

## **Comparison of Legal System Related to Implementation of Cyber Notary in Indonesia With Common Law And Civil Law System**

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### **Abstrak**

*Di masa teknologi modern seperti sekarang ini dan terlebih lagi dalam keadaan pandemi Covid-19, disebut juga cyber notary yang mengharuskan semua posisi pekerjaan khususnya perihal ini posisi notaris dalam melaksanakan kewenangan dan tugasnya selaku notaris dengan teknis dengan basis teknologi terkhusus terkait urgensi pembuatan akta notaris dengan elektronik. Pada Pasal 16 Ayat (1) huruf m Undang-Undang Jabatan Notaris (Law 2-2014) mengharuskan seorang notaris dalam membaca akta di hadapan penghadap dengan di hadiri oleh sekurangnya 2 (dua) orang saksi serta diberikan penandatanganan ketika itu oleh para pihak, notaris serta saksi. Sementara Undang-Undang Informasi Transaksi Elektronik (UU ITE) pada Pasal 5 Ayat (4) yang memberi batasan dengan melakukan pengecualian akta notaril tidak masuk pada kategori dokumen atau informasi elektronik. Sehingga pembuatan akta dengan elektronik tidak mendapatkan dasar hukum yang signifikan maka belum memberi jaminan kepastian hukum khususnya terkait autentisitas dan keberadaan dari akta elektronik tersebut. Metode penelitian yang dipergunakan yakni dengan metode penelitian hukum normatif yang mempergunakan pendekatan perpu dan analisa konsep hukum dengan bersumberkan dari meteri hukum primer atau sekunder. Hasil penelitian menunjukkan bahwa konsepsi cyber notary ini pada pembuatan akta elektronik dirasakan harus terdapat pengaturan yang memberikan aturan dengan jelas seperti apa syarat atau ketentuan untuk pembuatan akta notaris atau autentik yang dilaksanakan dengan mempergunakan konsep cyber notary. Sehingga notaris dapat melaksanakan tugas jabatan tersebut tanpa berlawanan dengan peraturan perundang-undangan dan undang-undang.*

*Kata kunci: akta notaris; cyber notary; dokumen elektronik*

### **Abstract**

In the era of modern technology as it is today and even more so in the Covid-19 pandemic, cyber notaries require all work positions regarding notaries carrying out their authorities and duties as notaries with technology-based techniques, especially regarding the urgency of making a notary deed. Article 16, Paragraph (1), letter M of the Law on Notary Positions (UUJN) requires a notary to read the deed in front of the audience in the presence of at least 2 (two) witnesses, and be signed by the parties, the notary and the witness. Meanwhile, the Electronic Transaction Information Law (Law 19/2016) in Article 5, Paragraph (4), which provides limitations by making exceptions to notarial deeds does not fall into the category of electronic documents or information. So, the making of an electronic deed does not get a significant legal basis. It does not guarantee legal certainty, especially regarding the authenticity and existence of the electronic deed. The research method used is the normative legal research method that uses the Perpu approach and analysis of legal concepts sourced from primary or secondary legal materials. The results show that the concept of a cyber notary in the making of an electronic deed must have rules regarding the terms or conditions for making a notary or authentic deed that is carried out using the concept of a cyber notary. So, the notary can carry out his duties without contradicting the laws and regulations.

Keywords: notarial deed; cyber notary; electronic document

### **Introduction**

Notaries are tasked with assisting and providing services to the public regarding a particular legal act. Activity restrictions due to Covid-19 create obstacles for notaries in carrying out their duties, consulting and making agreements (Edwar and others, 2019). Efforts that can be carried out by a notary when faced with this situation are implementing e-notary through electronic media with voice call or video call features. The idea of a cyber notary in terms of making an authentic deed electronically has long been discussed. The cyber notary is a concept that uses technological developments for notaries in preparing authentic deeds in cyberspace (Nurita 2012). Cyber notaries can assist notaries in carrying

out their duties, for example, related to the electronic handing of deeds and the General Meeting of Shareholders (GMS) by teleconference.

The implementation of information technology in the inauguration of a notary deed according to a cyber notary is a concept where a notary can work with existing developments on a technology basis, namely cyber notary, which is a public notary by performing a service with document notary services electronically (Wijanarko and others, 2015). This concept was born because there are new technologies along with the times that can affect the work of a notary, especially regarding time efficiency. These technologies include digital signatures and video conferencing.

Making a notary deed electronically is one of the goals of the concept of a cyber notary, which makes it easy for notaries in carrying out the process of making a deed. Turns out that it has weaknesses related to the authenticity of the deed. Making a deed electronically needs to pay attention to certain characteristics and conditions so that the deed can be said to be authentic and has good evidentiary power, for example, an authentic deed that is not prepared electronically.

The community's need for authentic deeds is increasing along with the increasing economic development. Viewed from the perspective of legal actions, there are legal actions that have conditions to be poured into the form of an authentic deed. The community's need for law tends to always develop and be dynamic in line with the development of information and technology. Therefore, the law should always develop following the development of society, not become an obstacle to the development of society. The increase in social and economic activities with the constellation of the world community has entered an information-oriented society.

The notary cyber institution is a legal breakthrough that is carried out to meet the legal needs of society, especially for notaries in the era of globalization. But the cyber notary institution still has shortcomings both in terms of meaning and conceptualization in making deeds through cyber notary institutions. However, in its regulation, the concept of a cyber notary cannot be implemented effectively and efficiently due to the legal vacuum between meaning and implementing regulations rather than the cyber notary itself. So the cyber notary institution has been regulated but has a legal vacuum in the perspective of its meaning. In a legal vacuum, it certainly has consequences for notary cyber institutions, thus causing difficulties in carrying out one of the notary's powers. This meaning can have implications in which the legal actions of a notary can be applied through a notary cyber institution. The concept of a cyber notary does not have a limit of meaning. In this case, the provisions contained in the Law on the Position of a Notary against a cyber notary result in it being unable to be implemented. However, when referring to other laws and regulations, for example on the provisions regarding the General Meeting of Shareholders (GMS), the results of the minutes of the GMS are notarial deeds in the form of the official deed (relaas acten).

The presence of a notary authority in the cyber notary field is an answer to the demands of current technological developments. A social reality shows that the rapid development of information technology has changed people's patterns and behavior, including in business transactions, which have shifted from conventional patterns through face-to-face or offline contracts to electronic contracts online. Information technology transactions are no longer required to be carried out face to face but can be carried out

through the use of information technology so that the parties do not have to deal directly with each other. These technological developments will certainly influence the implementation of the position of a notary who has the main authority to make an authentic deed.

The application of a cyber notary is an important harmonization process. Although, there are requirements related to the authentication of the deed because it includes several laws and regulations. This is because there are rules that may contradict each other, such as Article 15 of the Law 2/2014 and Article 16 of the Law 2/2014 associated with Articles 11 and 12 of Law Number 11 of 2008 and Law Number 19 of 2016 concerning Electronic Information and Transactions (Law 19/2016). The main authority of a notary is the making of a deed. In the application of a cyber notary, a notary will face several obstacles, one of which is the necessity for the appearers to sign the deed. (2) Law 2/2014).

Based on Law no. 2 of 2014 in Article 15 Paragraph (1) and (2) regarding amendments to Law No. 30 of 2004 concerning the Position of a Notary (new Law 2/2014), in the elaboration of Article 15 Paragraph (3) Law 2/2014, No. 2 of 2014 is to carry out the certification of transactions carried out electronically (cyber notary) (Bahri and others 2019). However, the drawback is that there are no complete rules regarding the cyber notary's authority. Thus, it can be stated that this word is only explained in the elaboration in the latest Article 15 Paragraph (3), but it does not explain the purpose of a cyber notary. There are no rules regarding cyber notaries, which further causes notaries to have doubts about using the concept of the cyber notary, so this has hampered the growth of the notary profession to provide necessary services to citizens. Although the concept of cyber notary exists in the Law 2/2014, the regulation has not been able to provide an answer that this conception can be practiced and provides legal certainty.

Based on the explanation of Article 15 Law 2/2014, a notary has the authority to make an authentic deed relating to all acts, agreements, and provisions required by law. This authority is carried out by a notary to formulate the order of the parties as outlined in the authentic deed, taking into account the applicable legal regulations. The special authority exercised by a notary is regulated in Article 15 paragraph (2), which are ratifying the signature and setting the date of the letter by registering it in a special book, recording the letters by registering them in a special book, making copies of the letters under the hands in the form of a copy containing a description as written and described in the letter in question, ratifying the suitability of the photocopy with the original letter, providing legal counseling in connection with the making of the deed, making the deed related to land, and making the minutes of the auction. In addition, a notary has special authority to make corrections to writing errors or typos contained in the minutes of deed that have been made by making a Minutes of Corrections and a copy of the Minutes of Corrections and is obliged to submit them to the parties.

Media Conference Zoom is a video conferencing service based on cloud computing. With Zoom, one can meet other people virtually through voice calls and video calls between one person and another at the same time (real-time). In addition, conversations made with this application can be directly recorded so that they can be saved and watched at a later time. In Zoom, more than two people can communicate with the media of a room that is

used to conduct meetings, lectures, seminars, and others. The room on Zoom is created by a host and can be enforced by password imputing for someone who wants to enter the room. So not just anyone can enter the room except for people who are invited and told about the room password.

The inauguration of the deed, if carried out using the Zoom Conference media, has not been able to justify its legality or validity by applicable laws and regulations. When referring to Article 1 number (7) Law 2/2014 that a notarial deed is an authentic deed made by or before a notary according to the form and procedure stipulated in this law. In addition, Article 16 paragraph (1) letter m of the Law 2/2014 states that a notary must read the deed before an appeared. It can be seen here that it is not clear whether the word "before" in these articles must be face-to-face at the notary's office or allowed to deal with virtually through electronic conference media.

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This research is based on 3 (three) research originalities. The first research conducted by I Dewa Gede Cahaya Dita Darmaangga and I Dewa Ayu Dwi Mayasari that the formalization of the deed when carried out with the media conference The legality or legitimacy of Zoom cannot be justified. This can be seen here when connected with the blurring of norms in Article 15 paragraph 3 regarding electronic transactions (cyber notary) does not explain further regarding electronic transactions (cyber notary) so that legal consequences arise is the uncertainty in its application because it is not explained further about how the appearers in the formalization of a deed the parties must physically facing the Notary's office or may be present before the Notary however virtually or via electronically by using the media conference that has been allowed. (Dita Darmaangga & Mayasari, 2021)

The second by Maharani T, Parman L and Hayanul Haq L. The regulation of the norms regarding the Cyber Notary system in Indonesia is in the Law, namely a. Law No. 2 of 2014 concerning changes to Law No. 30 of 2004 concerning Notary Position. b. Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law), c. Law No 40 of 2007 concerning Limited Liability Companies, and for Australian Countries, how many CyberNotary Arrangements are explained in the 1999 / Electronic Electronic Transaction Act Transactions Act 1999 / ETA (Australia). The difference lies in Indonesia having its own rules in which there is clearly stated authority in carrying out the profession of notaries including in connection with the identification of transactions electronically (Cyber Notary), while Australia does not have its own specific rules that explain explicitly the authority of notaries in serving Cyber systems. Notary, because the service mechanism is part of the form of electronic transactions that are regulated in the 1999 Electronic Transaction Act / Electronic Transaction Act 1999 / ETA. The equation is seen in the Function, the Cyber Notary System is equally a government regulation in the form of public servants quickly,

concisely, and has the value of legal protection on all parties. in Indonesia with the Registration of Online Companies, through the Legal Entity Administration System or abbreviated as SABH, and in Australia with the e-apostille system. In terms of its objectives, namely the implementation of the Cyber Notary system in the two countries, which are both aimed at raising the potential of the economy and trade inside and outside the country.(Maharani et al., 2019) The third from Widiiasi N. Notary's authority in certifying transactions carried out legally electronics is the same as the authority to carry out legalization owned by Notary, this authority includes the authority to ensure the truth the certificate is mainly the signature contained in the certificate, so the signature contained in the certificate can be ascertained is the signature of the parties and not signed by anyone else, other than that, the status or The identity of the parties must also be verified, along with the date on the electronic certificate. As well as the related forms of notary accountability authority to carry out the certification is the same as responsibility of the notary in carrying out legalization.(Widiasih, 2020)

Based on what has been mentioned above, it is interesting to conduct research on legal certainty and the concept of the cyber notary in the preparation of electronic deeds by a notary relating to harmonization and synchronization with other perpu, regulations, and a comparison of state legal systems that adhere to common law and civil law. So that the notary, in carrying out his authority and duties, has a strong legal standing and can accommodate the interests of the community in this era of globalization and digitalization, especially in preparing electronic deeds.

### **Research Method**

The type of research used for writing this research is normative legal research, namely research in testing an existing provision or norm. It can also be stated as research carried out by technically observing secondary data or library materials. The approach technique used is the conceptual approach which has come from various doctrines and various views that have grown in legal science.(Tomy Michael, 2022)

### **Research Results and Discussion**

#### **Concept of Cyber Notary Among Countries Adhering to Common Law and Civil Law Legal Systems**

By observing developments in several countries, both in the form of Common Law and Civil Law, many countries have empowered the function and role of notaries in electronic transactions. Therefore, like it or not, Indonesia must also stimulate the implementation of notary services in electronic transactions. Even to the point of providing notary services themselves electronically. The concept of a cyber notary is widely used by Common Law countries. It is known that among the various legal systems that exist in the world, they are broadly divided into two legal systems, the Anglo-Saxon legal system or the Common Law System, and Continental Europe or Roman legal system or the Civil Law System. The Anglo-Saxon legal system is a legal system where the priority is an unwritten law that develops in the midst of people's lives and is used by judges in resolving cases directed at them, which generally uses a jury system at trial. And the evidence is prioritized in the presence of witnesses. Written evidence is only a supporter of witness statements, while the Continental

European legal system is a legal system where the law is made in written and codified form, which in terms of proof is prioritized on written evidence (Riyanto 2020).

This also affects the practice of notaries in the world, which is also broadly divided into two schools, namely Latin Notaries and Anglo-Saxon Notaries. Latin notaries are adopted by countries that adhere to the Civil Law System, while Anglo-Saxon notaries are adopted by countries that adhere to the Common Law System. The Civil Law System entered Indonesia at the beginning of the 17th century, based on the historical search of the "Republik derVerenigde Nederlanden" era. In 1620, Melchior Kerchem was appointed the first notary in Indonesia (Kuspratomo and Wahyuningsih 2020). The origin of this Latin Notary school started in the Northern Italy area. From Northern Italy, it also expanded to France, the Netherlands, and Indonesia with the presence of Vereenigde Oost Indische Compagnie (VOC) (Ridwan 2020). The group of countries that adhere to the Civil Law System in European countries such as the Netherlands, France, Luxemburg, Germany, Austria, Switzerland, Scandinavia (Denmark, Sweden, and Norway), Italy, Greece, Spain, and also their former colonies. While the groups included in countries that adhere to the Common Law System are the UK, the United States, Canada, Australia, and South Africa (Amanda and Rizkianti 2021).

The meaning of cyber notary was first mentioned by the American Bar Association (ABA) around 1994. This concept means that someone must carry out cyber notary activities according to specialization in the field of law that is mastered and also uses computers. This concept is perceived as having the same function as a notary to facilitate international transactions. This authenticity is done by making electronic documents that can be verified with legal capacity and financial responsibilities. The concept of cyber notary has its origins that can be traced in the legal system, namely the common law system and civil law. Two legal terms are often used and made synonymous, namely "electronic notary" (e-Notary) and "cyber notary". In addition, the French delegation from a legal workshop forum created by the European Union in 1989 in Brussels, Belgium, also explained the term cyber notary and its essence. E-Notary makes a notary a party who can provide an independent record presentation of an electronic transaction that has been made by the parties (Adi Krisna and Purwadi 2018).

For countries that follow the legal system of Continental Europe, the authority of a notary is very different from that of a notary in countries that adhere to the Anglo-Saxon legal system. Notaries in countries that adhere to the Continental European legal system or Latin Notaries are a profession carried out by legal experts (jurists) who are held for life or until they enter retirement. Latin Notaries can provide advice to their clients in making written evidence. The authority of notaries in countries that adhere to the Anglo-Saxon system is only the registration of documents, which for notaries in Indonesia who adhere to the Continental European legal system is *waarmerking* (registration of letters under the hand). Notaries in the Anglo-Saxon legal system did not play a role in making and determining the contents of the letter/deed. In addition, to become a notary in countries that adhere to the Anglo-Saxon system, on average, he does not undergo education as a jurist and has served for a certain period first. A deed that is a product of a Latin Notary has the power of formal, material evidence and, for certain legal actions, also has executive power. The strength of written evidence in the form of an authentic deed has the highest, strongest, and

most complete place or perfect evidence in the Continental European legal system. This makes the position of a notary in the Continental European legal system important, considering his duties and authority in making authentic deeds (Kuspratomo and Wahyuningsih 2020). Therefore, the application of the concept of the cyber notary in the Common Law system will not affect the strength of the deed. Notaries in Indonesia who use the Civil Law system see that the deed made by and before a notary is authentic. Thus, in the Common Law System country, the concept of a cyber notary can be widely applied. This is certainly different in countries that adhere to the Civil Law System, where this is due to differences in legal characteristics, especially in this case, the differences in the notarial legal system between the two systems.

In its implementation, countries that adhere to Civil Law respond by establishing their own CA (Certification Authority)/CSP (Certified Service Provider) technology to support the use of electronic signatures/digital signatures from notaries who are members (Hague Conference on Private International Law (Hague Conference on Private International Law (HCCH) 1961). This was implemented among others in Italy, Spain, Germany, Belgium, and France so that notaries can submit copies of deeds made by notaries electronically.

France and Belgium made changes to their legal systems to accommodate e-authentication by changing the rules in their Civil Code. Other countries, such as the Netherlands and Germany, made changes to the regulations/laws governing the position of a notary, especially provisions related to authentic deeds that open the interests of the validity of electronic signatures, by emphasizing a minimalist approach (functional equivalent approach) for electronic signatures and a technological approach through cryptography as long as it meets the identification requirements (the electronic signature can be identified), no objection to the contents of the document (content approval) and guarantees related to the integrity of the document (content approval). integrity) (Sitompul 2012). When these elements are met, the judge will receive the electronic signature as evidence in court.

Although Indonesia is not yet a member of the Hague Convention on Apostilles, the provisions related to electronic documents and electronic information, including electronic signatures, have been widely recognized and become best practices in exchanging documents used in international trade. Regarding the possibility of implementing an electronic/digital signature on a notary deed and its legality, there are three important aspects of an authentic deed that need to be considered, namely the strength of formal proof, the strength of material evidence, and the power of binding to third parties, in the sense that there is no denying power (Sutantio and Oeripkartawinata 2005). This must be accommodated by a notary, both in his position as a Trusted Third Party (T3P) and as an e-notary service provider. The effectiveness of the notary's role, both in cyber notary and e-notary, will require the existence of electronic system infrastructure, the certainty of interconnection, and notary access to the Public Registration System (Public Registries) and related electronic information such as population data and land records.

## **Legal Certainty of Notary Deeds Made Electronically Related to the Concept of Cyber Notary**

Since the issuance of the Appeal Letter from the Central Management of the Indonesian Notary Association (CM-INA) on March 17, 2020, the notary office is recommended to minimize activities outside the office or in the office if there are no urgent needs or tasks that must be completed, maximally they can be completed at home. . For the elaboration of Article 15 Paragraph (2) of the Law 2/2014 Number 2 of 2014, it is explained about the authority of a notary to carry out certification of transactions carried out electronically (cyber notary). However, the elaboration of that article is contrary to the norms of another article, namely Article 1 Number 7 Law 2/2014 Number 2 of 2014, which states that a notary deed is an authentic deed prepared by or before a notary based on the procedures and forms specified for the Law 2/2014. The meaning is, juridically, the use of the words facing, facing, before, and facing in Article 1 Number 7 of Law 2/2014 Number. 2 of 2014 is a real presence. The point is that physically, the related appearers come before the notary of his own free will (Mahmoud and others, 2014). The explanation of Article 15 Paragraph (3) of the Law 2/2014 is also considered to still have a vague meaning (vague norm) because it has not provided a clear understanding, even though it has been contained in the legislation. Certification in terminology means a stage, manufacture, or way of providing certification. The result of this is a certificate that is meaningful as a sign in the form of a printed or written statement from the party who has the authority and can be used as proof of ownership or evidence of an incident (Winarno 2015).

The implementation of a cyber notary creates a conflict between the provisions of Article 15 and Article 16 Paragraph (1) of the Law 2/2014 Number 2 of 2014. Article 15 explains that the other authority referred to is the authority of a notary in carrying out transaction certification with a cyber notary. Article 16 Paragraph (1) explains the elements of the authenticity of a deed as stated in Article 1868 of the Civil Code. Article 15 Paragraph (3) explains that the other authority for this purpose is the authority to certify electronic transactions or what is called a cyber notary. This authority is deemed inappropriate if it is referred to as certification because its true meaning is to strengthen electronic transactions so that they can be considered legal (legal) (Din 2019).

In Article 16 Paragraph (9) Law 2/2014 No. 2 of 2014, there are rules regarding the legal consequences that arise when a notary does not carry out the provisions of Article 16 Paragraph (1) in letter M as well as in Paragraph (7) of the Law 2/2014. The legal consequence that can be caused when the deed is made electronically is the occurrence of degradation of the legal certainty of the deed. If the notary does not read the deed that has been made before the parties, the strength of the evidence of the deed is made a deed under the hand except for the will as explained in Article 16 Paragraph (10) Law 2/2014. The deeds that have been degraded into underhand deeds have proven power that cannot be equivalent to an authentic deed. Notaries must comply with all obligations that have been required by law because any violation carried out by a notary can impact the deed made. Making an authentic deed by a notary aims to provide legal certainty to a legal event experienced by the parties. The notary deed becomes one of the tools of good evidence so that a legal act in question does not need to be proven again as long as the untruth cannot be



proven. Deeds made electronically cannot provide the necessary legal certainty regarding legal events experienced by the parties.

So it is the same with the rules that form the legal basis for making electronic deeds in the Law 19/2016, Information and Electronic Transactions Law No. 11 of 2008. This regulation expressly limits the authority of a notary to prepare a deed electronically. This matter can be reviewed for the provisions of Article 5 Paragraph (4) of the Law 19/2016. This law explains that electronic documents and/or electronic information, as described in paragraph (1), do not apply in a letter based on the law and need to be compiled in written form with a letter, with the document Based on the law. It needs to be compiled in a notarial deed or a deed prepared by the officer who made the deed. Therefore, the existing notarial deed, which was prepared electronically, does not have legal force as valid evidence based on the provisions of the Law 19/2016.

The narrow meaning of electronic documents or electronic information regulated in Article 5 Paragraph (4) of the Law 19/2016 makes a notarial deed that has been prepared electronically by a notary deemed unable to be used as legal evidence or cannot suffice the strength of perfect evidence, such as an authentic deed. Legal provisions, regarding authentic deeds regulated in Law 2/2014 in Law Number 30 of 2004, Law 2/2014 Law No. 2 of 2014, and Law 19/2016, give the meaning that the implementation of the development of information technology to prepare authentic deeds electronically by a notary is still difficult to implement because the legal provisions that provide rules regarding the authenticity of the authentic deed are still an obstacle for the stages of preparation of the deed which is prepared electronically by a notary. Edmon Makarim (Makarim 2020) explained that there is no prohibition on the preparation of electronic copies for the legislation on the position of a notary, but problems have the potential to arise due to the obligation to time markers and readings that show the time and/or date on which certain events occurred (time stamping). Therefore, various parties who make transactions with a notary agree on the time that will be used in advance for an electronic transaction. This is because a notary, as a public official, has the authority to draw up an authentic deed, and the originality of a deed is prepared before a notary in line with the requirements that need to be carried out in the deed he prepared. In letter c, it states that what is in the document and letter is also the fingerprint of the appearer of the Minutes of Deed. And in letter m, it is stated that reading the deed before the appearer is accompanied by at least 2 or 4 special witnesses in making an underhand will deed, and given Signature at that time by the appearer, notary and witness.

In making the deed of the GMS via teleconference or Zoom conference, where the meeting participants are in a different place from the other participants, it should be stated explicitly to avoid the deed being under the hands. In contrast to the making of a conventional GMS deed, the closing part of the deed has explained that meeting participants, witnesses, and notaries are at the same place and time. From the explanation above, it can be concluded that the legal position of the deed of minutes of the GMS, which is implemented through electronic media such as the Zoom conference, is an authentic deed if it uses the legal principle of *lex specialis derogate legi generali* where the *lex specialis* is Article 77 Paragraph (1) jo. Elucidation of Article 77 Paragraph (4) of the Company Law, while the *lex generalis* is Article 16 Paragraph (1) letter m. The concept of a cyber notary does not violate

the principle of the obligation to keep the contents of the deed secret for a notary as regulated in Article 16 Paragraph (1) letter f. That is precisely where the problem lies because of inadequate regulations. The potential for violations is wide open. In this case, the Law 2/2014 is not enough to be the basis for a cyber notary. The obligation to keep the contents of the deed secret is still guaranteed by law even though there are exceptions in the Corporate Crime Act, such as the right to keep secrets will be void (Merlyani and others, 2020).

In the context of electronic transactions, there are implementing regulations issued by the Ministry of Communication and Informatics. But they need to be regulated further because there have been changes to the Law 19/2016, as well as government regulations. The concept of electronic transaction certification, which has been normalized in the Kominfo regulations, is still at the identity verification stage to obtain an electronic signature account. The concept is that when someone wants to register their electronic signature, that person can meet or appear before a notary to verify their identity. Furthermore, the notary is given a certification that the person concerned is worthy and appropriate to obtain a digital signature. However, it has not been possible, as long as the Law 2/2014 has not been changed because many articles collided, especially Articles 15 and 16, which can result in the deed being degraded into a private deed. Several things are regulated in the Law 19/2016, namely regulating the registration for digital signatures that can also be carried out by the position of a notary, which, in essence, has accommodated the concept of a cyber notary. Then it is also regulated by several laws, such as the Government Administration Law, which stipulates that the position of a notary is one of the officials who are given the authority to declare ratification of copies of documents made by government officials.

The Central Board of the Indonesian Notary Association (CM-INA), with Circular No. 67/35-III/ CM-INA/2020, has provided guidelines for Notaries to describe the position in the state of working from home, namely as and what they classified can be postponed: a. to re-arrange the schedule for signing the deed with the appearers, until the situation is more likely to be implemented; b. provide recommendations for other notary partners whose circumstances provide the possibility of carrying out the position; c. In the agreement, meeting, or deed, based on the regulations of the Perpu, the document can be compiled under the hand, so that the clause "will be stated or made back on the authentic deed as soon as possible after the Covid-19 emergency is revoked by the government". Then the deeds that cannot be postponed include: a. land deeds; b. Deeds regarding the change of legal institutions and registration; c. Deeds relating to interactions between individual legal subjects such as debts, marriage agreements, and notarial wills with the registration.

The clause regarding physically facing becomes an inhibiting factor in making a deed electronically, which causes the strength of proof of a deed to be imperfect. The community needs a dynamic attitude from a notary as a public official, regardless of the obstacles and legal certainty related to the authenticity and existence of an electronic deed.

### **Conclusion**

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) of the Law 2/2014, which states that notaries have other authorities regulated in the legislation. In the explanation, it is stated that what is meant is other authorities regulated in laws and regulations, including the authority to certify transactions conducted electronically (cyber

notary). Although technological advancements allow for the implementation of notary positions electronically and remotely (online and remotely), in Indonesia, this cannot be implemented at this time considering that the basic paradigm underlying Law 2/2014 is built based on conventional mechanisms, such as paper-based documents and physical presence. The civil law system in notarial law in Indonesia views a deed made by and/or before a notary as an authentic deed, which according to Article 1870 of the Civil Code, is perfect evidence that there are formal requirements in its making. Apart from this, and reflecting on the current global situation, we can see the concept of cyber notary or e-notary as a necessity and urgency to be built in stages towards comprehensive and applicable implementation through a strategic renewal design in terms of regulation, infrastructure, and culture, to be implemented effectively.

The application of the concept of the cyber notary in the Common Law system will not affect the strength of the deed. While notaries in Indonesia who use the Civil Law system view the deed made by and before a notary as an authentic deed. Thus, in the Common Law System country, the concept of a cyber notary can be widely applied. This is certainly different in countries that adhere to the Civil Law System, where this is due to differences in legal characteristics. The State of Indonesia, as a modern legal state, certainly cannot escape developments outside the law. This can be seen from the word cyber notary in the Elucidation of Article 15 Paragraph (3) of the new Law 2/2014, but the application of the concept of cyber notary should be adapted to the national legal culture that is in line with effective legal changes where legal changes must be in accordance with the legal culture. Therefore, according to the researcher, harmonization is needed between the Elucidation of Article 15 Paragraph (3) of the new Law 2/2014 and Article 1 Point 7 of the new Law 2/2014.

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