



**JURNAL
POROS HUKUM
PADJADJARAN**

P-ISSN: 2715-7202
E-ISSN: 2715-9418

Volume 5, Number 1, November
2023

Submission:
27 July 2023

Published:
30 November 2023

DOI:
<https://doi.org/10.23920/jphp.v5i1.1405>

Link Publications:
<http://jurnal.fh.unpad.ac.id/index.php/JPHP/issue/archive>

Publisher:
Magister of Laws
Universitas Padjadjaran

ELECTRONIC NOTARY SERVICES BASED ON THE LAW ON THE OFFICE OF NOTARY AND THE LAW ON ELECTRONIC INFORMATION AND TRANSACTIONS

Hasna Aulia^a; Ranti Fauza Mayana^b; Badar Baraba^c

ABSTRACT

The use of the internet or electronic media has become an important part in terms of improving performance both in the field of government agencies and various other professions. One profession that is known in the community is the Notary profession, a Notary as a general official whose job is to provide services to members of the public who need their services in making written evidence, especially in the form of authentic deeds in the field of civil law such as making sale and purchase deeds, deed of establishment of limited liability companies, Deeds of Fiduciary guarantees, Deeds of Inheritance Rights, Deeds of Wills, Deeds of Cooperation agreements and others, establishment of a notary is an implementation of the evidentiary law. This study examines notary services electronically from the point of view of implementation, regulation and legal certainty as an embodiment of the concepts of Cyber Notary and E-Notary. Through a normative juridical approach with descriptive analytical methods it was found that in terms of substance, structure and culture, Indonesia still requires various kinds of adjustments, updates and collaborative strategies to form a harmonization of regulatory aspects, support from technological infrastructure and human resources and trust in the notary's position. Alone. It is necessary to make improvements related to the harmonization of substance in regulations related to the position of Notary and supporting facilities and infrastructure.

Keywords: notary services; cyber notary; e-notary.

INTRODUCTION

Indonesia is a developing and developing country, and the role and function of law for a legal profession is not easier than in developed countries, because there are various limitations that not only reduce the smooth pace of the legal process but also require approaches and thoughts that lead to legal construction adaptive.¹ The rule of law has the principle of guaranteeing legal certainty, order, and protection which is based on truth and justice by the mandate of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.²

^a Master of Notary, Faculty of Law Universitas Padjadjaran, Jl. Hayam Wuruk No. 02 Bandung, Indonesia. email: hasnaaulia98@gmail.com.

^{bc} Faculty of Law, Universitas Padjadjaran, Jl. Hayam Wuruk No. 02 Bandung, Indonesia.

¹ Wiratni Ahmadi, (2016) *Teknik Pembuatan Akta Notaris*, Cetakan Ketiga, Bandung: Logoz Publishing, p. 2

² H. Salim dan H. Abdullah, (2007) *Perancangan Kontrak dan MOU*, Jakarta: Sinar Grafika, pp. 101-102.

The development of information and communication technology has caused world relations to become *borderless* and caused significant social, economic, and cultural changes to take place very quickly. Information technology currently contributes to improving human welfare, progress, and civilization. The current development of information technology also has an impact on the development of electronic systems.³

Electronic systems are used to explain the existence of information systems which are the application of information technology based on telecommunications networks and electronic media, which function to design, process, analyze, display, and transmit or disseminate electronic information. Electronic transactions are *non-face* (without meeting face to face), *non-sign* (not using a real signature), and without territorial boundaries (a person can carry out electronic transactions with other parties even though they are in different countries) using information technology.⁴ The use of the internet or electronic media has become the most important part in terms of improving performance both in the field of government agencies and various other professions. One of the professions that is well-known in society is the Notary profession. A notary according to Article 1 number 1 of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter abbreviated as UUJN) is a public official who has the authority to make authentic deeds and has other authorities as intended in the Law Invite this.

Notaries as public officials are tasked with providing services to members of the public who need their services in making written evidence, especially in the form of authentic deeds in the field of civil law such as making sale and purchase deeds, deeds of establishment of limited companies, deeds of fiduciary guarantees, deeds of inheritance rights, deeds of wills. , Cooperation Agreements, and others. The existence of a notary is an implementation of the law of evidence.⁵ It can be said that a notary is very necessary to ensure the legality of actions and to prevent unlawful actions.⁶

Along with the very rapid development of information and electronic technology, electronic media is widely used as a mainstay platform for communication, coordination, implementation of teaching and learning processes, implementation of various kinds of work, activities, and business transactions as well as the

³ Ronald Halim, Anwar Borahima dan Maskun, (2019). *Penawaran Jasa Notaris Melalui Website*, Vol. 3, Riau, p. 262

⁴ Mariam Darus Badruzaman. (2016). *E-Commerce Tinjauan dari Hukum Kontrak Indonesia*, Vol. 12, Jakarta: p. 20.

⁵ Herlien Budiono. (2013). *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, Buku Kedua, Bandung: Citra Aditya Bakti, p. 220.

⁶ Rudyanti Dorotea Tobing. (2012), *Aspek-Aspek Hukum Bisnis, Pengertian, Asas, Teori dan Praktik*, Yogyakarta: Lasbang Justia, p. 216.

implementation of duties and positions.⁷ It seems that the development of this technology has been interpreted differently in the scope of the implementation of the notary position, starting with the possibility of using electronic signatures which legally must be approved by the Indonesian Electronic Certificate Organizer (PSrE) which is recognized by the Ministry of Communication and Information this legality is one of the rationale for implementing *cyber notary*.

The implementation of the duties and positions of Notaries has long actually utilized electronic means such as the Fiduciary Registration System via online AHU (General Legal Administration), applications for legalization letters for the establishment of legal entities and business entities via online SABH (Legal Entity Administration System) and SABU (Business Entity Administration System).) online as stated in Law Number 40 of 2007 concerning Limited Liability Companies has made it possible to hold General Meetings of Shareholders (GMS) electronically up to the installation of Electronic Mortgage Rights. This is the reason for digitalization in the field of notary services today, but the application of digitalization cannot yet be fully applied to notary services, one of which is the creation of authentic deeds electronically.

Likewise, some regulations can be used as a legal basis for making authentic deeds electronically in Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter abbreviated as the ITE Law). The ITE Law strictly places restrictions on the authority of notaries in making deeds electronically. This can be seen in the provisions of Article 5 paragraph (4) of the ITE Law, which states that:

"Electronic information or electronic documents as referred to in paragraph (1) do not apply to letters which according to law must be made in written form and letters and their documents which according to law must be made in the form of notarial deeds or deeds made by deed-making officials. ".

Nowadays, during the pandemic crisis, there are difficulties in carrying out face-to-face actions, and on the other hand, there is still a need to make authentic deeds, as in the provisions of Article 5 paragraph (4) of the ITE Law above which excludes the making of authentic deeds by Notaries or Deed-Making Officials in electronic form, however, in the implementation of the position of notary, it is still visible that there are forms of services carried out through electronic media.

From the explanation above, the problem can be formulated as follows:

1. How are electronic notary services regulated and implemented in Indonesia based on UUJN and UU ITE?

2. What is the legal certainty regarding electronic notary services in Indonesia?

RESEARCH METHODS

This research uses analytical descriptive research specifications that describe applicable laws and regulations linked to legal theories and the practice of implementing positive law related to problems.⁸ Approach Method The researcher uses a normative juridical approach method by trying to synchronize applicable legal provisions in the practical application of legal regulations in the field and Research Stages. In accordance with the normative juridical method used, literature research will be carried out sourced from statutory regulations, and literature.

DISCUSSION

Regulation and Implementation of Electronic Notary Services in Indonesia

A notary is a state official who has the authority to make authentic deeds. Authentic deeds are a means for the parties to guarantee the rights and obligations of a Notary in the eyes of the law and provide legal protection to interested parties. Therefore, the need for notary services cannot be avoided with the increasing needs of an increasingly modern society. The ongoing modernization has an impact on the inability of existing regulations to accommodate all aspects of human life, in this case, the scope of notary services. Notaries as public officials apart from having the powers mentioned above, it turns out that several regulations also contain other powers than notaries.

Other authorities regulated in statutory regulations include the authority regulated in Law Number 40 of 2007 concerning Limited Liability Companies, regarding matters made in the form of a notarial deed, namely for the establishment of a company made in the form of a notarial deed, changes to the budget basis, power of ownership and deposit of shares, plans for merger, consolidation, takeover or separation of shares, and with the promulgation of the Information and Electronic Transactions Law, notaries are directed to be part of the implementation of electronic transactions.

The presence of the internet has given birth to various conveniences with electronic systems. From this electronic system, various types of Electronic System Implementation emerged which led to the creation of a transaction model known as online transactions or based on electronic systems. From this, two phenomena emerge, namely, on the one hand, it provides benefits for transaction processes that are faster, real-time, and can be

⁸ Ronny Haniatjo Soemitro. (1990). *Metode Penelitian Hukum dan Jurumetri*, Jakarta: PT Ghalia Indonesia, pp. 97-98.

done anywhere, while on the other hand, this creates several challenges, one of which is in the legal field.

According to Bentham, law always undergoes transformation and changes its format from one format to another. The occurrence of this transformation may be caused by an adaptation process or through deliberate efforts starting from reconceptualization processes by thinkers to processes in the form of restructuring by politicians.⁹

This challenge has implications for all aspects, especially in private law, for this reason, the field of notary law is currently being intensively studied regarding Cyber Notary. The cyber notary is interpreted as a notary who carries out the duties or authority of his position based on information technology, which is related to the duties and functions of a notary. , especially in making deeds. Cyber notary has the concept of utilizing technological advances for notaries in carrying out their daily tasks, such as digitizing documents, holding General Meeting of Shareholders (GMS) by teleconference, and other similar things.

Indonesia is one of the countries that is feeling the impact of the Industrial Revolution 5.0 to compete with other countries that have already used digital technology as access to various industrial fields. especially after the implementation of restrictions on public activities, during the pandemic conditions, the shift in public services, especially in the legal sector, has been directed towards information technology-based services.

The implementation of the Notary profession in such a way has been regulated and limited by statutory regulations relating to the duties, authority, and prohibitions on notaries carrying out their positions. Apart from statutory regulations, there is also a Notary Code of Ethics prepared by the Notary Organization which outlines moral norms regarding behavior that is applied and must be followed by notaries in carrying out their profession. In connection with advances in the field of information technology, artificial intelligence will continue to develop and have an impact on notaries in carrying out their positions.

The large number of deeds that must be made by Notaries is accompanied by developments in legal services that continue to vary every day, Notaries are required to always update and deepen their knowledge. Notary is one of the professions in the field of legal services which is also starting to use digital technology in providing services. Notaries are required to understand information technology to manage the resulting legal products.

⁹ Soetandyo Wignyoebroto. (1993). "Hukum, Kebebasan Warga dan Kekuasaan Negara", *Jurnal Hukum dan Keadilan*, Vol. 1 No. 1.

The implementation of Cyber Notary in Indonesia certainly involves several statutory regulations, but in Indonesian statutory regulations there are still contradictory regulations, for example, Articles 15 and 16 of the Law on the Position of Notaries and linked to Articles 11 and 12 of the Law on Information and Electronic Transactions.¹⁰ Apart from the fact that there is still disharmony between several regulations, this raises security issues in the implementation of electronic systems which makes it very strategic.

The digitization of Notary services can be seen from certain activities carried out by the ministry which have been carried out online, such as the Notary's obligation to register monthly Notary reports, reports and checks on registration of wills and several other things related to company registration which must be registered through the General Legal Administration system (AHU). Online certificate checking, electronic mortgage registration and so on.

As time goes by, changes in technology and information are becoming more rapid and some notary services have switched electronically, but this is not yet strictly regulated by law, although some experts say that Article 15 paragraph (3) UUJN is an expansion of authority for Notary and is the entry point for the concept of electronic Notary in Indonesia. Article 15 paragraph (3) UUJN states "Notaries have other authorities regulated in statutory regulations", and the explanation of Article 15 paragraph (3) UUJN states regarding other authorities that can be exercised by Notaries, one of which is to certify transactions electronically, however, It is not clearly regulated what kind of certification can be carried out by a Notary electronically, and its presence is not explicitly contained in the body of the UUJN but only in the explanation of the article.

One example of the electronic service system that has been used by Notaries is General Legal Administration (AHU), which is felt to be very helpful, whereas before the implementation of the AHU system, registration of a Limited Liability Company (PT) took up to months. However, after this system is in place, registration only takes a maximum of 2 days, and the notary can also easily provide certainty of time to clients.

Then in the licensing sector, the government issued policies including, Presidential Regulation Number 91 of 2017 concerning the Acceleration of Business Implementation, which was followed by the issuance of Government Regulation of the Republic of Indonesia Number 24 of 2018 concerning Electronically Integrated Business Licensing Services, and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2018 concerning Registration of Limited Partnerships, Firm

¹⁰ Awalludin Norsandy, (2020). *"Peran Notaris Dalam Perjanjian Melalui Media Elektronik Berdasarkan Undang-Undang ITE"* (Yogyakarta: Universitas Islam Indonesia) p. 61.

Partnerships, and Civil Partnerships. Several of these regulations are interrelated and support each other, especially in efforts to accelerate the development of the business world by providing convenience and speeding up services, especially in the licensing sector.

The implementation of electronic or online registration is also implemented in the fiduciary registration system, the registration address can be easily accessed at fidusia.ahu.go.id. With the implementation of the content system, there is no longer a need for face-to-face contact with officers at the counter. This fiduciary registration can be carried out by the fiduciary recipient, their proxies, or their representatives. After registration, the certificate will be automatically obtained online. Thus, printing certificates can be done yourself. Apart from the online registration feature, the website also contains information about the goods being guaranteed. With this information, anyone can find out whether the item being guaranteed is still registered or not.

Apart from these services, there are still many menus on the website that can be accessed by Notaries, including Associations which are implemented based on the Regulation of the Minister of Law and Human Rights Number 10 of 2019 concerning Amendments to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2016 concerning Procedures. How to Submit an Application for Legalization of a Legal Entity and Approval of Changes to the Association's Articles of Association.

Furthermore, regarding Foundation Legal Entities which are regulated in the Regulation of the Minister of Law and Human Rights concerning Amendments to Regulation of the Minister of Law and Human Rights Number 2 of 2016 concerning Procedures for Submitting Applications for Legalization of Legal Entities and Approval of Changes to the Articles of Association and Submitting Notifications of Changes to the Articles of Association and Amendments Foundation Data.

A will is also something that needs to be recorded, because the will takes effect when the testator dies, for this reason, the recording of wills is facilitated by the state, and the arrangements for recording wills are carried out based on the Regulation of the Minister of Law and Human Rights concerning Procedures for Reporting Wills and Applications for Issuing Certificates of Wills Electronically.

A number of the services mentioned above are services that seek to support Notaries in carrying out their positions related to government bureaucracy, so that they can reduce the amount of time needed to process a Notary product, for this reason, the government is in its efforts to issue regulations relating to the Notary product.

Some of these regulations are considered a reflection of Article 15 paragraph (3) UUJN which states that Notaries have other authorities to certify transactions carried

out electronically, which in this case is interpreted as implementing a Cyber Notary. As in practice, the implementation of Cyber Notary in Indonesia is still limited to regulations. In the sense that it is not enough to be contained in Article 15 paragraph (3) UUJN.

The limitations of this regulation make it disharmonious between UUJN as the basis for implementing the position of notary and the regulations for implementing digital certification, especially products that are under the Ministry of Law and Human Rights as described above. According to the author, this regulation becomes disharmonious because of several the regulations relating to Article 15 paragraph (3) above are contradictory to the regulations in the digital certification sector.

The next obstacle to implementing the Cyber Notary concept is in terms of the legal system adopted by Indonesia. Cyber Notary is adopted by countries that adhere to the Anglo-Saxon legal system (common law), such as England, the United States, Canada, North America, and Australia. Public notaries in common law countries are not appointed by authorized officials so they are not bound by the form or format of certain deeds regulated by law. In the Cyber Notary concept, documents created by a notary are electronic.

Indonesia is still experiencing its dilemma, but Indonesia must determine which approach will be taken, whether the Cyber Notary approach as intended in the provisions of Article 15 paragraph (3) UUJN which is interpreted as another authority for Notaries to certify transactions carried out electronically, or whether they will use an approach initiated and mostly adopted by Continental Europe through the E-Notary concept.

Furthermore, will this concept be placed as an additional provision or as a complement to existing provisions such as the Cyber Notary provisions which are positioned as another authority of the Notary or is it a change to the provisions relating to the position of Notary in the sense of a shifting change in the sense of digitalization Notary services and product?

Answering this dilemma is by trying to continue to harmonize the legal system adopted by Indonesia, namely Continental Europe, for this reason, Indonesia is directed to choose the E-Notary concept as in the Continental European legal system which emphasizes Notary products on perfect evidentiary strength.

As a result of choosing the E-Notary concept, regulations will of course change which will have an impact on the shift towards the digitalization of Notary services as well as their products, because the regulations, especially those governing Notary positions, are only adequate for the implementation of Cyber Notary or are only limited to services. Notary Public.

The implementation of electronic Notary services is an important harmonization process related to deed authentication requirements because it involves several statutory regulations, therefore Indonesia must make improvements related to harmonization of regulatory substance between UUJN and related laws such as the ITE Law, Civil Code and implementing regulations so that Notaries can carry out their duties and positions without obstacles and keep abreast of current developments.

Legal Certainty of Electronic Notary Services in Indonesia

A Notary holds the trust of the state to carry out professional activities in the field of civil law. Therefore, Notaries must play an active role in helping to make the government's program successful regarding the implementation of online services in many agencies. Conditions like this certainly bring shifts to the Notary profession. To support their profession, Notaries should move quickly to improve their services through electronic systems (cyber notary).

Technological sophistication can enable Notaries and parties to no longer be limited in the dimensions of space and time because, with the cyber notary concept, it is hoped that in the future it will be able to fulfill all transaction activities carried out both domestically and abroad, so that wherever the parties stay, they can still carry out their business activities without any space and time constraints.

A progressive notary means being progressive in a mindset that always acts not only by adhering to positive legal norms, but also always exploring various forms of legal action that can be stated or formulated in the form of an authentic deed. So that the development of Information and Communication Technology can give birth to changes so that the role and performance of Notaries can be optimized and not left behind in following these changes in accordance with the demands of modern society and the rapidly developing times. So, a Notary must also be able to provide the best service and maximum possible satisfaction to the public in accordance with the demands of current developments as a form of implementation of the action pattern and professional attitude pattern of a Notary.¹¹

Practices and procedures for making authentic deeds emphasize preventive justice which creates and maintains legal certainty in the interests of society and avoids prosecution. The influence of advances in information technology on the position of notary in the future in Indonesia will be determined by two factors, namely legal politics and legal awareness.

¹¹ Habib Adjie, (2013). *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*, Surabaya: PT. Refika Aditama, p. 56.

In 2013 the Ministry of Law and Human Rights launched the Electronic Fiduciary Security Registration Administration System. This is proven by the issuance of Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 9 of 2013 concerning the Implementation of Electronic Registration of Fiduciary Guarantees and 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 in order to improve services to people who need legal services in the field of fiduciary guarantees. The aim of implementing electronic registration of fiduciary guarantees is to improve legal services for registering fiduciary guarantees easily, quickly, cheaply and comfortably, so applications for registration of fiduciary guarantees are carried out electronically.

The electronic fiduciary registration administration system was established as an effort to prevent repeat fiduciary cases. However, the reality in the electronic fiduciary registration system in 2013 is different from the main objective of establishing the system. In the fiduciary guarantee registration form in this system there is no column to fill in a description of the object that is the object of the fiduciary guarantee. As a result, the Fiduciary Guarantee Registration Statement and Fiduciary Guarantee Certificate do not include a description of the object that is the object of the fiduciary guarantee. This clearly contradicts the requirements in Article 13 paragraph (2) UUJF which stipulates that the fiduciary guarantee registration statement must at least contain:

- 1) identity of the Fiduciary Giver and Recipient;
- 2) date, number of the Fiduciary Guarantee Deed, name and location of the notary who made the Fiduciary Guarantee Deed;
- 3) data on the main agreement guaranteed by fiduciary;
- 4) description of the objects that are the object of the Fiduciary Guarantee;
- 5) guarantee value; And
- 6) the value of the object that is the object of the Fiduciary Guarantee

At the beginning of 2021, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (hereinafter referred to as KemenATR/BPN) has issued a legal product, namely Regulation of the Minister of ATR/Head of BPN Number 1 of 2021 concerning Electronic Certificates, which is the basis for the implementation of electronic certificates. This provides a huge opportunity for cyber notary to be implemented in Indonesia's positive legal system. This regulation means that the implementation of land registration, which was previously carried out conventionally, can be carried out electronically, both for first-time land registration and data maintenance. Even though there are already regulations regarding electronic certificates, digitalization in the notary world is not that easy, the implementation of cyber notary in

Indonesia is hampered by the classic reason which has always been the main reason why cyber notary cannot be implemented, namely the norm of having to be physically present when making a deed and not being able to do it in person. electronically because you have to do it on paper as stated in the UUJN and UUJN-P. Apart from that, Article 5 paragraph (4) letter b of the ITE Law also excludes notarial deeds in the context of electronic information and/or electronic documents as legal evidence, giving the potential for legal problems for notaries, whether civil, administrative or even criminal.¹²

In order to implement the social distancing or physical distancing policy to prevent the spread of Covid-19 (Corona Virus Disease), everyone is asked to be able to carry out work remotely or work from home in order to reduce the risk of transmission through physical contact. carry out their work, in other words, as long as it is not work that requires physical presence, then all work or legal actions required can be carried out electronically or using an electronic (online) communication system. All parties are expected to immediately adapt to transform their work, including the good legal services they provide. Therefore, the COVID-19 pandemic situation is clear evidence of the need to create legal certainty in the implementation of Cyber Notary so that legal certainty is guaranteed for the community at large as well as certainty for the relevant officials. So that Cyber Notary can be used as a modern solution not only in dealing with pandemic situations, but also in dealing with Industrial Revolution 4.0 situations.

Cyber Notary and Electronic Notary (E-Notary) in Indonesia are still at the conceptual and regulatory level apart from the provisions of Article 15 paragraph (3) UUJN which states that Notaries have other authorities regulated in statutory regulations, in the explanation it is stated that what is meant with "other authorities regulated in statutory regulations" including the authority to certify transactions carried out electronically (cyber notary).¹³ Even though technological advancements make it possible to carry out notary positions electronically and remotely, in Indonesia this cannot currently be implemented considering that the main paradigm underlying UUJN is built on conventional mechanisms such as paper-based documents and physical presence. (physical presence).¹⁴

In the Cyber Notary concept, the task of a public notary is more about carrying out administrative processes combined with security technology as part of the implementation of the CIAANA Principle of Secured Transaction. by placing a stamp/seal on a document/agreement as a form of administration or registration of

¹²Eri Pramudyo,Ranti Fauza Mayana,Tasya Safiranita Ramli, (2021). "Tinjauan Yuridis Penerapan Cyber Notary Berdasarkan Perspektif UU ITE dan UUJN" *Jurnal Indonesia Sosial Sains*, Vol. 2, No. 8.

¹³Pasal 15 ayat 3 Undang-Undang Jabatan Notaris.

¹⁴Ranti Fauza Mayana. (2021). "Legalitas Tandatangan Elektronik: Possibilitas dan Tantangan Notary Digitalization di Indonesia", *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan*, Volume 4, Nomor 2.

documents and not playing a role in making the contents of the deed, therefore public notary is not a position that is always held by a legal expert (jurist) which is based on the basic principles of the ideas of the American Bar Association Information Security Committee 1994 regarding Cyber Notary which consists of:

- (a) *Trust when transacting between parties over the internet*
- (b) *the security of the transmission*
- (c) *the integrity of the content of the communication; and*
- (d) *the confidence that such transactions will receive legal recognition that a binding contract is enforceable.*

Electronic Notary (E-Notary) as a proposed concept was initiated by the French Delegation at the TEDIS (Trade Electronics Data Interchange System) Legal Workshop-European Union 1989 in Brussels where in essence the Notary was placed as a party who presents an independent record of an electronic transaction carried out by the parties.¹⁵ This difference is rooted in the authority of Notaries in Continental European countries or also known by the Latin term Notary as a profession held by legal experts (jurists) who produce products in the form of authentic deeds that have perfect evidentiary power in the Continental European legal system.¹⁶

In terms of the widespread implementation of E-notary where the implementation of the duties and positions of Notaries as well as products in the form of electronic documents, it is necessary to mitigate standardization or forms of storing minutes of deeds as well as mechanisms for providing copies and grosse.

Both the Cyber Notary and E-notary concepts require comprehensive legal components for their implementation, based on legal system theory, Lawrence M. Friedman stated that the success of law enforcement depends on 3 (three) elements of the legal system, namely substance, structure and legal culture. Apart from this and reflecting on the current global situation, we can begin to view the concept of Cyber Notary or E-Notary as a need and urgency to be developed gradually towards a comprehensive and applicable implementation through a strategic renewal design in terms of regulations, infrastructure and culture. so that it can be implemented effectively.¹⁷

¹⁵ Leslie G. Smith, *The Role of the Notary in Secure Electronic Commerce*, Information Security Institute Faculty of Information, Queensland University of Technology, p. 1.

¹⁶ Herlien Budiono, (1998). *Akta Otentik Notaris Pada Sistem Hukum Anglo Saxon dan Sistem Hukum Romawi, Percikan Gagasan Tentang Hukum Ke-III*, Kumpulan Karangan Ilmiah Alumni FH Unpar, Bandung, Mandar Maju, p. 104.

¹⁷ Eri Pramudyo, Ranti Fauza Mayana, Tasya Safiranita Ramli. (2021). "Tinjauan Yuridis Penerapan Cyber Notary Berdasarkan Perspektif UU ITE dan UUJN" *Jurnal Indonesia Sosial Sains*, Vol. 2, No. 8.

We can begin to view the concept of Cyber Notary and E-Notary as a need and urgency to be built gradually towards comprehensive and applicable implementation through designing strategic reforms in terms of regulations, infrastructure, and culture so that they can be implemented effectively. The most important thing for the Indonesian State to pay attention to when it comes to usefulness and legal certainty is that whichever concept is adopted, Indonesia to make improvements related to harmonization of the substance of regulations between UUJN and related laws as well as improvements in terms of implementing regulations as codes of conduct in their implementation.

Legal certainty regarding electronic notary services can already be measured for several notary services because in practice several information technology-based notary services already have arrangements in place, one of which is the Fiduciary Registration System via online AHU (General Legal Administration), application for a legalization letter for the establishment of a legal entity and business entities through online SABH (Legal Entity Administration System) and online SABU (Business Entity Administration System) as stated in Law Number 40 of 2007 concerning Limited Liability Companies, it is possible to hold General Meetings of Shareholders (GMS) electronically and what is new is apostille.

If we look closely at the moment, the concept of E-Notary, especially in making deeds electronically, cannot yet be implemented, but that does not mean that it is not possible forever, because if we look at Article 5 paragraph (2) and paragraph (3) of the ITE Law, it can be confirmed that these two paragraphs provides an opportunity for the realization of the E-Notary concept, but this does not mean that there is an opportunity to implement the concept so that there is neglect without improvements to the supporting components of the E-Notary concept itself.

It would be a consequence for Indonesia if it shifted Notary service practices from conventional to a digital system, both in terms of services and products issued to make improvements about:

1. Harmonization of substance in related regulations

Indonesia needs to harmonize regulations related to Notaries because the implementation of the E-Notary concept should not become a system that is not based on rules, these improvements include both general rules and implementation rules.

The regulations intended for reform are the Civil Code, UUJN as the basic regulations for the position of Notary, the ITE Law in connection with regulations in the field of information technology, as well as the code of conduct that regulates each individual who carries out the position of Notary;

2. Supporting facilities and infrastructure

The transition from conventional to digitalization must be supported by electronic system infrastructure that is reliable, certified, and accessible. Efforts are made to provide this infrastructure to be centralized on one platform that has high security, even though it can be accessed by the public in general and especially notaries as service providers.

It is hoped that this infrastructure will also be able to minimize leakage of essential data needed in making Notarial deeds, as well as be able to minimize violations of the code of ethics committed by Notaries.

CONCLUSION

The regulation and implementation of electronic notary services in Indonesia have been accommodated in the UUJN for electronic notary services as a manifestation of the notary's other authority contained in Article 15 paragraph (3) UUJN to carry out digital certification which is interpreted as Cyber Notary, however, Cyber Notary is felt to be lacking. In line with the continental European legal system, Indonesia is directed to adopt the E-Notary concept by shifting the implementation of notary positions towards digitalization accompanied by policy changes in the notarial sector and the need for other supporting facilities and infrastructure and the Civil Code as well as improvements in terms of implementing regulations.

Legal certainty regarding electronic notary services in Indonesia can already be measured for several notary services because nowadays several information technology-based notary services already have arrangements, one of which is the Fiduciary Registration System via online AHU (General Legal Administration), application for a letter of legalization of establishment legal entities and business entities through online SABH (Legal Entity Administration System) and online SABU (Business Entity Administration System) as stated in Law Number 40 of 2007 concerning Limited Liability Companies have made it possible to hold General Meetings of Shareholders (GMS) electronically, however must make improvements related to the harmonization of substance in the regulations relating to the position of Notary as well as supporting facilities and infrastructure.

It would be best to harmonize the UUJN, ITE UU, and other laws related to Notary services, so that Notaries can carry out their duties and positions without obstacles and keep abreast of current developments, and it is necessary to carry out research based on academic ability in terms of choosing a good E-Notary concept from in terms of the legal system adopted and conformity with the legal culture of Indonesian society so that there is no dilemma in selecting the concept for implementing the office of Notary.

The government should consider implementing electronic notary services and immediately study digitalization in the field of legal services carried out by notaries, both studies covering procedures for implementation and all other supporting aspects that can provide a sense of security for users of notary services and of course create legal certainty.

REFERENCES

Books

- Amiruddin dan Zainal Asikin. (2004). *Pengantar Metode Penelitian Hukum*, Jakarta: PT Raja Grafindo Persada.
- Awalludin Norsandy. (2020). *"Peran Notaris Dalam Perjanjian Melalui Media Elektronik Berdasarkan Undang-Undang ITE"* Yogyakarta: Universitas Islam Indonesia.
- H. Salim dan H. Abdullah. (2007). *Perancangan Kontrak dan MOU*, Jakarta: Sinar Grafika,
- Habib Adjie. (2013). *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*, Surabaya: PT. Refika Aditama.
- Herlien Budiono. (1998). *Akta Otentik Notaris Pada Sistem Hukum Anglo Saxon dan Sistem Hukum Romawi, Percikan Gagasan Tentang Hukum Ke-III*, Kumpulan Karangan Ilmiah Alumni FH Unpar, Bandung: Mandar Maju.
- Herlien Budiono. (2013). *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, Buku Kedua, Bandung: Citra Aditya Bakti.
- Ronny Haniatjo Soemitro. (1990). *Metode Penelitian Hukum dan Jurumetri*, Jakarta: PT Ghalia Indonesia.
- Rudyanti Dorotea Tobing. (2012). *Aspek-Aspek Hukum Bisnis, Pengertian, Asas, Teori dan Praktik*, Yogyakarta: Lasbang Justia.
- Soerjono Soekanto dan Sri Mamudi. (2003). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: PT Raja Grafindo Persada.
- Soerjono Soekanto, (2006). *Pengantar Penelitian Hukum: Cetakan ke-3*, Jakarta: UI Press.
- Wiratni Ahmadi. (2016). *Teknik Pembuatan Akta Notaris*, Cetakan Ketiga, Bandung: Logoz Publishing.

Journals

- Eri Pramudyo, Ranti Fauza Mayana, Tasya Safiranita Ramli. (2021). *"Tinjauan Yuridis Penerapan Cyber Notary Berdasarkan Perspektif UU ITE dan UUJN"* *Jurnal Indonesia Sosial Sains*, Vol. 2, No. 8 August 2021.
- Leslie G. Smith, (2006) *The Role of the Notary in Secure Electronic Commerce*, Information Security Institute Faculty of Information, *Queensland University of Technology*.

Ranti Fauza Mayana. (2021). "Legalitas Tandatangan Elektronik: Possibilitas dan Tantangan Notary Digitalization di Indonesia", *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* Volume 4, Nomor 2, June 2021.

Soetandyo Wignysoebroto. (2021). "Hukum, Kebebasan Warga dan Kekuasaan Negara", *Jurnal Hukum dan Keadilan*, Vol. 1 No. 1.

Legislation

Kitab Undang-Undang Hukum Perdata.

Undang-Undang Jabatan Notaris.

Undang-Undang Informasi dan Transaksi Elektronik.