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# Juridical analysis of the legal certainty of cyber notary in making authentic deeds by a notary

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**Abstract**
The rapid development of information and communication technology has had an impact on the field of notarial law, which has led to an idea known today as cyber notary. Notaries are required to be able and able to use the cyber notary concept in order to create a service that is fast, precise and efficient, so as to accelerate the rate of economic growth. The authority of a notary is regulated in Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notaries (UUJN). The authority of a notary in the cyber notary concept is explicitly mentioned in the explanation of Article 15 paragraph (3) UUJN. This research examines the form of notary authority regarding the concept of cyber notary in terms of statutory regulations and the legal certainty of cyber notaries in making authentic deeds by notaries. This legal research is normative research using a statutory approach and a conceptual approach. The research results show that the possibility of expanding notary authority in the cyber notary concept can be found not only in the UUJN, but also in Law Number 40 of 2007 concerning Limited Liability Companies and Financial Services Authority Regulation Number 16/POJK.04/2020 of 2020, related the authority of a notary in making notarial deeds regarding the holding of an electronic General Meeting of Shareholders (GMS). The provision of Notary services that utilize technological advances in making authentic Deeds does not yet have legal certainty because there is no harmonization of regulations related to the authority of Notaries in making Deeds electronically. Indonesia needs efforts and support from various stakeholders, especially policy makers, notaries and the public regarding legal certainty in the implementation of cyber notary. Legal certainty can only be achieved if there is a legal basis that clearly regulates cyber notaries.

**Keywords:** Cyber notary, deeds, notary

## Introduction

The development of the world of Information Communication Technology has had a significant positive impact on various areas of human life today. The development of communication media is increasingly advanced day by day and is able to provide more effective and efficient services and functions in communication. Among the media that can do this are computers, gadgets and other devices, now every one of us can easily access the internet.

Advances in information and communication technology have had a positive impact on many sectors of human life. Apart from providing more effective and efficient services in communication, with the development of communication through cyberspace or what is often referred to as cyberspace, it provides the absence of dimensional boundaries. A world that knows no borders, "borderless world" is a name that is often used to describe how fast and fast the pace of technological development is which has a significant contribution, especially in communication technology, such as as an intermediary between individuals, community groups and corporations in an agile manner without knowing time or without must present the parties to be able to communicate and be present face to face. This rapid development also had an impact on the field of notarial law, which made it an idea known today as cyber notary.

It cannot be denied that information technology is the basis for almost all aspects of life, from economics, social culture, education, to law. Since the enactment of Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law), slowly but surely buying and selling transactions have shifted from conventional to electronic-based, hence the name e-Commerce. Not only that, in the line of government administration, especially public services, electronic-based services are also being prioritized, so e-Government has emerged. This is as stipulated in the government program, namely, the development of Information Technology and Telecommunications with the term e-Government.

The implementation of e-Government is a mandate of Presidential Instruction Number 3 of 2003 concerning National Policy and Strategy for e-Government Development in Indonesia. In terms of public services, there is one type of non-government service but it is very closely related to the implementation of public services and is heavily regulated because its duties and functions are regulated by law, namely notary services. Notaries in carrying out their duties are based on statutory regulations, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (hereinafter referred to as UUJN). The provisions of the Notary Position Regulations and the Notary Position Law essentially state that the main task of a notary is to make authentic deeds. In Article 1870 of the Civil Code (hereinafter referred to as the Civil Code) it is said that an authentic deed provides an absolute agreement to the parties who make it.

Thus, the importance of the notary's position lies in the notary's authority given by law to make absolute instruments or means of proof and therefore the authentic deed is essentially considered correct. So it is very

important, especially for parties who need it for personal or business matters. Notaries are an extension of the government, in this case the state. The state has entrusted Notaries to carry out some of the state's affairs or duties, especially in the field of civil law.

As an official who has the authority to make authentic deeds, notaries have been given the authority in the UUJN to make various authentic deeds. The Notary's authority is regulated in Article 15 UUJN. The authority to make authentic deeds is stated in Article 15 paragraph (1) UUJN which is the general authority of a notary and Article 15 paragraph (2) UUJN describes the special authority of a notary. The special authorities include: 1) Validate the signature and determine the exact date of the underwritten letter by registering it in a special book; 2) Book documents privately by registering them in a special book; 3) Make copies of original letters under your own hands in the form of copies containing descriptions as written and depicted in the letter concerned; 4) Validate the suitability of the photocopy with the original letter; 5) Providing legal counseling regarding the preparation of deeds; 6) Make deeds related to land; and 7) Make a deed of auction minutes.

Notary services to the public are still conventional, but along with the development of information technology which inevitably forces every line of life to transmigrate from conventional systems to electronic systems, notary services are also shifting towards electronic-based services, or what is known as cyber notary. The role of the notary is required to be able to participate in the development of technology and information, because in an electronic transaction it is very possible for the intervention of a notary as a trusted third party like the role of a notary in conventional transactions. It is very inappropriate if notaries still use conventional methods in providing services in the field of electronic transactions, because speed, timeliness and efficiency are really needed by the parties. The development of the function and role of notaries in electronic transactions was then popularized with the term Cyber Notary. Notaries are required to be able and able to use the cyber notary concept in order to create a service that is fast, precise and efficient, so as to accelerate the rate of economic growth.

The rapid development of human lifestyles towards information and telecommunications technology has brought various conveniences that can enable relations between humans to take place quickly and easily without taking into account aspects of space and time. One of the results of this development is teleconferencing or what is known as teleconference. Teleconference is communication carried out by people connected to a server from various parts of the world. Teleconferences generally consist of 3 (three) types, namely audio conferences, video conferences and web conferences. The type of teleconference that is often used is video conference. Video conferencing is a set of interactive telecommunications technology that allows 2 (two) or more parties in different locations to interact via sending 2 (two) directions of audio and video simultaneously.

At the time of determining the health emergency status, the Indonesian Government on March 31 2020 determined that Indonesia was experiencing a health emergency due to COVID-19 based on Decree of the President of the Republic of Indonesia Number 11 of 2020 concerning the Determination of the Corona Virus Disease 2019 (COVID-19) Public Health Emergency. The government issued Government Regulation of the Republic of Indonesia Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19), hereinafter abbreviated as PP No. 21/2020 concerning Large-Scale Social Restrictions.

Article 1 PP No. 21/2020 concerning PSBB stipulates that in this Government Regulation, what is meant by Large-Scale Social Restrictions are restrictions on certain activities of residents in an area suspected of being infected with COVID-19 in such a way as to prevent the possibility of the spread of COVID-19. The provisions in the PP are reaffirmed in Article 13 paragraph (1) of the Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 6 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19) which regulates that the implementation of Large-Scale Social Restrictions Major includes: a) Closeures School and Office; b) Restrictions on religious activities; c) Restrictions on activities in public places or facilities; d) Social and cultural restrictions; and e) Restrictions on other activities specifically related to defense and security aspects.

Various existing regulations require social distancing and physical distancing in all community activities. It cannot be denied that the spread of COVID-19 has had a direct impact on several sectors of life, such as education, social and economic. It cannot be denied that one of those directly affected by COVID-19 is the notary profession. Notaries are affected because the Notary's office is one of the places recommended to be temporarily closed due to COVID-19, except in several areas where the spread of COVID-19 is relatively low, which is currently better known as the green zone.

There are also terms in cyber notary, CA (Certification Authority) or PsrE (Electronic Certificate Organizer) which are directly managed by the Directorate of Information Security, Indonesian Ministry of Communication and Information. PSrE is an abbreviation of Electronic Certificate Provider which aims to provide efficient, safe and practical certificate and digital signature services for the digital ecosystem in Indonesia. With cyber notaries, notary jobs are required to be fast and careful by changing conventional notary services to become more modern and sophisticated.

The idea of a cyber notary actually emerged in 1995. However, the lack of a legal basis hampered the development of this effort. Since Law Number 11 of 2008 concerning Information and Electronic Transactions was passed, discussions regarding the concept of cyber notary have resumed. The authority of a notary in the Cyber Notary concept is explicitly mentioned in the explanation of Article 15 paragraph (3) UUJN which reads "What is meant by "other authority regulated in statutory regulations", includes, among other things, the authority to certify transactions carried out electronically (cyber notary), making deeds, endowment pledges, and airplane mortgages." Based on the explanation of this article, a notary has the authority to certify transactions carried out via cyber notary.

Based on the background above, the main problem that will be researched is the form of notary authority regarding the concept of cyber notary reviewed in statutory regulations

and the form of legal certainty for cyber notaries in the rules for making authentic deeds by notaries. The objectives to be achieved from this research are as follows: 1) to determine and analyze the form of notary authority regarding the cyber notary concept in statutory regulations; and 2) to determine, analyze and explain the form of cyber notary legal certainty in the rules for making authentic deeds by notaries based on the notary position law.

## Method

This type of legal research is normative juridical research. Normative juridical is law conceptualized as what is written in statutory regulations (law in books) or law conceptualized as rules or norms that become a benchmark for human behavior that is considered appropriate. The research approach used is a conceptual approach and a statue approach.

The sources of legal materials in this research consist of primary legal materials, secondary legal materials and tertiary legal materials. Primary Legal Materials consist of all legal rules that are formed or made officially by a state institution, and/or government bodies. Secondary legal materials consist of various kinds of literature and opinions of legal experts relating to issues which include literature in the form of books, research results (law), scientific works (about law), papers, articles and other relevant documents. Tertiary legal materials legal materials that provide meaningful instructions or explanations for primary and secondary legal materials, such as legal dictionaries, encyclopedias, etc.

This research uses a qualitative juridical analysis method, namely in the form of an in-depth interpretation of legal materials as is common in normative legal research. Next, the author will connect the results of the analysis to the problems in this research to produce an objective assessment to answer the problems in the research.

## Results and Discussion

### Form of Authority Regarding the Cyber Notary Concept Reviewed In Legislation

Notary authority in UUJN can be divided into three authorities, namely General Authority, Special Authority, and other authorities which will be regulated later. The general authority of a notary is regulated in Article 15 UUJN, namely that a notary has the authority to make authentic deeds regarding all deeds, agreements and provisions that are required by statutory regulations and/or desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosses, copies and quotations of deeds, all as long as the preparation of the deeds is not assigned or excluded to other officials or other people as determined by law.

Based on the explanation of Article 15 UUJN above, a Notary has the authority to make authentic deeds relating to all acts, agreements and provisions required by law. The authority to make an authentic deed means that the notary's duty is to formulate the wishes of the parties as stated in the authentic deed, taking into account the applicable legal regulations.

The special authority of a notary is regulated in Article 15 paragraph 2, namely validating signatures and determining the date of private letters by registering them in a special book, recording private letters by registering them in a special book, making copies of original private letters in the form of copies. which contains the description as written and depicted in the letter concerned, validates the suitability of the photocopy with the original letter, provides legal counseling in relation to making deeds, makes deeds relating to land, and makes auction minutes. Notaries also have special authority as regulated in Article 51 UUJN, namely to correct writing errors or typographical errors contained in the Minutes of a signed deed, by making a Correction Minutes and a copy of the Correction Minutes and are obliged to deliver them to the parties.

One of the other authorities regulated later is the authority for notaries to certify transactions carried out electronically which is found in the Elucidation to Article 15 paragraph (3) UUJN. Notaries obtain the authority to certify through attribution authority. Attribution is authority obtained directly from the law. The norms regulated in article 15 paragraph (3) UUJN, in the explanation, state that one of the powers of a Notary is to certify transactions carried out electronically (cyber notary). In this case, cyber notary is not regulated in the body of the UUJN material, in order to answer this problem, a legal discovery is needed through legal construction or interpretation methods. Legal interpretation is used if there are no statutory provisions that can be directly applied to the legal problem at hand, or in cases where the regulations do not exist, so there is a legal vacuum (recht vacuum). The method of interpretation or legal interpretation is used because if a concrete event is not clearly and firmly adhered to in a statutory regulation.

In carrying out the interpretation of laws and regulations, grammatical interpretation is always carried out first, because in essence, to understand the text of the laws and regulations, the meaning of the words must first be understood. It should be noted that the phrase cyber notary is in brackets. According to the Big Indonesian Dictionary, parentheses have the meaning of punctuation marks (...) that enclose additional information or explanations. Grammatically, the phrase cyber notary which is located in parentheses, is additional information or explanation than the previous phrase. So in this case, cyber notary from the perspective of grammatical interpretation can be interpreted in a limitative way regarding "the authority to certify transactions carried out electronically", so this authority applies limitatively only to one authority, namely with regard to the certification of transactions carried out electronically.

According to Article 1 number 10 of the ITE Law, the electronic certification organizer must be a legal entity and the product produced is an electronic certificate. If we refer to these provisions, it is clear that a notary cannot carry out electronic certification because a notary is not a legal entity, as explained in Article 1 number 10 of the ITE Law as follows: "Electronic Certification Organizer is a legal entity that functions as a party worthy of trust, which provides and audits Electronic Certificates."

However, the regulation of a notary's participation in the electronic transaction certification process is clearer, namely in Article 27 of the Minister of Communication and Informatics Regulation Number 11 of 2018 concerning the Implementation of Electronic Certification, which states: "Regarding the application as intended in Article 25, the Electronic Certification Organizer may: a) Carry out your own inspection; b) Appoint a registration authority to carry

out the inspection; and/or c) Appoint a notary as the registration authority."

The notary's authority in the article above is to be appointed as a registration authority, which is the delegated authority of the electronic transaction certification organizer because the notary is responsible for the completeness of the requirements submitted by the certificate applicant. As a notary registration authority, the task is to carry out the checks mentioned above in the form of verifying the correctness of identity and checking the completeness of the documents being examined. The equipment in question includes: a) Name; b) Single Identity Number (NIK), passport number, or business entity NPWP; c) Electronic mail address; d) Telephone number; e) Answers to security questions; and f) Biometric data.

One of the authorities of a Notary whose implementation includes the cyber notary concept is fiduciary registration. This is as mandated by Article 5 paragraph (1) of Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Guarantees (hereinafter referred to as UUJF) which mandates that the encumbrance of objects with fiduciary guarantees is made by notarial deed in Indonesian and is a fiduciary guarantee deed. This fiduciary is carried out in two stages, namely imposition and registration. Based on Article 12 paragraph (1) UUJF, it is stated that registration of fiduciary guarantees is carried out at the fiduciary registration office.

The implementing regulations of the UUJF are the issuance of Government Regulation of the Republic of Indonesia Number 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and Fees for Making Fiduciary Guarantee Deeds (hereinafter referred to as PP No. 86 of 2000). Article 2 paragraph (2) PP No. 86 of 2000 states that registration applications are submitted in writing in Indonesian through the office by the fiduciary recipient, proxy or representative by attaching a fiduciary guarantee registration statement. The application for registration of fiduciary guarantees must be accompanied by supporting documents. One of them is as regulated in Article 2 paragraph (4) letter a PP No. 86 of 2000 which states that applications for registration of fiduciary guarantees must be accompanied by a copy of the notarial deed regarding the imposition of fiduciary guarantees. Looking at the provisions contained in PP No. 86 of 2000, it can be seen that registration of fiduciary guarantees is still done manually.

PP No. 86 of 2000 was replaced by Government Regulation of the Republic of Indonesia Number 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees and Fees for Making Fiduciary Guarantee Deeds (hereinafter referred to as PP No. 21 of 2015). Considering letter a PP No. 21 of 2015 states that to improve fiduciary security registration services easily, quickly and at low cost, it is necessary to carry out electronic fiduciary security registration services. Article 2 paragraph (2) PP No. 21 of 2015 states that applications for registration of fiduciary guarantees are submitted through the electronic fiduciary registration system. Then Article 7 paragraph (2) PP no. 21 of 2015 states that fiduciary guarantee certificates are signed electronically by officials at the fiduciary registration office. The presence of this electronic fiduciary registration service can certainly help the work of Notaries.

The notary acts as the recipient of power of attorney from the creditor (fiduciary recipient) to register fiduciary guarantees. In this case, the law does not require a Notary to register a fiduciary guarantee, but a Notary can be authorized by the creditor to register the fiduciary guarantee. Notaries who can be applicants for online fiduciary registration are Notaries who have a user ID and password from the Directorate General of General Legal Administration, Ministry of Law and Human Rights of the Republic of Indonesia, who have complied with the provisions of applicable laws and regulations, and are authorized by the applicant to register. fiduciary guarantee. The presence of this electronic fiduciary registration service can certainly help the work of Notaries.

Fiduciary guarantee registration can be accessed via fidusia.ahu.go.id by a notary. In Article 3 PP No. 21 of 2015 explained in relation to the Application for registration of Fiduciary Guarantee as intended in Article 2 contains: a. identity of the Fiduciary Giver and Fiduciary Recipient; b. date, Fiduciary Guarantee deed number, name and location of the notary who made the Fiduciary Guarantee deed; c. data on the principal agreement guaranteed by fiduciary; d. description of the object that is the object of the Fiduciary Guarantee; e. guarantee value; and f. the value of the object that is the object of the Fiduciary Guarantee.

Article 8 PP No. 21 of 2015 also explains that the Fiduciary Guarantee Certificate can be printed on the same date as the date the Fiduciary Guarantee is recorded in the Fiduciary Registration Office database. In general, the registration of fiduciary guarantees is a change from manual to electronic registration, but the deed that is made remains conventional. In general, the registration of fiduciary guarantees is a change from manual to electronic registration, but the deed that is made remains conventional. Apart from electronic registration of fiduciary guarantees, there are other registrations which are required to use an electronic system related to deeds which are still made conventionally by a Notary. The registration in question is the registration of a limited liability company.

The obligations contained in Article 9 paragraph (1) of the Company Law which imposes an obligation on the founders to jointly submit an application can be authorized by another party. This is as regulated in Article 9 paragraph (3) of the Company Law which states that in the event that the founder does not submit the application himself as intended in paragraph (1) and paragraph (2), the founder can only authorize the Notary. The Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021 concerning Requirements and Procedures for Registration of the Establishment, Change and Dissolution of Limited Liability Company Legal Entities (hereinafter referred to as Permenkumham No. 21 of 2021) regulates the registration of limited liability companies. In Article 5 of Permenkumham No. 21 of 2021, it is explained that the establishment of a capital partnership company is carried out by the applicant through a notary by filling in the establishment form electronically via SABH (Legal Entity Administration System). SABH is an electronic Company information technology service organized by the Directorate General of General Legal Administration. Then the Minister issued a certificate of registration of the Company's legal entity electronically based on Article 7 of Permenkumham No. 21 of 2021.

Regarding the registration of Limited Partnerships, Firm Partnerships and Civil Partnerships, it is regulated by Minister of Law and Human Rights Regulation No. 17 of

2018 as the latest regulation governing registration of limited partnerships, firm partnerships and civil partnerships, which were previously regulated in the Commercial Code (KUHD). Legal services for registration of legal entities and business entities by notaries through the Legal Entity Administration System (SABH) and Business Entity Administration System (SABU) applications on the AHU portal. The SABH application is a service that is available on AHU Online with a service focus on online legal services for legalization of corporate bodies, foundations and associations. The application for registration of this legal entity is carried out by a notary who has been given access to the AHU Online System via the SABH application if the applicant's data is verified as complete. With the enactment of Permenkumham No.17/2018, all registration of Limited Partnerships, Firm Partnerships and Civil Partnerships must be done online via the SABU application with a simplified system and is part of accelerating investment. So, before entering into obtaining permits through OSS, it is important to first obtain a Decree on the Establishment of a Legal Entity or Business Entity through SABH/SABU at the Ministry of Law and Human Rights.

The duties and authority of the Notary position described above are related to the technical and administrative duties and authority of the Notary position. Then it is related to the authority of the Notary in making deeds, one example of which is making GMS Minutes. In principle, the implementation of electronic GMS is not regulated in the UUJN, this regulation is contained in the UUPT. Electronic GMS is conducted using teleconference, video conference or other electronic media. This is intended to make it easier for shareholders who cannot attend the place where the GMS is held. The use of information and communication technology is one solution so that the GMS can continue to be held by maximizing the attendance of all shareholders.

The real implementation for a notary who utilizes or uses sophisticated information technology in carrying out his duties, functions and authority can be seen in written form, such as in the preparation of minutes of the GMS of a Limited Liability Company which is usually carried out by a notary. Accommodating increasingly sophisticated developments and focusing on technological developments. The contents of the provisions in article 77 of the Company Law itself are: 1. In addition to holding a GMS as intended in Article 76, a GMS can also be conducted via teleconference, video conference or other electronic media which allows all GMS participants to see and hear each other directly and participate in the meeting; 2. Quorum requirements and decision-making requirements are requirements as regulated in this Law and/or as regulated in the Company's articles of association; 3. The requirements as intended in paragraph (2) are calculated based on the participation of GMS participants as intended in paragraph (1); and 4. Every time a GMS is held as referred to in paragraph (1), a Deed of Minutes of Meeting must be drawn up which is approved and signed by all GMS participants.

So based on the provisions of Article 77 it can be concluded that in order for a GMS via electronic media to be justified, it must first fulfill the formal requirements that allow all GMS participants: 1. Can see and hear directly; and 2. Can participate directly in meetings. This means that if one of the conditions is not met then the media in question does not meet the requirements to be used as media in its implementation. Then after the formal requirements have been fulfilled, as the author has explained above, the GMS is a company organ where important decisions and the responsibilities of both directors and commissioners will be discussed in it for the benefit of the parties concerned, namely in this case the shareholders. Therefore, in the technical implementation, a neat meeting systematic is required and outlined in the form of a Deed of Meeting Minutes to provide certainty regarding what matters have been discussed and decided together at the meeting. In order to achieve certainty, based on the provisions of Article 21 paragraph (5) of the UUPT Deed, the minutes of the meeting made privately must be declared by a notarial deed no later than 30 (thirty) days from the date the GMS decision is issued, then it is made in a form. Deed of Meeting Decision Statement (PKR), which is a deed of the parties or Partij Deed.

In holding an electronic GMS (E-RUPS) the result of the Deed of Minutes of the GMS is a Notarial Deed as stated in article 12 paragraph (1) POJK 16/POJK.04/2020 which states that the Deed of Electronic GMS Minutes must be made in the form of a Notarial Deed by Notary registered with the Financial Services Authority without requiring signatures from GMS participants. E-GMS providers are also required to submit electronic documents to a notary who produces at least: a) list of shareholders present electronically; b) list of shareholders who provide power of attorney electronically; c) recapitulation of attendance quorum and decision quorum; and d) transcript of recordings of all interactions at the GMS electronically to be attached to the minutes of the Deed of Minutes of the GMS.

In carrying out the activities of a General Meeting of Shareholders held by a Company, as mentioned in the discussion of the previous point, it involves a Notary in the activity of making the deed in order to provide evidentiary power for the results of the decisions that have been decided at the GMS. Basically, if the GMS activity itself is held conventionally, the deed can be made either in the form of a Partij Deed or also in the form of a Relaas Deed. However, along with technological developments in the implementation of GMS, namely through electronic media, this has been accommodated in statutory regulations, both regulated in the Company Law and in the implementing regulations and technical implementation.

By holding GMS activities now via electronic media, of course in technical terms the implementation will be different and must comply with the provisions stipulated in POJK Number POJK 16/POJK.04/2020 concerning the Implementation of Electronic General Meetings of Shareholders of Public Companies and POJK Number 15 /POJK.04/2020 concerning Plans and Implementation of the General Meeting of Shareholders of Public Companies, where if we look at the provisions of Article 12 POJK 16/2020, it can be seen there that in the case of making minutes of the GMS which are carried out electronically, they must be made in the form of a deed Notarial by a Notary registered with the Financial Services Authority.

Thus, the concept of cyber notary in UUJN from the perspective of grammatical interpretation can be interpreted in a limitative way regarding "the authority to certify transactions carried out electronically", so this authority applies limitatively only to one authority, namely with regard to the certification of transactions carried out electronically. Notaries' participation in electronic

certification is only based on their authority as a registration authority. However, the possibility of expanding the authority of notaries in the cyber notary concept can be found not only in the UUJN, but also in the UUPT, especially the authority of notaries in making notarial deeds for holding GMS electronically.

**Legal Certainty of Cyber Notary in Making of an Authentic Deed by a Notary**

Regarding the authority of a Notary in making authentic deeds, Article 1 Number 7 UUJN states that a Notarial Deed is an authentic Deed made by or before a Notary according to the form and procedures stipulated in the UUJN. In the Elucidation to Article 15 Paragraph (3) UUJN, it is stated that apart from the authority as referred to in paragraph (1) and paragraph (2), Notaries have other authorities as regulated in statutory regulations. In the Explanation of Article 15 Paragraph (3) UUJN, it is stated regarding the authority of Notaries in certifying transactions carried out electronically (Cyber Notary), however the Elucidation of this Article clashes with the norms of other Articles, namely Article 1 Number 7 UUJN which states that Notarial Deeds are authentic Deeds made by or before a Notary in accordance with the form and procedures stipulated in the Notary's Position Law. The word "in front of" is not limited to physical presence because it is not explained in the UUJN, so the meaning of "in front of" does not have to be physical.

What is physically required is related to the reading of the deed as in Article 16 paragraph (1) letter m that the Notary is obliged to read the Deed in front of the audience in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for the preparation of the Deed The will is under the hand, and signed at that time by the presenter, witness, and Notary, where in the Elucidation of Article 16 Paragraph (1) letter m UUJN it is explained that the Notary must be physically present and sign the Deed in the presence of the presenter and witness. Related to the authority of the Notary in making a deed of relaas, one example is making the Minutes of the GMS. In principle, the implementation of electronic GMS is not regulated in the UUJN, this regulation is contained in the UUPT. Electronic GMS is conducted using teleconference, video conference or other electronic media. This is intended to make it easier for shareholders who cannot attend the place where the GMS is held. The use of information and communication technology is one solution so that the GMS can continue to be held by maximizing the attendance of all shareholders.

The latest developments regarding the implementation of electronic GMS are seen in the Republic of Indonesia Financial Services Authority (OJK) Regulation Number 15/POJK.04/2020 concerning Plans and Implementation of General Meetings of Shareholders of Public Companies (hereinafter referred to as POJK 15/2020) Juncto Financial Services Authority Regulations ( OJK) Republic of Indonesia Number 16/POJK.04/2020 concerning Implementation of Electronic General Meetings of Shareholders of Public Companies (hereinafter referred to as POJK 16/2020). Article 49 paragraph (4) POJK 15/2020 states that in the event that the GMS is a GMS which is only attended by independent shareholders, the minutes of the GMS must be made in the form of a deed of minutes of the GMS made by a Notary registered with the Financial Services Authority. Then there are other provisions can be seen in Article 12 paragraph (1) POJK 16/2020 which states that electronic GMS Minutes must be made in the form of a notarial deed by a Notary registered with the Financial Services Authority without requiring signatures from the GMS participants. Article 12 paragraph (2) POJK 16/2020 states that e-GMS providers are required to submit to the Notary a printed copy containing at least: a. List of shareholders present electronically; b. list of shareholders who provide power of attorney electronically; c. recapitulation of attendance quorum and decision quorum; and d. electronically recorded transcripts of all interactions at the GMS to be attached to the minutes of the GMS.

Making a GMS minutes deed by a notary produces a deed which is classified as a relaas deed because the Notary was present, witnessed, saw and heard the matters discussed and decided at the meeting. In relation to the reading of the deed as in Article 16 paragraph (1) letter m, the Notary is obliged to read the Deed in front of the audience in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for making a Deed of Will privately, and signed at that time by the presenter, witness and Notary, where in the Elucidation of Article 16 Paragraph (1) letter m UUJN it is explained that the Notary must be physically present and sign the Deed in the presence of the presenter and witness, this provision can be waived considering Article 16 paragraph (7) UUJN states that the reading of the Deed as intended in paragraph (1) letter m is not mandatory, if the presenter wishes that the Deed not be read because the presenter has read it himself, knows and understands its contents, provided that this is stated in the closing of the Deed and On each page of the Deed Minutes it is initialed by the presenter, witness and Notary.

If it is related to the provisions of the GMS in the PT Law, it is explained in Article 90 paragraph (1). Every time a GMS is held, the minutes of the GMS must be drawn up and signed by the chairman of the meeting and at least 1 (one) shareholder appointed from and by the GMS participants. However, Article 90 paragraph (2) states that the signature as intended in paragraph (1) is not required if the minutes of the GMS are prepared by notarial deed.

It can be concluded that the making of a notarial deed for an electronic GMS is legally valid so it can be carried out because this authority has been regulated by statutory regulations where the product produced by the notary is in the form of a Relaas Deed, bearing in mind the provisions for physical presence and not face to face as stated in in Article 1 number 7 UUJN but physical presence is part of the reading of the deed which can be waived. To maintain the authenticity of the notarial deed at the electronic GMS, it is mandatory to be physically present, namely the Chair of the GMS, 1 (one) member of the Board of Directors and/or 1 (one) member of the Board of Commissioners, and capital market supporting professionals who assist in the implementation of the GMS as stated in regulated in POJK 16/2020, and also a Notary as regulated in UUJN to read the deed and initials of the deed of the GMS minutes.

Thus, the making of a notary's deed of release regarding the minutes of the GMS electronically is still carried out conventionally and the authenticity of the deed can be fulfilled. However, if the concept of cyber notary is implemented absolutely, namely by using teleconferencing/video calls without physical presence, then the deed will be relegated to a private deed. From the

perspective of proving electronic documents, the ITE Law still does not place notarial deeds made electronically as valid evidence.

Notaries who use information and communication technology in carrying out their duties and authority can be said to be implementing the cyber notary concept in a simple way. However, the explanation of Article 15 paragraph (3) UUJN which regulates cyber notaries is not yet clear because there is no detailed explanation of how the cyber notary concept is implemented. The ambiguity of this regulation means that the article can have multiple interpretations. The concept of cyber notary should be regulated in the main article and should also be contained in the general provisions of UUJN, not just mentioned in the explanation of the article without regulating in detail what and how cyber notary.

The unclear concept of cyber notary regulated in the UUJN makes it difficult to implement. Not only is the regulation unclear in the UUJN itself, but there are also limitations stipulated in Article 5 paragraph (4) of the ITE Law that electronic documents are excluded for deeds made by Notaries and deed-making officials. So in other words, the making of deeds must still be carried out based on UUJN. This is the same as the elements of an authentic deed contained in Article 1868 of the Civil Code.

There are four elements of legal certainty proposed by Gustav Radbuch. According to Gustav Radbuch, there are four things related to the meaning of legal certainty, namely: 1) the law is positive; 2) the law is certain; 3) facts must be formulated clearly; and 4) positive law does not change easily. Analysis of the legal certainty regarding the regulations on the duties and authority of the Notary position linked to the cyber notary concept shows that regarding the duties and authority of the Notary position if it is linked to the cyber notary concept then there is already positive law that regulates it, namely Article 15 paragraph (3) UUJN with the cyber notary concept, Article 77 paragraph (1) UUPT, POJK 15/2020, POJK 16/2020, and other regulations that regulate the duties and authorities of Notaries technically related to online fiduciary registration and company registration through the legal entity administration system.

Looking at the positive law that regulates the duties and principal authority of Notaries in relation to the concept of cyber notary above, there is actually ambiguity and uncertainty due to disharmony between existing laws and regulations, especially regarding the duties and principal authority of Notaries relating to making deeds electronically where there is disharmony. These laws and regulations are contained in the Civil Code, UUJN, and the ITE Law.

The second element is that the law is certain. This is related to reality or facts. The reality or fact that the use of information and communication technology in the duties and authority of the Notary position requires a more in-depth study considering that the provisions in the UUJN do not provide clarity regarding the concept of cyber notary. The third element is that facts must be formulated in a clear way. From the results of the author's analysis, this element is not fulfilled because it is still unclear and has multiple interpretations regarding the regulations governing the duties and authority of the Notary position which are related to the concept of cyber notary. The fourth element is that positive law must not change easily. This fourth element is fulfilled, but if the definite and clear elements are not fulfilled, the regulations regarding the duties and authority of the Notary position are linked to the making of authentic deeds by cyber notary-based notaries and do not provide legal certainty.

So, because it is a normative position, it is important for Notaries to have harmonious statutory regulations to guarantee legal certainty of the legal products issued, one of which is an authentic deed which functions as perfect evidence. Certainty or legal certainty is the goal of every law. In making laws and regulations that are generally binding, efforts must be made to ensure that the provisions contained in the law are clear, unequivocal, and do not contain double meanings or provide opportunities for other interpretations. Thus, it is necessary to improve regulatory substances so that the use of technological advances does not backfire on a Notary in carrying out his duties and positions.

According to Danrivanto Budhijanto, basically legal harmonization is an effort or process to realize harmony and compatibility of legal principles and systems so as to produce harmonious regulations (legal systems). Legal harmonization needs to be carried out in regulations related to the implementation of the duties and authority of the Notary position in connection with the disruption of information and communication technology. Of course, legal harmonization that must be carried out is legal harmonization that refers to sociological, philosophical, economic and juridical values. That by carrying out harmonization it will be clearly reflected in the thinking or understanding that a statutory regulation is a complete integral part of the entire system of statutory regulations.

Thus, Indonesia must decide which approach will be taken, whether the cyber notary approach as stated in the provisions of Article 15 paragraph (3) UUJN which states that a cyber notary is interpreted as another authority for the Notary to certify transactions carried out electronically, or whether it will use the approach Continental Europe through the E-Notary concept considering that Indonesia adheres to the European Legal System (Civil Law). Furthermore, will this concept be placed as an additional/complementary provision 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 shift towards Electronic Notary? (E-Notary) in the sense of digitizing notary services and their products.

What is very important for Indonesia to pay attention to is whichever concept is adopted, it is important for Indonesia to make improvements regarding the harmonization of regulatory substance between the UUJN and related laws such as the ITE Law and the Civil Code as well as improvements in terms of implementing regulations as a code of ethics in its implementation. In terms of structure/facilities and infrastructure, it is important for Indonesia to have electronic system infrastructure that is reliable, accredited/certified and ensures interconnection and accessibility, both for notaries and the public who use notary services. These three aspects should be formulated in a comprehensive, reliable, integrated and safe system through a collaborative strategy supported by various relevant agencies/ministries.

## Conclusion

The concept of cyber notary in UUJN from the perspective of grammatical interpretation can be interpreted limitatively

regarding "the authority to certify transactions carried out electronically", so this authority applies limitatively only to one authority, namely with regard to the certification of transactions carried out electronically. However, the possibility of expanding the authority of notaries in the cyber notary concept can be found not only in the UUJN, but also in the UUPT, especially the authority of notaries in making notarial deeds for holding GMS electronically.

Providing Notary services that utilize technological advances in making authentic Deeds in cyberspace (Cyber Notary) is possible for Notaries in Indonesia based on the Elucidation of Article 15 Paragraph (3) UUJN, however the implementation of Cyber Notary is still in conflict with the Law. one with another so that it does not provide a guarantee of legal certainty. Legal certainty can be achieved if there are no conflicting provisions between one law and another. Notarial Deeds made electronically (Cyber Notary) do not yet have legal certainty because there is no harmonization of regulations related to the authority of Notaries in making Deeds electronically as stated in UUJN and UU ITE.

**References**


1. Edmon Makarim, *Notaris dan Transaksi Elektronik; Kajian Hukum tentang Cyber Notary atas Electronic Notary*, Jakarta: Raja Grafindo Perkasa, 2013.
2. Emma Nurita, *Cyber Notary, Pemahaman Awal dalam Konsep Pemikiran*, Bandung: Refika Aditama, 2012.
3. Erina Permatasari dan Lathifah Hanim, "Peran dan Tanggung Jawab Notaris terhadap Pelaksanaan Pendaftaran Badan Hukum Perseroan Terbatas Melalui Sistem Online", *Jurnal Akta*, Vol. 4 No. 3, hlm. 401 – 402. (2017)
4. Government Regulation of the Republic of Indonesia Number 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees and Fees for Making Fiduciary Guarantee Deeds
5. I Ketut Tjukup,"Akta Notaris (Akta Otentik) sebagai Alat Bukti dalam Peristiwa Hukum Perdata", *Jurnal Ilmiah Prodi Magister Kenotariatan, Acta Comitas*. (2016).
6. Kamus Besar Bahasa Indonesia (online), https://kbbi.kemdikbud.go.id/entri/kurung, diakses pada 8 September 2023
7. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions
8. Law Number 11 of 2008 concerning Information and Electronic Transactions
9. Law Number 40 of 2007 concerning Limited Liability Companies
10. Musdamayanti dan Ahdiana Yuni Lestari, "Kekuatan Pembuktian Tanda Tangan Elektronik dengan Menggunakan Cyber Notary", *Media of Law and Sharia; Volume 3, Number 1*, (2021).
11. Ngurah Justia Dharmadyawan R dan Ni Ketut Supasti Dharmawan, "Cyber Notary di Era Globalisasi 4.0: Suatu Kebutuhan Ataukah Ancaman", *Acta Comitas: Jurnal Hukum Kenotariatan, Vol. 7 No. 01*. (2022).
12. Pipit Utami Saputri, Kepastian Hukum Regulasi Tugas Dan Wewenang Jabatan Notaris Dikaitkan Dengan Disrupsi Teknologi Informasi Dan Komunikasi, *Acta Diurnal, Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad, Volume 4, Nomor 1*, (2020).
13. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021 concerning Requirements and Procedures for Registration of the Establishment, Change and Dissolution of Limited Liability Company Legal Entities
14. Regulationt of the Minister of Law and Human Rights Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships and Civil Partnerships.
15. Sekretariat Jenderal dan Kepaniteraan MKRI dengan Pusat Studi Konstitusi (Pusako) Fakultas Hukum Universitas Andalas, Perkembangan Pengujian PerundangUndangan di Mahkamah Konstitusi, *Jurnal Konstitusi, Volume 7, Nomor 6*, (2010).
16. Soeroso, *Pengantar Ilmu Hukum*, Jakarta: Sinar Grafika, 2013.
17. Sutarman, *Pengantar Teknologi Informasi*, cetakan pertama, Jakarta: Bumi Aksara, 2009.