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**OPPORTUNITIES AND CHALLENGES OF CYBER NOTARY  
IMPLEMENTATION IN INDONESIA****Amanah Ikrasari**<sup>1</sup>Master of Notary Study Program, Faculty of Law, Airlangga University, Surabaya.  
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**Abstract**

*Changes and legal dynamics have risen to a new concept in the notary world. The Law of Notary Public changes have raised the concept of a cyber notary as an effort by the government to accommodate global changes amid the strengthening flow of digital technology and information. Cyber notary itself is a concept in which the duties and functions of a notary can be carried out through electronic media. However, the application of cyber notaries in Indonesia still needs to be improved due to the unclear concept of regulation. In this research, the focus is to look at the opportunities and challenges of implementing cyber notaries in Indonesia from a regulatory and practical perspective. The results of this research show that there is an opportunity to apply cyber notary in Indonesia, (1) legally Indonesia has recognized, acknowledged, and protected the existence of electronic documents are external or products that notaries in cyber notary practice will produce, (2) cyber notary the validity of the law of Notary Public is recognized (3) the effectiveness of cyber notaries in notary services. Meanwhile, in its application, cyber notary encounters challenges, namely (1) limited regulation of cyber notary, (2) conflicting norms of having to read the deed before the parties, (3) problems with facilities, supporting facilities, and infrastructure in the application of cyber notary.*

**Keywords:** *Opportunities; Challenges; Cyber Notary*

**INTRODUCTION**

Het recht think anter de feiten an, a legal adage which argues that the law always lags behind the events it regulates.<sup>1</sup> This expression illustrates how the development of the times and our legal conditions are always limping along with the times. Not

only in one or two cases, but the expression mentioned above has also occurred a lot in various fields of law, including in the notarial field. The rapid development of the times and technological advances have brought us to a new era of human

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<sup>1</sup> Zainal Arifin Muchtar, Eddy O.S. Hiariej, 2022, *Dasar-Dasar Ilmu Hukum*, Red & White Publishing, Jakarta, hlm. 99.

civilization.<sup>2</sup> Technological developments and artificial intelligence that provide convenience to various human jobs require humans to adapt and adjust always to be able to live according to the times.<sup>3</sup> The rapid development of technology requires the government to shift from conventional-based administration of government and community services to digitizing government. Digitalization of government services is carried out to achieve the benefits of services that are short, fast, and responsive according to the needs of the community.<sup>4</sup> Likewise, in the context of carrying out the duties of a notary function, which is given by the state the authority as a state official who gives legal reinforcement to agreements that occur in society.<sup>5</sup> The position of a notary is so important in helping the community to create legal certainty and protection for the various legal actions it performs.<sup>6</sup> Such a notary's position requires a notary to adapt to the times and respond to the times and various challenges in carrying out his duties and authorities. The choice to implement a cyber notary in carrying out the functions and duties of a notary starts with changes to the law regarding the position of a notary.<sup>7</sup>

An understanding cyber notary is a concept that tries to use technological developments, developments in information and technology for notaries in carrying out their duties and authorities such as the electronification of documents, the General Meeting of Shareholders (GMS) by teleconference, the signing of deed electronically.<sup>8</sup> Following technological developments in several developed countries, notary services have shifted to processes that can be provided electronically, even legally regulated by applicable law. As in Germany, it is regulated in Section 126 of the German Civil Code that the written form for making a deed can be replaced by using an electronic form unless otherwise regulated by law; if using an electronic form, it is signed by the parties using an electronic signature.<sup>9</sup> France also accepts digital deeds or documents as evidence before a court, including those drawn by a notary.<sup>10</sup>

In Indonesia, it adheres to the continental European system, which holds that the rule of law requires a mechanism for forming an authentic deed. The deed formation system, as contained in the provisions of 1868 of the Civil Code, is so rigid that an authentic deed

<sup>2</sup> Budiman Ginting, *Perkembangan Hukum Perdata di Indonesia : pembaharuan Terhadap Hukum Perdata* Indonesia, <https://mkn.usu.ac.id/iimages/4.pdf>.

<sup>3</sup> Genesia Hardina Memah, *Jabatan Notaris Dalam Era Perkembangan Teknologi, Informasi dan Komunikasi*, *Acta Comitas: Jurnal hukum Kenotariatan*, Vol 6, No 01, 2020, hlm. 187.

<sup>4</sup> Muhammad Ridwan Satya nurhakim, *Implementasi E- Government Dalam Mewujudkan Transparansi dan Akuntabilitas Sistem Pemerintahan Modern*, *Jurnal ilmu Adminitrasi Pemerintahan*, Volume XI, Nomor 3, 2014, hlm. 403.

<sup>5</sup> Yoyon Mulyana Darusman, *Kedudukan notaris sebagai pejabat pembuat akta otentik dan sebagai*

*pejabat pembuat akta tanah*, *ADIL: Jurnal Hukum*, Vol 7, No. 1, hlm. 44.

<sup>6</sup> Anke Dwi Saputra (ed), (2008), *Jati Diri Notaris Indonesia*, Gramedia Pustaka, Jakarta, hlm.7-8.

<sup>7</sup> Junita Faulina, Abdul Halim Berkatullah, Djoni S Gozali, *Kedudukan Hukum Akta Notaris yang Merupakan Konsep Cyber notary Masa Pandemi Covid-19 di Indonesia*. *Notary Law Journal*, Vol 1, No 3, 2022, hlm. 247.

<sup>8</sup> Luthvi Febryka Nola, *Peluang Penerapan Cyber notary Dalam Peraturan Perundang-Undangan di Indonesia*. *NEGARA HUKUM*, Vol. 2, No. 1, Juni 2011. hlm.82.

<sup>9</sup> Edmon Makarim, *Cyber notary/ E-Notary*, Bahan ajar MKN Fakultas Hukum Universitas Sumatera Utara.

<sup>10</sup> *ibid*

formed will be considered valid if it fulfills three components, namely.<sup>11</sup> (1) made in a form by the applicable legal regulations which means that the formation of the deed must be carried out by statutory regulations (2) there is a requirement to do a deed before or by a public making official, indicating that the deed in question was formed based on the request of the parties, on the other hand, the formation of a deed by a public official is carried out because there is an event, examination, decision and so on, (3) the making of a deed must be carried out by an official located at the place where the parties did the deed in question, this authority relates to several matters which include: the type and classification of the deed as well as the position of the maker, the day and information on the date on which the deed was drawn up, the location where the deed was drawn up. These three requirements must be fulfilled so that the notary himself is not flexible and experiences difficulties in doing a deed if the deed is needed in a short period, doing a deed remotely, etc.<sup>12</sup>

Economic development, supported by rapid technology, requires Indonesian notaries to work faster to respond to client requests and process contracts faster.<sup>13</sup> This demand grew stronger when Indonesia promulgated the Electronic Information and Transactions Law, which allows electronic documents and signatures to be made.<sup>14</sup>

This research will see how compatible the law in Indonesia can be in accepting the implementation of electrification of the implementation of the duties and functions of a notary by looking at the opportunities and challenges of implementing cyber notary in Indonesia.

## METHOD

This article was written using normative legal research methods. The analysis and discussion of this article, in addition to using a statutory approach, namely examining the norms in Law Number 2 of 2014 concerning the Office of a Notary and Law Number 11 of 2008 concerning Information and Electronic Transactions, also uses a conceptual approach. (conceptual approach) and comparative studies, especially section 126 of the German Civil Code.

## ANALYSIS AND DISCUSSION

The concept of a cyber notary is the concept of trying to implement a computer-based notary service process in its notary activities, such as electronic documents or files, electronic signing, implementation of GMS, which can be attended via teleconference, and other things that can be carried out electronically including being able to provide outreach legal counseling related to the function of a notary.<sup>15</sup> Normatively, the birth of a cyber notary in carrying out the duties and

<sup>11</sup> Candella Angela AT, Dientie Rumimpunu, Muhamad HS, kedudukan Akta Otentik Sebagai Alat Bukti Dalam Persidangan Perdata di Tinjauan dari Pasal 1870 KUHP Perdata (Studi Kasus Putusan Nomor 347/Pdt.G/ 2012/ PN. Medan), Publikasi Fakultas Hukum Universitas Samratulangi Manado, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=>

<sup>12</sup> Edmon Makarim, Layanan Notaris Secara Elektronik Dalam Kedaruratan Kesehatan

Masyarakat, <https://law.uui.ac.id/layanan-notaris-secara-elektronik-dalam-kedaruratan-kesehatan-masyarakat-oleh-dr-edmon-makarim-s-kom-s-h-ll-m/>.

<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

<sup>15</sup> Burhanuddin, 2022, *Tanggung Jawab Notaris Perlindungan Minuta Akta Dengan Cyber Notary*, Azka Pustaka, Sumatera Barat, hlm. 5.

functions of a notary is based on the enactment of Article 15 paragraph (3) of the law of notary public, which clearly states the expansion of the authority of a notary, namely certifying or authenticating transactions carried out through electronic media, making a deed of waqf pledge and aircraft mortgage.<sup>16</sup>

Not without reason, digitizing the duties and authorities possessed by a notary certainly has its benefits. The use of computer media in daily notary activities facilitates the transaction process between parties who live far apart, which does not allow face-to-face meetings; it can also provide time efficiency in making and signing contracts and saving costs. The greatest convenience felt by notaries in implementing cyber notaries in Indonesia is the ease of communicating with clients from anywhere and anytime. For example, when a notary is required to attend a GMS with shareholders at different locations and places, this can be done via teleconference.<sup>17</sup>

### **Opportunities for Implementing Cyber Notary in Indonesia.**

#### **1. Existence of Applicability, Recognition, and Protection of Electronic Documents in Indonesia.**

Juridically, the recognition of electronic documents is contained in the provisions of Article 1 paragraph (4) of the Electronic Information And Transactions Law, which defines electronic documents, namely any electronic information that is created, sent,

forwarded, stored, and received in the form of analog, optical and other types that can be displayed, heard and seen by electronic and computer media.<sup>18</sup>

Since the recognition of electronic documents through the enactment of the Electronic Information And Transactions Law, the use of electronic documents has also penetrated the administration of the government system. The use of electronic documents in government administration is also recognized through enacting Law Number 30 of 2014 Concerning Government Administration (UUAP). Through this regulation, the government is aware of technological developments and the trend of digitizing government, encouraging the government to use several alternatives for administering government; the government is digitizing services, making electronic documents and decisions, and so on.<sup>19</sup> About the use of electronic documents carried out by the government, it can be found in the case of the government using electronic decisions as stipulated in Article 38 of the Government Administration Law; electronic decisions can be made if written decisions cannot be made.<sup>20</sup>

Electronic decisions have the same power and position as written decisions, but if there are differences between written and electronic decisions, the written decision applies to the conflict. Before the Government Administration Law was enacted, much earlier through Law number 25 of 2009 concerning Public Services

<sup>16</sup> Lihat penjelasan Pasal 15 (3) Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris.

<sup>17</sup> Syamsir, Elita rahmi, Yetniwati, Prosepk *Cyber notary* Sebagai Media penyimpanan Pendukung Menuju Profesionalisme Notaris, *Jurnal Recital*, Vol 1, No. 2, 2019, hlm 132.

<sup>18</sup> Lihat Ketentuan Pasal 1 ayat (4) Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik.

<sup>19</sup> Siti kotijah, 2023, konstruksi Hukum Administrasi Pemerintahan Pasca UU Cipta Kerja, CV. Muhammad Fahmi Al-Azizi, Yogyakarta, hlm. 23.

<sup>20</sup> Lihat Ketentuan Pasal 38 Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan.

(UUPP). The provisions of Article 24 UUPP explain that deeds, documents, and similar files, both non-electronic and electronic products, are considered valid as long as applicable regulations make them.

Not only giving recognition to the validity of electronic documents but moreover also protecting each electronic document that is issued and recognized. Especially electronic documents or files that include electronic signatures.<sup>21</sup> So that electronic documents that use electronic signatures can give rise to legal consequences, namely (1) data owned by the owner of the signature; (2) the power over the signer's data that exists when the electronic signature only exists on himself; (3) changes to each electronic data can be known by the signatory; (4) every change in data that has been recorded electronically can be known by the owner of the signature; (5) there is a certain mechanism to find out who signed the party; (6) any electronic data owned by the signatory can be identified for approval with a certain mechanism.<sup>22</sup>

Furthermore, regarding the security of electronic documents in Indonesia, it is also stated in Article 12 of the Electronic Information And Transactions Law, which explains that several security criteria in electronic documents include: (1) the principle of authenticity, integrity, and anti-repudiation. So that several security aspects regulated in Article 11 of the Electronic Information and Transactions Law can be classified into security elements mandated in

Article 12 of the Electronic Information and Transactions Law.<sup>23</sup> As in the manufacture of related electronic data, it is only found in the signatory, and the data recorded during electronic document processing is only held by the owner of the signature itself, which is part of the element of authenticity (authentication).<sup>24</sup> Any changes to signatures and other documents regarding the signatory information can be seen as part of the integrity value, as well as the mechanism used to identify the signatory and the mechanism to find out the signatory has given a statement agreeing to all information recorded in electronic documents made is part of the value of anti-denial (nonrepudiation).<sup>25</sup>

An electronic signature that fulfills the elements from point a to point f of Article 11 of the Electronic Information and Transactions Law is a signature that has been certified and can be accounted for as long as it can be accessed, guaranteed for its integrity, can be accessed which can explain the situation. This is a form of authentication of an electronic document that uses a mechanism determined by the digital transaction system operator services organized by the National Cyber and Crypto Agency.<sup>26</sup>

Apart from that, the protection of electronic documents in Indonesia is also contained in the provisions of Article 26 of the Electronic Information and Transactions Law, which states that every transfer of personal data must be known and approved

<sup>21</sup> Reza Pahlevi, Uegensi mengenai kewenangan Notaris Dalam Pengesahan dan Pembukuan Tanda Tangan Elektronik, Thesis program Magister Kenotariatan Universitas Airlangga, hlm 17.

<sup>22</sup> Riki Perdana Raya Waruwu, *UU ITE dan Pengakua Dokumen Elektronik*, <https://www.mahkamahagung.go.id/iid/artikel/3048/eksistensi-dokumen-elektronik-di-persidangan-perdat>.

<sup>23</sup> Riki Perdana Raya Waruwu, Eksistensi Dokumen Elektronik Dalam Persidangan Perdata, <https://www.mahkamahagung.go.id/iid/artikell/3048/eksistensiii-dokumen-elektronik-di-persidangan-perdata>

<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*

<sup>26</sup> *Ibid*

by the owner of the data concerned, the subject whose personal data is transferred, can file a civil lawsuit to seek compensation from the court.<sup>27</sup> This provision is also followed by punishment contained in the provisions of Article 27 paragraph of the Electronic Information and Transactions Law that each person may not transmit other people's electronic documents that violate decency, defamation, and humiliation of recognition, a penalty of six years in prison and a fine of 1 billion rupiah.

In addition to protecting electronic documents as contained in the Electronic Information and Transactions Law, the dynamics and developments in national law have also specifically and more comprehensively protected electronic documents in Indonesia through the enactment of Law Number 27 of 2022 Concerning Personal Data Protection. Through the provisions of Article 1 paragraph (1), this Law explains the scope of personal data, namely data about individuals who can be identified or combined with electronic or non-electronic information directly or indirectly.<sup>28</sup> Through this law, it is explained that every controller of personal data is required to protect personal data from all forms of illegal processing.<sup>29</sup> Which is the provisions of Article 65 of the Personal Data Protection Law states (1) everyone is prohibited from collecting and obtaining other people's data to benefit themselves or others; (2) prohibited from publishing or disclosing personal data that does not belong

to them; (3) are prohibited from using other people's data.<sup>30</sup>

The scope of protected personal data includes general and certain specific data. General data is data in the form of name, gender, religion, nationality, marital status, and a combination of data used to identify other people's identities. Meanwhile, what is meant by specific data is biometric data, crime information, personal financial data, and children's data. Thus, of course, the law in Indonesia is very comprehensive in protecting personal data as a private right of someone who can only be known by himself.<sup>31</sup>

## 2. Cyber Notary Regulations in the Law on Notary Public

The development of the duties and functions of a notary in guaranteeing the certainty of legal actions carried out by the community has demanded changes to the law on notarization. The new dynamics have given rise to a consequence and expansion of the notary's authority in the digital era. The birth of a cyber notary is based on the provisions of Article 15, paragraph (3). Through the provisions of this article, other authorities are granted to notaries, which include electronic transaction certification (cyber notary), aircraft mortgages, and deed of waqf pledge.<sup>32</sup>

Judging from the history of its development in general, as revealed by Hikmahanto Juwana, that cyber notary was originally born in 1994 and was first used by The Information Security Committee of The

<sup>27</sup> *ibid*

<sup>28</sup> Lihat ketentuan pasal 1 ayat (1) Undang-undang Nomor 27 Tahun 2022 Tentang Perlindungan Data Pribadi

<sup>29</sup> Wahyudi Djafar, Hukum Perlindungan Data Pribadi di Indonesia : Lanskap, Urgensi, dan Kebutuhan pembaharuan, <https://law.ugm.ac.id/wp-content/uploads/sites/1043/2019/08/Hukum->

Perlindungan-Data-Pribadi-di-Indonesia-Wahyudi-Djafar.pdf.

<sup>30</sup> *ibid*

<sup>31</sup> Anjas Putra pramudito, Kedudukan dan Perlindungan Hak Atas privasi di Indonesia, Jurist Diction, Vol. 3, No. 4, 2020, hlm. 1397.

<sup>32</sup> Lihat Ketentuan Pasal 16 ayat (1) (2) dan (4) Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris

American Bar Association,<sup>33</sup> the agency provides an overview of the use of computer technology in the public notary profession, whose profession aims to increase public trust in the documents produced,<sup>34</sup> which document authentication can be printed anytime and anywhere.

Cyber notary aims to certify and authenticate electronic transactions, which means the certification is carried out by a notary with the Certification Authority function so that the notary, in carrying out his duties and functions, is to certify digital certification to parties who need it and are interested.<sup>35</sup>

Judging from the provisions of Article 16 letter m and Article 15 paragraph (3), the Law of public notary restricts the types and forms of deeds that can be served by a notary who can make them in digital form. Judging from the two regulatory characters contained in the provisions of the two articles above, article 15, paragraph (3) is the basis for notaries in certifying electronic certificates. Whereas the provisions of Article 16 letter m are a form of ratification of a partij deed made face to face, which is attended, and witnessed directly by the notary concerned.

The enforceability of the provisions of Article 16 is a manifestation of Article 1864 of the Civil Code regarding the authenticity of the deed made. Judging from the enforceability of the provisions of Article 16,

it also accommodates partij deeds made directly and face to face before a notary. Thus, it is also possible that if the contents and legal actions contained in the partij deed are made and agreed together electronically and not face to face, a cyber notary can be applied, in which the basic emphasis of a cyber notary is to provide authentication of digital deeds, which the essence is the same as the certification of the partij deed which is made face to face and directly before a notary.<sup>36</sup>

Cyber notary itself, in reviewing Law Number 40 of 2007 concerning Limited Liability Companies (UU PT), which based on the provisions of Article 77 of the Law, states that GMS can be held using teleconferences and video conferences so that all members can participate in the meetings held. Also, automatically, the presence of a notary is mandatory as contained in the provisions of Article 20 of the Company Law that terms of changes to the company's articles of association must be submitted through a notary deed to the minister and the amendment to the articles of association is also contained in the deed of the appointed notary, whereby the amendment to the articles of association is one of the agendas that can only be discussed at the GMS so that the notary is automatically required to be present at the GMS meeting,<sup>37</sup> Furthermore, carry out their duties and functions when necessary.

<sup>33</sup> Luh Anastasia Trisna Dewi, Legal Aspect of Cyber Notary, *Journal of Policy Law and Policy*, Volume 1, Nomor 1, 2021, hlm. 38.

<sup>34</sup> *Ibid*

<sup>35</sup> Muhammad Fernando, Abdul Salam, Urgensi Trusted Third party Sebagai Acuan Autentifikasi Tanda Tangan Digital Dalam Pembuatan AKkta Notaris, *Jurnal Ilmu Sosial dan Pendidikan*, Vol.7, No.8. 2023. hlm. 329.

<sup>36</sup> Zainatun Rosalina, Moh. Bakri, Itta Andrijani, Keabsahan Akta notaris yang Menggunakan Cyber

Notary Sebagai Akta Otentik, <https://meedia.neliiti.com/media/publications/15310-ID-keabsahan-akta-notaris-yang-menggunakan.pdf>.

<sup>37</sup> Amalia, Peran Notaris Dalam Proses Perubahan Anggaran Dasar Perseroan Terbatas, Tesis, program magister Kenotariatan fakultas Hukum Universitas Indonesia, <https://liib.ui.ac.id/file?file=digital/20127-2/2022370168-T37562-Amalia.pdf>, hlm. 13.

Judging from this correlation, it is possible that notaries and other shareholders can participate virtually using the teleconference method.<sup>38</sup>

Apart from the legal rules that support the implementation of cyber notaries in notary practice, the system that supports the work of notaries has been provided with convenience. The use of computers is not only done in terms of doing deeds by a notary but practically in terms of registration of legal entities through the Legal Entity Administration System is proof that notaries are starting to adapt with the help of computers.<sup>39</sup>

Deeds certified by a notary electronically also raise debate about whether they can be considered as authentic as conventional deeds before a notary and attended by witnesses from the parties. As with the mechanism for doing conventional deeds in general, several mechanisms can be carried out, namely: (1) the parties appear and convey their wishes; (2) after hearing the goals and intentions of both parties, the notary is required to take the legal action desired by the client; (3) after knowing the steps that must be taken, the notary then does a deed based on the provisions contained in the law of public notary.<sup>40</sup>

### 3. Electronic Documents are Recognized as Legal Evidence

One of the state's responses to technological and information developments

has been to provide recognition and enforceability of a document product or result of electronic activities. Through the ratification and promulgation of the Electronic Information and Transactions Law, this rule is like a breath of fresh air that provides certainty of the enforceability of electronic evidence to guarantee strong legal certainty for actions carried out electronically. How could it not be that this rule guarantees legal certainty that protects the parties in the search for justice and their right to prove the arguments presented before the court?<sup>41</sup> Likewise, the enactment of the Electronic Information and Transactions Law aims to provide justice, legal certainty, and a sense of security for organizers and users of information.<sup>42</sup>

The power of proof against electronic documents, signatures, etc., which originates from law enforcement practices within the scope of public law and private law which limit the types of evidence accepted before a court. In terms of limiting evidence that can be admissible before the court, namely only limited to evidence contained in provisions 164 Herzien Inlandsch Reglement (HIR) and provisions 1866 of the Civil Code, which limits justice seekers in proving actions that have been carried out electronically such as buying and selling, agreements or contracts

<sup>38</sup> *Ibid*

<sup>39</sup> Ahmad Fauzi, Mekanisme Pendirian Perseroan Terbatas, Publikasi Ilmiah Fakultas Hukum Universitas Islam Negeri Syarif Hidayatullah, <https://repository.uinijkt.ac.id/dspace/bitstream/123456789/30525/1/AHMAD%20FAUZI-FSH.pdf>

<sup>40</sup> Sherly Aulya Purnamasari, Pembuatan Akta Notaris Secara Elektronik Berdasarkan Undang-Undang Jabatan Notaris dan Undang-Undang ITE, <https://fh.unram.ac.id/wp->

<content/uploads/2020/0808/SHERLY-AULIA-P-D1A016289.pdf>

<sup>41</sup> Achmadudin Rajab, Urgensi Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik Sebagai Solusi Guna Membangun Etika Bagi Pengguna Media, *Jurnal Legislasi Indonesia*, Vol 14, No. 4, 2017, hlm. 465.

<sup>42</sup> *Ibid*



made electronically.<sup>43</sup> This has implications for other than the evidence mentioned in these articles, other evidence cannot be used before the trial and does not get the strength of evidence to be considered by the judge.<sup>44</sup>

In the context of criminal law, the position of electronic evidence is seen as no longer based on the limitations of evidence contained in the Criminal Procedure Code. Recognition of the position of the evidence provides guarantees of protection and legal certainty for the parties. This is in line with the affirmation in Article 5 of the Electronic Information and Transactions Law, which explains that electronic documents are legal and the expansion of evidence contained in procedural law in Indonesia.<sup>45</sup>

From a criminal perspective, the position of electronic evidence is recognized as valid and accepted in court. This is as stated in the decision of MK Number 20 / PUU-XVI / 2016, which confirms the position and recognition of electronic documents listed in the Electronic Information and Transactions Law, in which electronic evidence can only be used at the request of the Attorney, Police, and other agencies carrying out law enforcement functions.<sup>46</sup>

Judging from the development of the evidentiary law, juridically, the law in Indonesia from the perspective of proof is quite compatible with the application of

cyber notary. How could it not be seen from the traffic of duties and functions of a notary, which juridically will be very intersecting and will be in dire need of digitizing the work process?<sup>47</sup> Thus products issued by notaries, such as electronic deed documents, recording in special books carried out electronically, and other data collection. Concerning the enforceability of electronic deeds, even if seen from the enforceability of the provisions of Article 5 of the Electronic Information and Transactions Law, it has emphasized and legitimized electronic documents in the evidentiary process before the court.

#### **4. Effectiveness of Implementing Cyber Notary in Indonesia**

Implementing the electronic system in carrying out the duties and functions of a notary has had many influences and major changes in notary practice. Some of the influences of the cyber notary system which has provided many conveniences, namely:<sup>48</sup> (1) the electronic system provides an opportunity for notaries to make and digitally certify deeds as well as digital signing processes and the use of digital certificates to ensure the integrity of document certainty; (2) a management system that is carried out via a computer allows storing, searching for data and information made by a notary much easier and faster; (3) notaries can submit and send

<sup>43</sup> Muntasir, Kedudukan Alat Bukti Elektronik Dalam Hukum Acara Perdata : Menimbang Praktik Pemeriksaan Alat Bukti Elektronik Pada Peradilan Agama,

<https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/kedudukan-alat-bukti-elektronik-dalam-hukum-acara-perdata>

<sup>44</sup> *Ibid*

<sup>45</sup> Lihat Ketentuan Pasal 5 UU Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik.

<sup>46</sup> Theresia Actaviani manurung, Kedudukan Alat Bukti Elektronik Dalam Pembuktian Perkara

Pidana di Indonesia, *Jurnal Kertha Desa*, Vol 10, No. 5, hlm. 371-381.

<sup>47</sup> Jamie Armadi Jaya, Mulyani Zulaeha, Suprpto, Kewenangan Notaris dalam Mensertifikasi Transaksi Elektronik ditinjau dari Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris, *Nolaj*, Vol. 1, No.2, 2022, hlm. 131.

<sup>48</sup> Anugrah Dwi, Mengenal Notaris dan Sistem Elektronik dalam Kenotariatan, Program Pasca Sarjana UMSU, <https://pascasarjana.umsu.ac.id/mengenal-notaris-dan-sistem-elektronik-dalam-kenotariatan/>.

documents through the agreed platform; (4) the registration process that applies an electronic system in several notary jurisdictions; (5) digitization of notary work allows notaries to communicate and consult remotely with clients.<sup>49</sup>

Including cyber notaries in notary practice has also provided many benefits that are felt directly by the notary and the parties. Judging from the authority possessed by a notary, namely: first, making authentic deeds regarding all actions and deeds, agreements originating from the parties or stipulations from legislation that are required to be contained in a notarial deed, ensuring certainty of the date of formation of the deed, storing the deed document providing grosses, copies, and quotation deed.<sup>50</sup>

Second, in addition to the main authority in doing deeds and guaranteeing legal certainty as stated above, the notary also has the authority, namely: (1) to validate signatures, determine the certainty of the date of private letters and record them in a special book; (2) registering and recording private documents in a notary's special book; (3) make a copy of the original letter under the hand in the form of a copy that describes the matters contained in the letter; (4) validation and matching of the original letter with the copy; (5) provision of socialization in the field of law regarding notarial aspects related to their position, function, duties, and authority; (6) can do a deed in the field of

land or; (7) make a deed of minutes of the auction.<sup>51</sup> As well as other powers that originate from laws and regulations.<sup>52</sup>

Viewed from the aspect of authority, these are types of authority that can adapt to technological developments, making deeds that can be done electronically, long-distance legal counseling using teleconference media, and GMS meetings. Meeting notaries, clients, and the public regarding legal counseling at least provide effectiveness and efficiency of travel time and costs for the notary or the parties. The process can be maximized by digitizing the series of deed-making, meetings, and legal counseling, which are carried out conventionally. Especially about the legal counseling process in remote areas can be done by teleconference; it can be attended by the public anywhere with a wider reach than face-to-face legal counseling meetings.<sup>53</sup>

In terms of efficiency, not only in terms of time but also cost efficiency. Not only can travel and meeting costs be cut and eliminated, but other costs can also be minimized using electronic-based services. Of course, adopting an electronic system carried out in notary services reduces activities that require physical processing of files, thus reducing expenses such as printing activities, use of paper, ink, and procurement of maintenance for office needs that a notary should fulfill.<sup>54</sup>

<sup>49</sup> Pande Gde Satria Wibawa, pande Yogantara, Keautentikan Akta Risalah rapat Umum Pemegang Saham (RUPS) Secara Elektronik Dalam perspektif Cyber notary, *Acta Comitatus : jurnal Hukum Kenotariatan*, Vol. 6, No. 3, 2021, hlm. 641.

<sup>50</sup> Lihat Ketentuan Pasal 15 ayat (1) Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris

<sup>51</sup> Lihat Ketentuan Pasal 15 ayat (2) Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris

<sup>52</sup> Lihat Ketentuan Pasal 15 ayat (3) Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris

<sup>53</sup> Desi Bunga Diana, Arsin Lukman, Efektifitas Penerapan *Cyber notary* Dengan Meningkatkan Kualitas pelayanan Pada Era Digital, *Jurnal Ilmu Sosial dan Pendidikan (JISIP)*, Vol 7, No 1, januari 2021, Hlm.313.

<sup>54</sup> Sri Yusfina Yusuf, Ma'mun, 2020, Reformasi Birokrasi Dalam Peningkatan Kualitas Implementasi Reformasi Birokrasi : Teknis

Apart from that, another effectiveness of cyber notary that is felt directly by the notary is the ease of access to searching and managing the required data. Notaries can search, store and manage data by searching for certain keywords, thereby saving time and speeding up the process of providing services notaries perform to their clients. From the aspect of data security, the use of electronic systems ensures the security of notary data, and the use of digital certificates and deeds with encryption technology guarantees that electronic documents remain original from being counterfeited and manipulated. It guarantees the confidentiality and privacy of documents created and stored.<sup>55</sup>

### **Challenges of Implementing Cyber Notary in Indonesia.**

In its implementation, several obstacles hinder the implementation of cyber notaries. Some of these obstacles are described as follows:

#### **1. Limitations of Cyber Notary Regulations in Indonesia**

The legal basis for implementing cyber notaries in Indonesia is in Article 15, paragraph (3) of the law of public notaries. Even though juridically, there have been regulations that form the basis for implementing cyber notaries in Indonesia, the types of arrangements only included in the elucidation of Article 15 paragraph (3) are limited. This is seen in terms of the type of arrangement; in the science of legislation, the explanation of the article has the function of (1) explaining the definition/meaning, the purpose of the regulation of an article, (2) the

explanation is intended to explain the rules which are still vague, contain ambiguity so that the rules which are explained remains consistent with the purpose of the regulation (3) becomes an additional description and supports the formation of the law as an effort to make the intended rules more meaningful and more useful (4) as additional material for judges in interpreting the rules.<sup>56</sup>

However, in the contextualization of a cyber notary in Indonesia, amidst the minimal regulation of cyber notary and the limited regulation and explanation of the concept of cyber notary in Indonesia, moreover the explanation and mention of the phrase cyber notary, which only appears in the elucidation of the article then provide several implications related to the position of the elucidation of the article. This is one of the characteristics of the elucidation of the article, namely that it cannot be used as a basis or material for consideration for making rules, and the explanation may not contain norms. Thus, the cyber notary is listed in a limited manner in the law of public notary; the arrangements are finished here and cannot be followed up with the formation of the rules under it.<sup>57</sup>

Even in several files made by a notary public, they need to recognize the term electronic as a substitute for documents or files that must be made in writing. This is evident in the various explanations and understandings of several types of notary documents contained in the provisions of article 1 of the law of public Notary, whether in the form of a deed, grosse, quotations, and copies of the deed, none of which mentions

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Substantif Administratif Bidang Reformasi Birokrasi, Badan Pengembangan Sumber Daya Manusia Hukum dan Hak Asasi Manusia Republik Indonesia, Jakarta, hlm. 11.

<sup>55</sup> Rifki Primartha, Penerapan Enskripsi dan Deskripsi File Menggunakan Algoritma Data

*Encrypto Standart (DES), Jurnal Sistem Informasi*, Vol.3, No.2, hlm. 370-387.

<sup>56</sup> Jimly Ashidiqqie, 2020, *Perihal Undang-Undang*, Rajawali Press, Jakarta, hlm. 55.

<sup>57</sup> *ibid*

or recognizes electronic mechanisms, both in understanding and in the process of its formation.<sup>58</sup>

This has implications for the implementation of the cyber notary that is being implemented in Indonesia; of course, it confuses for notaries to implement cyber notaries and the transition from conventional practice to electronic notary services. Of course, the cyber notary concept still needs to be further regulated regarding several doubtful things for Indonesian notaries, such as data security and the power to open authentic deeds with an electronic certification mechanism. To improve and clarify the concept and implementation of cyber notaries in Indonesia, it is necessary to amend the law of public notaries with detailed arrangements regarding the implementation of cyber notaries to respond to economic and technological developments.

## 2. Problems of Conflicting Norms in the Implementation of Cyber Notaries in Indonesia

The problem of regulatory limitations and the concept of cyber notary applied in Indonesia has raised other problems, as has been alluded to the opportunities for implementing cyber notary in Indonesia, about the strength of proof and validity of deeds made and or certified by a notary through electronic media.

Problems began to arise when the law of public notary needed to provide regulations on how electronic certificate certification could be carried out for notaries. However, it only regulates the mechanism for making certificates so that several terms and conditions for doing deeds cannot be

fulfilled using electronic certification by a notary. One of the components that cannot be carried out is the process of reading the deed agreed upon by the parties. The reading of the notarial deed itself is a means to re-check the deed that was made to provide confidence for both related parties.<sup>59</sup>

If it is connected with the authenticity of a deed, the reading made by a notary is a mandatory condition that must be fulfilled.<sup>60</sup> Than Toe Kie, in his view, argues that the reading of the deed is necessary to (a) provide an opportunity for the notary to review mistakes in making or certifying the deed, (b) the parties given the right and opportunity to question matters that are not understood or are felt to be unclear in the deed that has been made (c) the notary and the parties are allowed to rethink the contents of the deed that has been made, can change and replace the contents if they are not by what the client intended.<sup>61</sup>

If the deed is not read, the legal implication is that the deed does not have authentication; the deed in the trial process only has the power of proof, like an ordinary or private deed. This is stated in Article 16, paragraph (9) of the law of notary public. Even in this case, implementing the provisions of Article 16 paragraph (7) provides a different understanding that the notary does not have to read the deed if the parties wish to read it themselves.

However, further in the provisions of Article 16 paragraph (8), the notary continues to read both parties, which also reap various problems and legal force if the deed is not read directly in front of both parties. Thus, the phrase requiring the reading of the deed in the presence of the client is tantamount to eliminating the

<sup>58</sup> *Ibid*

<sup>59</sup> G.H.S. Lumban Tobing, 1996, *Peraturan jabatan Notaris*, Erlangga Press, Jakarta, hlm. 201.

<sup>60</sup> Tan Thong Kie, 1987, *Serba Serbi Ilmu Kenotariatan*, Alumni, Bandung, hlm.11.

<sup>61</sup> *Ibid*.

effectiveness of the cyber notary. Of course, implementing cyber notaries in Indonesia is a challenge and a dilemma. Changes and improvements are needed to regulations that implement cyber notaries in Indonesia.

### **3. Problems of Limited Facilities and Infrastructure Supporting the Implementation of Cyber Notary in Indonesia.**

Indonesia's national development is a continuous process to respond to changes in the world globally in all lines of national and state life; national development is responsive to changes in society and social dynamics, especially the emergence of the globalization of information and electronic technology, which makes Indonesian society part of information society and participates in and feel the electronic development of the world.<sup>62</sup> To respond to this development, it is an obligation to fulfill the need for access to information and information technology. So that it is necessary to strive for the development process in the field of information and technology to be carried out optimally, spread, and evenly in all regions in Indonesia.<sup>63</sup>

Digitalization of government will only work in a digital society. The government's efforts to build public awareness through digital literacy, which this digital literacy program aims to help people eradicate poverty through easy access to social, digital services by the government, including convenience for people to carry out their legal actions.<sup>64</sup>

Based on data submitted by the Ministry of Information and Technology in

2021 showed that the number of Internet users in Indonesia is 62.1% of the entire Indonesian population, while based on the digital literacy development index, the development of digital literacy on the island of Java occupies the highest position with an average above 3.54. This understanding of digital literacy is very supportive in the implementation of a cyber notary, especially in carrying out the duties and functions of a notary, where people who are aware of digitalization will easily understand, accept and be able to apply processes of legal action that are carried out conventionally as a digital and electronic process.

However, digital literacy has its problems, namely the problem of the quality of digital literacy in disadvantaged areas. There are at least 62 regencies with the status of underdeveloped areas as stipulated in Presidential Decree No. 63 of 2020, based on data from the Ministry of Communication and Informatics of the Republic of Indonesia that as much as 85% of internet network conditions in underdeveloped areas are often disconnected and inaccessible. Judging from this condition, of course, it will be very difficult for notary practice to be able to work or certify deeds made electronically.<sup>65</sup> It could be in areas with low internet access, preferring to draw up deeds and other legal actions related to notary services by meeting or visiting the intended notary in person.

In the 3T area, of course, it will be the biggest challenge for the notary in carrying out his practice; how can the notary not conventionally have difficulty accessing locations or clients in the outermost areas

<sup>62</sup> Lihat dalam Naskah Akademik Undang-Undang Nomor 28 Tahun 2008 Tentang Informasi dan Transaksi Elektronik, hlm. 10.

<sup>63</sup> *Ibid*

<sup>64</sup> Kementerian Teknologi dan Informasi, Status Literasi Digital di Indonesia 2022,

<https://web.kominfo.go.id/siites/default/files/ReportSurveiStatusLiterasiDigitalIndonesia2022.pdf>, hlm. 5.

<sup>65</sup> *ibid*

with geographical conditions that are difficult to reach and traverse? Apart from that, even digital alternatives experience difficulties because the available internet facilities are not optimal; even in some areas, there is still no electricity, so they cannot reach the internet network as the only link for electronic systems.<sup>66</sup>

In addition to the problems with the limitations above, data released by the Ministry of Communication and Informatics in the same year also shows that the fragmentation of society, both the general public, the government, and the TNI/Polri shows that only 26.7% of the Indonesian people work using laptops or computer devices.<sup>67</sup> While the other 73.3% do not use a laptop or computer device, of course, this will be a challenge for notaries in carrying out their functions and duties, especially in the implementation of cyber notaries, where most Indonesian people do not work in ways or mechanisms that should be required in implementing cyber notaries such as using laptops or computer devices. So it will be difficult for notaries to communicate and send the required electronic data.

## CONCLUSION

Changes to the law on the position of a notary public have provided the legality of implementing cyber notaries in Indonesia. However, cyber notaries can only be implemented by some notaries throughout Indonesia due to regulations and technical implementation constraints. So in its implementation, cyber notary itself has its opportunities and challenges, namely:

1. As for the opportunities for implementing cyber notaries in Indonesia,

namely (1) Indonesia already knows, recognizes, and provides protection for the existence of electronic documents, which are also products produced by notaries through the implementation of cyber notaries (2) From a statutory perspective through the law of notary public it has provided regulation on the implementation of a cyber notary in Indonesia (3) The effectiveness of the implementation of a cyber notary which provides convenience to clients such as no file management fees, time effectiveness, and document security are more guaranteed.

2. The challenge of implementing a cyber notary in Indonesia is based on three aspects: (1) the limited regulation of cyber notaries in Indonesia, which is only regulated in part of Article 15 paragraph (3). Even then, it is limited to explanation only, as a form of expanding the notary's authority to carry out certification in electronic deed; amidst the limitations of the concept, it has implications for types of arrangements that cannot be followed up in the form of derivative regulations because they are only limited to an explanation of the article and are not an explanation of the body of the regulation (2) there is a requirement to read the deed before the party concerned, which of course cannot be done only by relying on the implementation of a cyber notary. They are reading the deed before the parties affect the authenticity of the deed in question. (3) the problem of limited facilities, facilities, and infrastructure to support the implementation of cyber notaries in Indonesia.

<sup>66</sup> Kompas, Sistem kelistrikan Belum tersebar Merata, <https://money.kompas.com/read/2020/10/30/1>

14200326/sistem-kelistrikan-belum-tersebar-merata-menteri-esdm-dorong-teknologi-ini

<sup>67</sup> Kementerian Teknologi dan Informasi, *Op. Cit*, hlm 62.

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