



## Legal Aspect of Cyber Notary in Indonesia

Luh Anastasia Trisna Dewi

*Magister Hukum, Faculty of Law, Udayana University, Denpasar, Indonesia*

*Email: [anastasiatrisnadewi@gmail.com](mailto:anastasiatrisnadewi@gmail.com)*

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### Abstract

The urgency of cyber notary supposed to be a priority nowadays. Business transactions that use offline notary services have now penetrated online in line with technological developments and also the need for effective and efficient transactions. This article was compiled to find out various legal aspects that can support the legality of online notary activities. The method used to compile this article is the literature study method. The literature study method collects several primary, secondary and tertiary materials as a reference in the preparation of this article. Based on the literature study conducted, it can be concluded that the main duties and functions of a notary cannot be replaced directly with an information system. A gradual transformation is needed so that the concept of a cyber notary can run optimally.

**Keywords:** *Notary, Cyber Notary, Digital Deed.*

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### INTRODUCTION

Along with the rapid development of technology and information, it is necessary to update several regulatory aspects related to business transactions.<sup>1</sup> One of the concerns is online business transactions. The online business transaction in question is a transaction along with reinforcing legality that requires legalization from a notary. The online legality arises because of the need for current conditions. In the digital era 4.0, business people will prioritize efficiency and effectiveness in transactions. The pandemic situation is also one of the important considerations to be used as a reference to digitize all forms of legalization by a notary in stages.

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<sup>1</sup> Ni Putu Suci Meinarni; Ida Bagus Ary Indra Iswara; I Nyoman Saputra Wahyu Wijaya; Ayu Gede Willdahlia, *UMKM Goes Online: Regulasi E-Commerce* (Yogyakarta: Deepublish, 2021), <https://penerbitbukudeepublish.com/shop/buku-umkm-goes-online/>.

Notary is a public official authorized to make authentic deeds and other authorities.<sup>2</sup> Making this authentic deed is used as perfect evidence regarding legal actions in the civil law.<sup>3</sup> In relation to technological developments, the role and function of a notary in the digital realm has an important role. Notaries in certifying transactions conducted electronically in the Law on Notary Positions that arise as a result of technological advances. In general, authentic deeds made and/or before a notary are printed using paper. However, with the development of office administration technology, it has started not to use paper (paperless). Cyber Notary has the main function in conducting certification and authentication of electronic transaction activities. Electronic Transactions are legal acts carried out using computers, computer networks, and/or other electronic media.<sup>4</sup>

The concept of cyber notary is interpreted as a method for notaries in carrying out their duties and authority by using electronic institutions.<sup>5</sup> The concept of cyber notary is a concept regarding the implementation of notary authority based on information technology. The development of science and technology as well as the world of trade today makes Indonesia need to adopt this concept. The application of this concept will increase the role of the notary in the context of developing the nation's economy. This cyber notary concept needs to be considered for use in the amendment of the notary officer regulation. However, Indonesia cannot fully adopt this concept because it comes from a common law country whose authority and proof system are different from Indonesia's. In addition, the principle of effective regulatory changes must be a concern in the process of changing the UUN because there are many regulations concerning the authority of a notary.<sup>6</sup>

## METHODS

This article uses the literature study method or commonly known as normative legal research. In the preparation of legal articles, literature study includes several sources of literature, both primary, secondary and tertiary.<sup>7</sup> The sources in question include: laws, expert opinions, related books published at home and abroad, as well as website articles. This article refers to the laws and regulations related to notaries, namely: Undang-Undang Republik Indonesia Nomor 30 Tahun 2004 tentang Jabatan Notaris<sup>8</sup> and Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004.<sup>9</sup>

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<sup>2</sup> Presiden Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 30 Tahun 2004 Tentang Jabatan Notaris" (2004).

<sup>3</sup> Shidqi Noer Salsa, *Hukum Kepengawasan Notaris Di Indonesia Dan Belanda* (Jakarta: Kencana, 2020).

<sup>4</sup> Syamsul Bahri, Annalisa Yahanan, and Agus Trisaka, "Kewenangan Notaris Dalam Mensertifikasi Transaksi Elektronik Dalam Rangka Cyber Notary," *Repertorium* Vol. 8, no. No. 2 (2019): 142–57, <https://doi.org/10.28946/rpt.v>.

<sup>5</sup> Cyndiarnis Cahyaning Putri and Abdul Rachmad Budiono, "Konseptualisasi Dan Peluang," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 1 (2012): 29–36.

<sup>6</sup> Luthvi Febryka Nola, "Peluang Penerapan Cyber Notary Dalam Peraturan Perundang-Undangan Di Indonesia," *Negara Hukum* 2 (2011): 75–102.

<sup>7</sup> Soerjono Soekamto; Sri Mamudji., *Penelitian Hukum Normatif; Suatu Tinjauan Singkat* (Jakarta: PT. Rajagrafindo Persada, 2003).

<sup>8</sup> Indonesia, Undang-Undang Republik Indonesia Nomor 30 Tahun 2004 tentang Jabatan Notaris.

<sup>9</sup> Presiden Republik Indonesia, "Undang-Undang (UU) No. 2 Tahun 2014 (Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris)" (2014), <https://peraturan.bpk.go.id/Home/Details/38565/uu-no-2-tahun-2014>.

## DISCUSSION

### Definition of Cyber Notary According to National and International Experts

In the current era of globalization, the development of the era of information and communication technology in Indonesia, especially in cyberspace (cyberspace, virtual world) through the internet network, one of which is the development of communication with paperless electronic media. Universally, when someone enters this abstract virtual world, he is separated from the circumstances of place and time through this electronic media.<sup>10</sup> In several countries that using the Common Law and Civil Law legal systems, they have developed and empowered the function and role of a notary in electronic transactions. Therefore, Indonesia as one of the adherents of the Civil Law legal system must develop the function and role of a notary in electronic transactions, especially in providing notary services themselves electronically.<sup>11</sup>

An understanding of the concept of cyber notary has been put forward by several experts, including Emma Nurita and Brian Amy Prastyo. Emma Nurita provides an understanding that the concept of a 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.<sup>12</sup> Meanwhile, according to Brian Amy Prastyo, the essence of cyber notary itself 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 legal to use 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 a deed.<sup>13</sup>

There are two terms used in the phenomenon of notary services through internet media, namely cyber notary and electronic notarization. The term electronic notary was first introduced by the French delegation in the TEDIS legal workshop forum at the EDI conference organized by the European Union in 1989 in Brussels. The essence is the existence of a party who presents an independent record of an electronic transaction carried out by the parties.

The terms electronic notary is relatively new term in commerce and first appears to have been coined by the French delegation to the TEDIS (Trade Electronics Data Interchange System) legal workshop at the European Union's 1989 EDI Conference in Brussels, where the concept of such an activity was introduced. This conference proposed that various industry associations and related peak bodies could act as an "electronic notary" to provide an independent record of electronic transaction between parties, i.e. when company A electronically transmits trade documents to company B, and vice versa.<sup>14</sup>

<sup>10</sup> Mariam Darus Badruzaman, "Mendambakan Kelahiran Hukum Saiber (Cyber Law) Di Indonesia" (2001).

<sup>11</sup> Edmon Makarim, *Notaris Dan Transaksi Elektronik, Kajian Hukum Tentang Cybernotary Atau Electronic Notary*, 2nd ed. (Jakarta: Rajagrafindo Persada, 2013), <http://www.rajagrafindo.co.id/produk/notaris-dan-transaksi-elektronik-kajian-hukum-tentang-cybernotary-atau-electronic-notary-edmon-makarim/>.

<sup>12</sup> Emma Nurita, *Cyber Notary, Pemahaman Awal Dalam Konsep Pemikiran* (Bandung: Refika Aditama, 2012).

<sup>13</sup> Brian Amy Prastyo, "Peluang Dan Tantangan Cyber Notary Di Indonesia," 2014, <http://staff.blog.ui.ac.id/brian.amy/2009/11/29/peluang-cyber-notary-di-indonesia/>.

<sup>14</sup> Leslie G. Smith, *The Role of the Notary in Secure Electronic Commerce* (Sydney: Information Security Institute Faculty of Information, Queensland University of Technology, 2006).

The point is that in this context there is an independent third party that records transactions between one party and another on an electronic basis.<sup>15</sup> So in essence, electronic notary is a notarization process (authentication) of a signature on an electronic document through a certain method, which leads to output in the form of a notarial deed produced or processed electronically.

On the other hand, the term cyber notary is the idea of the American Bar Association Information Security Committee in 1994. The concept of cyber notary is a concept that adapts the use of computers cyber or online by notaries in carrying out their duties and authorities based on:

- 1) Trust when transacting between parties over the internet;
- 2) The security of transmission;
- 3) The integrity of the content of the communication;and
- 4) The confidence that such transactions will receive legal recognition, so
- 5) That a binding contract is enforceable.

Furthermore, what is called a cyber notary by the American Bar Association is someone who has expertise in the field of law and computers, just like a Latin notary in facilitating an international transaction. In the context of Public Key Infrastructure it connects the private key of the sender with the public key of the recipient under an umbrella of trust (umbrella trust). Cyber notaries will authenticate documents electronically, even cyber notaries are also expected to verify their legal capacity and financial responsibilities, so there is a suggestion that the requirement should be an attorney.

American Bar Association's Information Security Committee conceived of a "Cyber Notary" who would have both computer and legal specialist. They would be similar status to the Latin Notaries and whose main purpose would be facilitating international commerce, conceives that the cybernotary role "would be to bind the private keys and to envelope the entire transaction in an "umbrella of trust". Also conceives that the cybernotary would verify the financial responsibility and legal capacity of the parties—leading to requirement that electronic notaries be attorneys. Advocates Scottish cybernotaries to verify identity of the parties of electronic commerce. Conceives that the cyber notary can authenticate a document:

- 1) Validating its legal contents
- 2) Validating the digital signature
- 3) Validating the identity of the signer;
- 4) Validating the capacity of the signer;
- 5) Validating the authority of the signer;
- 6) And including the validation of the digital certificate.

Theodore Sedwick who is the manager of the Cyber notary Project-US Council for International Business argues that the term cyber notary is used to describe a combination of conventional notary-public functions and their applications in electronic transactions. Cyber notaries can play a role in ensuring to parties in other countries when the parties conducting transactions in a country really of their own awareness and without coercion or threats have signed electronic-based documents. Cyber notary in this case is likened to a safety in electronic transaction traffic through the internet. The main function of a Cyber notary is to perform authentication in electronic transaction traffic. The authentication function in this case relates to the legal

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<sup>15</sup> Hikmahanto Juwana, "Disampaikan Pada Acara Seminar 'Cyber Notary, Tantangan Bagi Notaris Indonesia'" (2011).

aspects required for the electronic transaction. This legal aspect in practice is usually in the form of certainty of the date and time of the transaction which is notarized by a cyber notary with an electronic notary seal and stored in the protocol. for archiving purposes, without mentioning the status of authentic deeds as known in civil law notarial practice. It is this legal aspect that distinguishes a Cyber notary from a Certification Authority which is only able to guarantee transaction security only from a technical point of view.

### **Cyber Notary Arrangements in Indonesia**

Initially, the provisions regarding electronic notarial services were expected to be included in one of the articles in the amendment to the Indonesian Regulation about Notary Officer namely Undang-Undang Jabatan Notaris (UUJN).<sup>16</sup> However, this cannot be fulfilled. Even so, Article 15 paragraph (3) of the amendment to the UUJN stipulates that notaries also have other powers as regulated in the legislation. In the elucidation of Article 15 paragraph (3), other intended authorities also include the authority to certify transactions conducted electronically or by cyber notary. In fact, this authority is not very appropriate if it is referred to as certification, because the intended meaning is so that it can be considered legally valid (legal). One form of strengthening or legalization electronically is in the form of a time stamp, or authorizing the occurrence of a transaction at a certain time carried out between the parties. Conventional forms of legalization include ratification of signatures in a document, which is also regulated as one of the notary's powers based on UUJN.

In addition, one example of electronic transactions carried out by a notary in carrying out his authority is as a public power of attorney for the formation of a Limited Liability Company (PT), fiduciary management, and others that require a signature or role from a notary for a document to be valid. In the case of the formation of a PT, the Decree of the Minister of Law and Human Rights (Menkumham) for the formation has used an electronic application, but the notary has problems in storing the SK electronically and its use because the validity of the electronic SK may legally be questioned by the parties certain. Therefore, it is a concern for notaries to be able to have a reference to a procedure or system that can guarantee the creation, storage, and use of public documents that they make or ratify, so that they can be considered authentic, just like an authentic written deed. Amendments to the UUJN, which are perceived as a step back from the development of the implementation of the legalization of information or documents electronically, are contained in Article 16 letter c of the amendments to the UUJN, which is required for the appearer to attach letters and documents as well as fingerprints on the Minutes of Deed. Thus, the authenticity of making an electronic deed using an electronic signature can be doubted because there is no fingerprint of the person in question.

In terms of the concept of cyber notary which some legal experts have developed by using electronic media by teleconferencing, it turns out that as stated by Edmon Makarim, so far there have been very few civil laws associated with cyber notaries. Which identifies with the making of the deed carried out by teleconference, but it is not. The working principle of a cyber notary is not much different from an ordinary notary. The parties still come and deal with the notaries. However, the parties immediately read the draft deed on their respective computers, after agreeing, the parties immediately signed the deed electronically at the notary's office. So the

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<sup>16</sup> Indonesia, Undang-undang (UU) No. 2 Tahun 2014 (Perubahan atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris).

deed is not made remotely using a webcam, but the parties are dealing directly with the notary. As for how to use a webcam, other countries have not used that method either.<sup>17</sup>

When observed and with reference to the Elucidation of Article 15 paragraph 3 of the Amendment to the UUJN which serves as the official interpretation of the legislators on certain norms in the body of the Amendment to the UUJN, it is concluded that the concept of cyber notary that has been accommodated is in terms of the authority to print and legalize letters and/or print certificates that are printed through the online system of the Directorate General of General Legal Administration (Directorate General of AHU online).

The application of the cyber notary concept by the Directorate General of AHU online is regulated in several regulations, namely:

- 1) Regarding services related to PT, it is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 4 of 2014 concerning Procedures for Submitting Applications for Legal Entities and Approval of Amendments to the Articles of Association and Submission of Notification of Amendments to the Articles of Association and Changes in Limited Company Data (Permenkumham 4 /2014);
- 2) Regarding services related to foundations, it is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 5 of 2014 concerning Ratification of Foundation Legal Entities (Permenkumham 5/2014);
- 3) Regarding services related to associations, it is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 6 of 2014 concerning Ratification of Legal Entities of Associations (Permenkumham 6/2014);
- 4) Regarding services related to Fiduciary, it is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2013 concerning Procedures for Electronic Registration of Fiduciary Guarantees (Permenkumham 10/2013) and Circular of the Directorate General of General Legal Administration Number AHU.OT. 03.01-11 of 2013 concerning Registration and Elimination of Fiduciary Guarantee Certificates;
- 5) Regarding services related to will reporting and registration of prospective notaries, it is regulated in the Amendment to the UUJN;
- 6) Regarding the imposition of types and rates of Non-Tax State Revenue, it is regulated in Government Regulation of the Republic of Indonesia Number 45 of 2014 concerning Types and Tariffs of Non-Tax State Revenues applicable to the Ministry of Law and Human Rights (PP45/2014);
- 7) Regarding the procedure for submitting and using the name of the Company, it is regulated in Government Regulation of the Republic of Indonesia Number 43 of 2011 concerning Procedures for Submission and Use of the Name of a Limited Liability Company (PP 43/2011);
- 8) Regarding the use of Foundation names, it is regulated in Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Implementation of Law on Foundations (PP 63/2008), and Law of the Republic of Indonesia Number 28 of 2004 concerning Amendments to Law Number 16 of 2001

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<sup>17</sup> www.hukumonline.com, "INI Gembira Cyber Notary Masuk Ke UU Jabatan Notaris," 8 Februari 2014, 2014, <https://www.hukumonline.com/berita/baca/lt52f6010370d79/ini-gembira-cyber-notary-masuk-ke-uu-jabatan-notaris/>.

concerning Foundations (Law 28/2004), as well as the Law of the Republic of Indonesia Number 16 of 2001 concerning Foundations (UU 16/2001);

- 9) Regarding the use of the name of the Association, it is regulated in the Law of the Republic of Indonesia Number 17 of 2013 concerning Social Organizations (Law 17/2013).

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary and Law Number 11 of 2008 concerning Information and Electronic Transactions, but in today's circumstances the notary deed that uses a cyber notary does not have perfect evidence like an authentic deed, this is because the notary deed using a cyber notary does not meet the requirements for the authenticity of a deed as stated in Article 1868 of the Civil Code.<sup>18</sup>

To get to the concept of a cyber notary that can increase the ease of doing business index in Indonesia, it is changing Article 15 paragraph (1) of the UUJN and adding the authority to allow deed and signature reading without face to face using currently developing technologies, such as video conferencing and digital signatures. In this way (online) the procedure for making the deed can be cut, so the process is less than 1 (one) day. Especially with the current conditions, the Covid-19 outbreak has made cyber notary arrangements to be implemented immediately.<sup>19</sup>

## CONCLUSION

Electronic transactions have an impact on the notary profession. The impact is related to the duties and functions of a notary as an officer granted a license by the government. Make an authentic deed regarding all actions, agreements and stipulations required by the laws and regulations and/or desired by the interested parties to be stated in an authentic deed, as well as guaranteeing the certainty of the date of making the deed, keeping the deed, providing grosse, copies and quotations of the deed. as long as the making of the deed is not also assigned or excluded to other officials or other people stipulated by law are the main duties and functions of a notary. Regarding these duties and functions, notaries cannot carry out a complete online transformation. There are some things that really have to be done online but there is still a lot that needs to be done offline. And in its implementation, a qualified information system is needed.

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<sup>18</sup> Kadek Setiadewi and I Made Hendra Wijaya, "Legalitas Akta Notaris Berbasis Cyber Notary Sebagai Akta Otentik," *Jurnal Komunikasi Hukum (JKH)* 6, no. 1 (2020): 126, <https://doi.org/10.23887/jkh.v6i1.23446>.

<sup>19</sup> Muhammad Farid Alwajdi, "Urgensi Pengaturan Cyber Notary Dalam Mendukung Kemudahan Berusaha Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (2020): 257, <https://doi.org/10.33331/rechtsvinding.v9i2.422>.

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