidence holds the highest legal strength. This demonstrates that Indonesia adheres to the continental European legal system, known as the civil law system, where legal truth and justice are based on written provisions.¹ Article 1867 of the Civil Code explains that written evidence is divided into two types: authentic deeds and underhand deeds.

Authentic deeds are considered perfect evidence, possessing full legal strength, and must be deemed true unless there is evidence to the contrary. On the other hand, underhand deeds are created without the requirement to be in the presence of a public official, and their validity is solely based on the signatures of the involved parties. To obtain strong evidence, agreements and minutes of shareholders'

¹Renata Christha Auli, "6 Sistem Hukum Yang Berlaku Di Dunia," Hukum Online, 2022.

meetings are recommended to be documented in the form of party deeds and relaas deeds made in the presence of or by a notary. This is because the authenticity of these deeds can serve as probatio causa, intentional documents created for future legal proof and juridical acknowledgment of a legal act.²

In its development, the implementation of this evidentiary process can be conducted through electronic media, as reinforced by legal foundations, particularly Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 regarding Electronic Information and Transactions (ITE Law). The ITE Law provides explanations about electronic documents and other supporting evidence that can be created, sent, received, or stored in digital form. The rapid growth of the electronic era has brought about significant changes and influences in various aspects, including the notarial field, currently acquainted with the concept of cyber notary. The emergence of the cyber notary concept is a manifestation of contemporary legal developments based on the application of the legal development theory proposed by Mochtar Kusumaatmadja. The term cyber notary is recognized by various countries adhering to both civil law and common law systems.

The authority of notaries in Indonesia, following the civil law system, includes creating authentic deeds for various acts, ensuring the certainty of the deed's creation date, storing deeds, providing originals, copies, and excerpts of deeds, as long as the creation of the deed is not entrusted or exempted to other officials stipulated by law. This is regulated in Article 15 paragraph (1) of Law Number 2 of 2014. Regarding amendments to Law No. 30 of 2004 concerning Notary Positions (UUJN), Article 15 paragraph (2) of UUJN stipulates that, in addition to what is mentioned in paragraph (1), notaries also have the authority to authenticate and record underhand deeds, subsequently registered in a special register. They are authorized to create original copies in the form of duplicates of underhand letters, verify photocopies against the originals, provide guidance related to deed creation, draft deeds related to land transactions, and auction minutes. The authority of notaries following the common law system is limited to legalizing or confirming the authenticity of signatures, generally offering advice, and preparing documents, particularly for international agreement purposes.³

² Melia Putri Purnama Sari, "Urgensi Pembuatan Postnuptial Agreement Dalam Bentuk Akta Pihak Sebagai Probationis Causa Berdasarkan Kebenaran Formil," *PALAR (Pakuan Law Review)* 09, no. September (2018): 1–23, <https://doi.org/10.33751/palar.v9i3>.

³ Norman Edwin Elnizar, "W.Hukumonline.Com/Berita/a/Yuk--Pahami-Konsep-Notaris-Dalam-Civil-Law-Dan-Common-Law-Lt59d9f5002c20c.," 2022, <https://www.hukumonline.com/berita/a/yuk--pahami-konsep-notaris-dalam-civil-law-dan-common-law-lt59d9f5002c20c>.

Another authority exercised by notaries in Indonesia concerning the application of the cyber notary concept is related to the certification of electronic transactions. In practice, notaries are only permitted to access document administration through a designated platform, such as a specified website. This occurs when a notary needs to input or transmit data required to complete specific documents for legal entity registration or other activities. The use of technology for notaries serves as a supportive tool for their work, not to perform their powers and duties, such as reading deeds, signing deeds, and other legal acts as mentioned in the explanations of Article 15 paragraphs (1) and (2) and Article 16 of UUJN. The legal basis for the cyber notary concept is explained in accordance with Article 15 paragraph (3) of UUJN, stating that notaries have other authorities regulated by regulations. This provision serves as a legal framework for notaries in Indonesia when conducting their services using technology.

The term "cyber notary" itself is not explicitly mentioned in regulations, especially in UUJN. However, referring to Article 15 paragraph (3) of UUJN, two aspects emphasizing the concept of cyber notary in Indonesia are found: authority and technology.⁴ These two aspects are closely related to the Notary's duties that intersect with technology, creating a correlation between them. This is the basis for the implementation of the cyber notary concept in Indonesia.

Based on prior information, there are several research studies with similar topics, but the content analysis differs from a paper written by Chastra. Chastra's research has the advantage of discussing legal certainty in notarial services utilizing the practice of cyber notary, with reference to Article 15 paragraph (3) of UUJN. However, its weakness lies in not clearly explaining the actual position of cyber notary.⁵ Furthermore, the research written by Rizqi explains the benefits and the application of cyber notary in Indonesia, along with its existence in Indonesian legislation. However, the study does not elaborate on the extent of the notary's authority in utilizing technological facilities.⁶ Finally, in the research written by Sona, the implementation of cyber notary in Indonesia according to UUJN and the

⁴ Luthvi Febryka Nola, "Peluang Penerapan Cyber Notary Dalam Peraturan Perundang-Undangan Di Indonesia," *Negara Hukum* 2, no. 1 (2011): 75–102. <https://doi.org/10.22212/jnh.v2i1.187>.

⁵ Deny Fernaldi Chastra, "Kepastian Hukum Cyber Notary Dalam Kaidah Pembuatan Akta Autentik Oleh Notaris Berdasarkan Undang-Undang Jabatan Notaris," *Indonesian Notary* 3, no. 17 (2021): 246–67, <https://scholarhub.ui.ac.id/notary/vol3/iss2/17/>.

⁶ Siti Nurul Intan Sari D Fadhila Rizqi, "Implementasi Cyber Notary DI Indonesia Ditinjau Dalam Upaya Reformasi Birokrasi Era 4.0," *Jurnal Hukum dan Kenotariatan* 5, no. 1 (2021). <https://doi.org/10.33474/hukeno.v5i1.9391..>

position of deeds made through cyber notary are explained. Yet, its weakness lies in not explaining the true meaning of the application of cyber in the notarial world.⁷

This paper focuses on the potential implementation of cyber notary in Indonesia for legal certainty and the challenges in proving notarial deeds within the framework of cyber notary. It aims to provide an understanding of cyber notary practices in Indonesia as a civil law country, closely related to proving through authentic deeds as perfect evidence for legal certainty. The aim of this research is to analyze cyber notary practices in civil law country and the nature of cyber notary in terms of evidentiary value.

2. METHOD

This research employs a descriptive-analytical method, aiming to present an analysis and description of facts between reality and connecting them with provisions in the law and relevant legal theories, using a normative juridical approach.⁸ The normative juridical approach is a method conducted by tracing and examining secondary data, consisting of primary legal materials, including positive law, legal principles, and legal norms, as well as relevant regulations and laws concerning the discussed and researched topic.⁹ Additionally, the exploration of secondary legal materials includes works of legal experts in the relevant field, specifically related to notarial practices and their developments. The investigation is also supported by tertiary legal materials such as law dictionaries and glossaries. The entirety of these data is read, examined, and understood, then cited to support the core issues under investigation.

3. RESULTS AND DISCUSSION

3.1 Potential Implementation of Cyber Notary in Indonesia for Legal Certainty

A notary is a public official providing services to the community in need of authentic written evidence. The creation of authentic deeds must be within the jurisdiction or position of the notary, as deviating from this can be considered a violation of the notary's authority in carrying out their duties.¹⁰ The primary authority of a notary is to create authentic deeds, as stated in Article 15 paragraphs 1 and 2 of Law Number 2 of 2014 concerning Notary Positions. However, Article

⁷ Mahfuzatun Ni'mah Sona, "Penerapan Cyber Notary Di Indonesia Dan Kedudukan Hukum Akta Notaris Yang Bebas Cyber Notary," *Jurnal Officium Notarium* 2, no. 3 (2022): 497–505, <https://doi.org/10.20885/jon.vol2.iss3.art12>.

⁸ Nabilah Apriani and Ridwan Wijayanto Said, "Upaya Perlindungan Hukum Terhadap Industri Usaha Mikro Kecil Dan Menengah (UMKM) Di Indonesia," *Jurnal Al Azhar Indonesia Seri Ilmu Sosial* 3, no. 1 (2022): 28, <https://doi.org/10.36722/jaiss.v3i1.1069>.

⁹ Zainal Asikin Amiruddin, *Pengantar Metode Penelitian Hukum* (Jakarta: Rajawali Pers, 2014).

¹⁰ Widhi Handoko Aisyah Amalia, "Peluang Penerapan Cyber Notary Di Indonesia," *Notarius* 15, no. 2 (2022). <https://doi.org/10.14710/nts.v15i2.36030>.

15 paragraph 3 mentions additional authority. Observing the explanation in Article 15 paragraph 3, this includes the authority to certify transactions conducted electronically (cyber notary) and create deeds for waqf pledges and mortgages on aircraft.

Concerning cyber notary, there is no explicit definition found. However, examining the language in Article 15 paragraph 3 indirectly sets limitations on cyber notary practices. Considering the evolving potential of cyber notary in the Industry 4.0 era, many define its application as the regulation of various aspects related to information provision and electronic transactions.¹¹ The definition of electronic transactions, according to Article 1 paragraph 2 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, refers to legal acts performed using a computer, computer network, and/or other electronic media.

From the scope of cyber notary to the definition of electronic transactions, it is evident that the Notary Positions Law grants authority with the aim of accommodating technological advancements, specifically in certifying electronically conducted transactions. However, this definition leads to broad interpretations due to the lack of detailed explanations and tangible forms of that authority.¹² Regarding the authority of notaries in the implementation of cyber notary, especially in the creation of authentic deeds, there are several difficulties. This is because there is a requirement for clients to physically meet the notary, and there is an obligation for direct signatures in the presence of the notary. If a direct signature in front of the notary is not possible, the client must provide reasons, as stated in Article 44 paragraph 2 of the Notary Positions Law.

According to Jusuf Patrick Tjahjono, a Notary in Surabaya, the concept of cyber notary currently discussed in Indonesia is limited to the legalization of the electronic signature on an electronic document. Beyond this, it would cause issues as it is impossible to equate or identify electronic documents with authentic deeds. Electronic documents can be recognized as evidence in procedural law, but only as evidential clues. In essence, the potential of notaries practicing cyber notary is limited to the legalization and verification of electronic signatures.

Fundamentally, this aligns with the explanation of Article 15 paragraph 3 regarding cyber notary, which is restricted to certifying each electronically conducted

¹¹ Mohammad Fajri Mekka Putra Simon Reinaldo, "Pentingnya Penerapan Cyber Notary Sebagai Upaya Terciptanya Keamanan Praktik Bisnis Di Indonesia," *urnal Ilmu Sosial dan Pendidikan (JISIP)* 6, no. 3 (2022). <https://doi.org/10.58258/jisip.v6i3.3369>.

¹² Abdul Halim Barkatullah & Djoni S. Gozali Junita Faulina, "Kedudukan Akta Notaris yang menerapkan Konsep Cyber Notary di Masa Pandemi Covid-19 di Indonesia," *Nolaj* 1, no. 3 (2022). <https://doi.org/10.32801/nolaj.v1i3.28>.

transaction. It does not involve creating deeds through cyber means, including indirect interaction, digital signatures, and other aspects not regulated by laws requiring the creation of authentic deeds. Additionally, provisions in Article 15, 16, and Article 38 and so forth in the Notary Positions Law establish documents created by or in front of a notary as public officials, making them authentic deeds with complete probative value. This is crucial for legal certainty, as the creation of authentic deeds provides clear norms, serving as a guide for notaries.¹³

The concept of cyber notary in the Indonesian legal system can be interpreted as the authority held by a notary as a representative of the community in forming an entity, managing fiduciary matters, and other activities requiring a signature and the notary's role for the document's validity. This includes utilizing electronic media through teleconferencing. Cyber notary involves the use of electronic media to facilitate and accommodate authority in printing and legalizing letters, documents, or certificates printed via the Directorate General of Legal Administration online system (Ditjen AHU).

The concept of cyber notary in the Notary Law (UUJN) provides authority for notaries to certify transactions electronically, using electronic media. One form of electronic strengthening or legalization is in the form of a time stamp to authenticate the occurrence of a transaction at a specific time between the parties.¹⁴ The utilization of cyber notary in Indonesia has thus been opened, even though the detailed regulation of the concept is not explicitly outlined in the explanation of Article 15 paragraph (3) UUJN. This differs from the conventional form of legalization, namely the authentication of signatures in a document, which is also regulated as one of the notary's authorities based on UUJN.

Additionally, a hindrance to the use of cyber notary in creating electronic deeds is found in Article 16 letter e of the UUJN amendment, which mandates the attachment of letters, documents, and fingerprints to the Deed's Minutes. Therefore, the creation of electronic deeds using electronic signatures might raise doubts about their authenticity due to the absence of fingerprints from the parties involved.

In the concept of cyber notary, as explained by Edmon Makarim, there has been a slight misunderstanding in interpreting the phrase "in the presence of" according to Article 1863 of the Civil Code, equating it with the creation of deeds through teleconferencing, which is not accurate. The working principle of cyber notary is not significantly different from a regular notary. The parties still come and face their respective notaries. However, the parties directly read the draft of the deed on

¹³ Deny Fernaldi Chastra, "Kepastian Hukum Cyber Notary Dalam Kaidah Pembuatan Akta Autentik Oleh Notaris Berdasarkan Undang-Undang Jabatan Notaris". [https://scholarhub.ui.ac.id/notary/vol3/iss2/17/.](https://scholarhub.ui.ac.id/notary/vol3/iss2/17/)"

¹⁴Fardhian, "Legalisasi Dokumen Publik Dan Transaksi Elektronik," LKHT, 2014.

their individual computers, and after agreement, they immediately electronically sign the deed at the notary's office. Thus, the deed is not created remotely, for example, using webcam; instead, the parties must still physically face their notary.¹⁵

Misinterpretation and forced implementation of cyber notary content without a clear legal basis may lead to deeds containing personal data of the parties and witnesses being compromised, traded, or misused by unscrupulous individuals, including notaries lacking integrity. However, safeguarding the deed and its contents is a duty of the notary, as stated in Article 16 paragraph (1) letter e of Law No. 30 of 2004 concerning Notary Positions. Violations of this obligation have legal consequences. It is essential to emphasize that, in the current efforts to protect personal data in Indonesia, there is a lack of detailed and specific regulations on how to safeguard personal data effectively, which has not been addressed in various legislations.

Please note that the Notary also plays a role as a personal data custodian. This is because the notary, in the deeds they create, is obliged to write down the personal data of the parties appearing before them. The section of the notarial deed that outlines personal data is referred to as "komparisi." Before entering the personal data of the appearing parties in the "komparisi" and the personal data of the witnesses at the end of the deed, the notary is required to be cautious. Before doing so, the notary should check and verify the validity of the identities of the parties through identity documents they possess, including electronic identity cards. The checking and verification performed by the notary are related to the effort to protect personal data. With the rampant sale of personal data by irresponsible individuals, the possibility arises that someone might use another person's personal data when appearing before a notary to create a deed related to a specific legal act. Therefore, by being cautious in checking and verifying the personal data of those appearing before them, the notary plays a role in protecting personal data in Indonesia.¹⁶

Based on the above description, the author's perspective on the concept of cyber notary is straightforward. It involves the creation of deeds, currently done using computers or devices equivalent to them, and not using typewriters as in the past. With the advent of technology, notaries can store deeds on computers and provide draft deeds to clients via electronic mail. However, for the completion of authentic deeds, a physical presence, physical document forms, and direct signatures are required. This is to ensure the authenticity of the deed as regulated by the Notary Law. If these conditions are not met, the deed is not authentic but merely a

¹⁵ Edmon Makarim, *Notaris Dan Transaksi Elektronik, Kajian Hukum Tentang Cybernotary Atau Electronic Notary* (Jakarta: Rajawali Pers, 2013).

¹⁶ Muhammad Abdoel Aziz, "Peran Notaris Dalam Perlindungan Data Pribadi" (2020). <https://tatanegara.ui.ac.id/peran-notaris-dalam-perlindungan-data-pribadi/>.

document made under private signature. Concerning to the data using a cyber need to be protect as cyber notary will imply, this is due to mandate The Republic of Indonesia's Constitution regulate in Article 28 G, paragraph 1 that everyone must be protect in relation to self, family, honour, dignity and property under his/her control, thus the point of data protection in using of cyber system due to cyber notary.¹⁷

Upon careful consideration of its relationship based on the analyses provided earlier and with reference to the Explanation of Article 15 paragraph (3) of the UUJN Amendment, which serves as the official interpretation of the legislator for the formulation of regulations under specific norms in the body of the UUJN Amendment, the current practice of applying cyber notary is limited. Notaries certify each electronic transaction, mainly by legalizing documents and/or printing certificates through the General Legal Administration Directorate system online (Ditjen AHU online).

The successful utilization and integration of technology through the implementation of cyber notary in the Directorate General of Legal Administration (Ditjen AHU) online have prompted notaries to adapt to technological advancements, particularly in the Legal Entity Administration System (SABH), which has undergone several revolutionary developments, the latest being a time-efficient enhancement resulting in services that can be completed within minutes. Through Ditjen AHU online, bureaucratic processes are streamlined, eliminating the need for physical meetings between service providers and recipients. This reduces the risk of corruption, collusion, and nepotism. Despite these technological advances, the creation of authentic deeds still adheres to the prescribed requirements, ensuring that they are made authentically. This is rooted in the fact that notaries in a civil law system country must operate conventionally, maintaining the essence of their profession amidst cultural and technological shifts.

3.2 Challenges in the Proof of Authentic Deeds within the Framework of Cyber Notary

Evidence, documents, or also known as written evidence are regulated in Article 138 of the HIR/164 RBg, Article 165 of the HIR/285 RBg, Article 167 of the HIR, Article 1867 to Article 1894 of the Civil Code (KUHPerdata), and Ordinance 1867 Number 29 regarding Provisions on the Evidentiary Force of Under-Hand Writings by Indonesians or Those Equated with Them.¹⁸ Written evidence can be divided into deeds and non-deeds, and deeds are further categorized into authentic deeds

¹⁷ Puti Mayang Seruni Hasnati Hasnati, "Consumer's Personal Data Protection in the Digital Era," *Jurnal Ius Constituendum* 9, no. 1 (2024): 20–35, <https://doi.org/http://dx.doi.org/10.26623/jic.v9i1.8061>.

¹⁸ Taufik Makarao, *Pokok-Pokok Hukum Acara Perdata* (Jakarta: Rineka Cipta, 2004).

and under-hand deeds. Under-hand deeds, as regulated in Article 1874 of the KUHPerdata, are intentionally made for evidentiary purposes by the parties involved without the assistance of a public official; they are made solely between the interested parties. According to Article 165 of the HIR/285 RBg, an authentic deed is a document made in accordance with the law by or in the presence of a public official.

An authentic deed is evidence with absolute or perfect validity. It precisely determines the rights and obligations of the parties, ensures legal certainty, and serves as a preventive measure against disputes. The evidentiary force of an authentic deed also extends to the interests of third parties (not limited to the parties involved). The authentic deed provides proof of the truth of what the official saw, heard, and did. The formal evidentiary force establishes certainty about the date or time and place the deed was made, as well as proves that the signatures are genuine.¹⁹ An authentic deed not only proves that the parties explain what is written in the deed but also that what is stated is true.²⁰

Fundamentally, there is a crucial function of an authentic deed, namely, as evidence (*probationis causa*). An authentic deed as evidence means that agreements recorded in an authentic deed are made to be used as proof. The evidence system in the civil procedural law system in Indonesia is a positive proof system (*positief wettelijke*), basing the assessment of evidence on evidence stipulated by law positively (without requiring the judge's conviction). Valid evidence (determined by law) binds the judge, and only based on such evidence can the judge make a decision. This is evident in the HIR, Article 138 paragraph (2), Article 150 paragraph (3), Article 154 paragraph (1), Article 155 paragraph (1), and Article 156 paragraph (1).²¹

In essence, the value of a notarial deed as stated in Article 1868 of the Civil Code has the following aspects:²² Manifest (*uitwendigde bewijskracht*): the ability of the deed itself as an authentic deed (*acta publica probant sese ipsa*). It is an external manifestation of an authentic deed made according to predetermined legal rules, and its validity can only be reversed if someone can prove or deny it. Then Formal (*formele bewijskracht*): the correctness of the deed, where it is made according to procedures and is done correctly based on the deed's content corresponding to the actual facts (made in the presence of, read/explained by the notary, parties present directly), ensuring the accuracy of the stated time and the content of the deed. and

¹⁹ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 2006).

²⁰ R. Subekti, *Hukum Pembuktian* (Jakarta: Pradnya Paramita, 2008).

²¹ Riduan Syahrani, *Hukum Acara Perdata Di Lingkungan Peradilan Umum* (Jakarta: Pustaka Karini, 1988).

²² Habib Adjie & Muhammad Hafidh, *Akta Notaris Untuk Perbankan Syariah* (Jakarta: PT Citra Aditya Bakti, 2017).

Material (materiele bewijskracht): the truth of an action and words spoken by the presenter recorded in the deed. The essence of materiality lies in the deed's content, directly articulated by the presenter, speaking truthfully and honestly, then documented by the notary in the deed.

With the evolution of time, evidence has undergone expansion. As Mochtar Kusumaatmadja's Legal Development Theory asserts, law serves as a means in development, not merely a tool for orderly development. The essence of the legal development theory is that law serves as a means for societal renewal. Electronic evidence was accommodated in the law in 2008 with Law Number 11 of 2008 regarding Electronic Information and Transactions (ITE Law) and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 regarding Electronic Information and Transactions. The ITE Law explicates the emergence of a new legal regime known as cyber law or telematics law. Telematics law pertains to the legal framework governing the convergence of telematics manifested in the operation of an electronic system, whether connected via the internet (cyberspace) or not connected to the internet.

In ITE Law Article 5 paragraph (1) and Article 5 paragraph (4) letter b, electronic information and/or electronic documents, including their printouts, are generally considered legal evidence, with exceptions for documents made in the form of notarial deeds or those made by public officials in accordance with the law. Despite the existence of the ITE Law and several other regulations, it cannot be claimed that Indonesian procedural law has regulated the proof of electronic evidence since the current regulations only cover substantive legal matters.

Electronic evidence has weaknesses in terms of proof because virtual documents or deeds are highly susceptible to alteration, forgery, or creation by unauthorized individuals who pretend to be the actual parties involved, as often seen in hoax news. Electronic information/data as evidence is not only inadequately accommodated in Indonesia's procedural legal system but is also highly susceptible to alteration, interception, forgery, and global dissemination within seconds. Consequently, the rapid and tremendous impacts of such actions are felt.²³

Based on the Ne Ultra Petita principle, which limits judges to grant only what is demanded, this principle restricts civil judges to "preponderance of evidence," being bound by legally valid evidence. Electronic evidence presented in court must ensure its integrity, and one way to ensure this is through proper examination procedures. However, there is currently no universally applicable procedure for examining electronic evidence in Indonesia. The practice leaves the examination

²³ Efa Laela Fakhriah, *Bukti Elektronik Dalam Sistem Pembuktian Perdata* (Bandung: Refika Aditama, 2017).

procedure to the discretion of each institution, leading to potential disparities in procedures and complicating the judge's ability to assess whether electronic evidence has been properly examined and retains its probative value.

Legal provisions regarding authentic deeds regulated in UUJN and ITE Law provide an understanding that applying information technology developments to electronic authentic deed creation by notaries remains challenging. The legal provisions governing authentic deeds still pose obstacles to the electronic creation process. The creation of an electronic authentic deed faces various legal clashes, including the authenticity requirement stipulated in Article 1868 of the Civil Code. Additionally, the various requirements for deed creation outlined in UUJN make it impractical for notaries to produce electronic deeds.

The concept of cyber notary, conducted electronically with the signing process being done online, is not entirely relevant to legal principles that still adhere to conventional methods. The requirement for documents, especially authentic deeds, to be in paper form, visible, and stored contradicts the essence of electronic signatures.²⁴ In the court's proof process, electronic documents/deeds do not require the original document; however, the electronic document must be accessible, displayed, intact, and accountable to influence a certain condition. Nevertheless, this doesn't apply to documents that must be in written form according to the legislation, including those handled by notaries.²⁵

Specific electronic evidence declared illegal from a legal standpoint must be prepared in writing by a notary or authorized authority creating the deed. For example, Birth Certificates must be created by civil registry officers, marriage certificates by religious affairs officials, or land deeds by land conveyancers. So, there are exceptions for Notaries to create electronic deeds. There are requirements to be fulfilled in deed preparation, based on Article 1868 of the Civil Code and the provisions in Articles 16(1)(i), 16(1)(k), 41, 44, 48, 49, 50, 51, or 52 of the Notary Law (UUJN). This makes it difficult to implement the concept of cyber notary in Indonesia.

In court proceedings, despite using complete evidence, the assessment of the strength of evidence can still be challenged by opposing evidence. Opposing evidence refers to any evidence intended to contradict the legal effects desired by the opposing party or to demonstrate the falseness of the presented events. It's

²⁴ Lisnawati Dini Sukma Listyana, Ismi Ambar Wati, "Kekuatan Pembuktian Tanda Tangan Elektronik Sebagai Alat Bukti Yang Sah Dalam Perspektif Hukum Acara Di Indonesia Dan Belanda," *Jurnal Verstek* 2, no. 2 (2014): 146–54, <https://doi.org/https://doi.org/10.20961/jv.v2i2.38859>.

²⁵ friko Rumadanu, Esther Masri, And Oti Handayani, "Penggunaan Cyber Notary Pada Akta Autentik Dan Kekuatan Pembuktiannya Dalam Perspektif Undang-Undang Jabatan Notaris," *Krtha Bhayangkara* 16, no. 1 (2022): 89–100, <https://doi.org/10.31599/krtha.v16i1.1032>.

impossible for opposing evidence to contradict determined evidence. Authenticated deeds drafted by civil law notaries have greater strength, legalizing that the facts within are true and cannot be challenged by the parties. Therefore, deeds drawn up by and in the presence of a Notary are authentic deeds.²⁶

The legal basis for the creation of deeds through cyber notary has not been further regulated, causing implementation challenges. The authority of Notaries in authentic deed creation refers to the provisions of the Notary Law. Normative conflicts related to Cyber notary and the Notary Law are hindered by Article 1869 of the Civil Code concerning the essence of authentic deeds' authenticity and non-compliance with the formal requirements for deed creation according to the UUJN. The concept of Cyber Notary, utilizing communication tools with internet networks and electronic transactions, allows users or parties to be anywhere, crossing territorial borders. This could create conflicts related to the notary's jurisdictional area.²⁷ The absence of regulations stating that physical confrontation can occur through teleconferencing creates legal uncertainty, affecting the notary's performance and potentially leading to legal consequences in administrative, civil, and criminal aspects.

For a Notary to make a complete authentic deed using cyber notary services, substantial legal provisions accommodating the entire authentic deed creation process in electronic form are needed, based on both UUJN and UU ITE. However, this hasn't happened, as both laws should serve as a foundation for Notaries to obtain legal protection in the electronic deed creation process. Ideally, the regulations for notarial services with electronic media should be included in the UUJN, but in reality, this hasn't occurred. This is because to make the deed perfect, it must be done according to the rules and procedures established by the law.

On the other hand, the existence of cyber notary can lead to potential misuse by parties with malicious intentions during the deed approval process. Involved parties may deny the process, especially in dispute cases, by challenging the validity of readings not conducted face-to-face with a Notary. This could lead to consequences for notary deeds, categorized as null or void as authentic deeds. Five sections relate to the invalidity of a notary deed, including being annulled, providing evidence that it falls under a deed under private signature, null and void, canceled by the party requesting the deed, and canceled by a court decision due to the legal force of the presumption of legality.²⁸ The Notary's work by comparing to the Malaysia's

²⁶ Itta. Rossalina, Zainatun., Bakri, Moh., & Andrijani, "Keabsahan Akta Notaris yang Menggunakan Cyber notary sebagai Akta Autentik," *E-jurnal Pascasarjana Fakultas Hukum Universitas Brawijaya* 1, no. 2 (2017). <http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/1554/1289>.

²⁷ Benny, "Penerapan Konsep Cyber Notary Di Indonesia Ditinjau Dari Undang-Undang Nomor 2 Tahun 2014," *Premise Law Journal* 5, no. 5 (2015).

²⁸ Habib Adjie, *Kebatalan Dan Pembatalan Akta Notaris* (Bandung: PT.Refika Aditama, 2013).

Notary are focused on making wills and certain legal documents, so the role of Notary in Malaysia is limited to the documents which they made and only have a limited powers and some documents need to be require additional approval by other legal authorities before being considered valid. Thus different from Indonesia, that the role of Notary in Indonesia have an important things such as a documents issued by Notaries in Indonesia considered to legally strong and have high acceptability.²⁹

The opportunity for implementing the cyber notary concept in electronic deed creation remains open, but its application is hindered by juridical constraints outlined in the previous explanations. Additionally, the absence of specific regulations governing it doesn't provide legal certainty for Notaries to carry out their duties. Legal certainty is meant to ensure that individuals behave according to applicable legal provisions. It also refers to the implementation of life regulations that are clear, organized, consistent, and consequential. Therefore, the regulation of cyber notary must be resolved promptly for legal certainty, allowing Notaries to perform their duties within the set regulations and avoiding legal consequences in administrative, civil, and criminal aspects.³⁰

4. CONCLUSION

The current implementation of cyber notary in Indonesia is constrained by regulations outlined in the explanation of Article 15 paragraph 3 of the Notary Position Law, which involves certifying every electronic transaction. Additionally, the practice of cyber notary is not explicitly defined, resulting in the consequence that authentic deeds must adhere to the procedures specified in the Notary Law. Any violation may relegate the deed to the status of a private document. The creation of electronic deeds cannot be immediately applied in Indonesia due to the absence of implementing regulations providing technical guidance and legal support for notaries in generating electronic deeds. Consequently, the evidentiary value of such deeds differs from authentic deeds created according to established regulations, which possess evidentiary strength in terms of visibility, formality, and substance during court proceedings. This strength encompasses indisputable facts unless proven otherwise by involved parties. The potential of cyber notary may be explored in the future by adapting to the evolving technological landscape. As a solution, Indonesia, being a civil law country, could define cyber notary uniquely and impose restrictions on technology usage to preserve the authenticity of

²⁹ Satrio Abdillah, Norhasliza Ghapa, and Maheran Makhtar, "A Comparative Study Between Indonesia and Malaysia on the Role of Notaries and Advocates," *Jurnal USM Law Review* 6, no. 3 (2023): 943, <https://doi.org/10.26623/julr.v6i3.7853>.

³⁰ Intan Nur Baiti and Siti Malikhatun Badriyah, "Urgensi Dan Penerapan Konsep Cyber Notary Di Masa Pandemi Covid-19," *Notarius* 16, no. 1 (2023). <https://doi.org/10.14710/nts.v16i1.40910>.

authentic deeds in line with the primary purpose of the notarial profession as a public office.

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