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## Legality Notary Deed using cyber notary documents as evidence in the principle of the tabellionis officium fideliter exercebo

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### Abstract

The implementation of legal actions electronically regarding certain matters needs to be stated in an authentic deed so that the concept of cyber notary emerges. Although it has been accepted in practice, but the making of a deed by means of a cyber notary is not in harmony with the provisions of Article 16 letter m of the JN Law which requires the making of a notary deed directly. In addition, cyber notary documents are electronic documents which are essentially made for the purpose of proof. Meanwhile, in Article 5 paragraph (4) of the ITE Law, notary deeds are excluded from electronic evidence. This study aims to determine the power of cyber notary documents in the making of notary of notary deeds and the legality of notary deeds by using cyber notary documents as evidence in terms of the tabellionis officium fideliter exercebo principle. This research uses normative legal research, with primary legal materials and secondary materials. The technique of collecting legal materials that have been collected are analyzed using qualitative descriptive analysis. The results of this study are the notary's authority to provide services electronically to produce cyber notary documents. Notary cyber document resulting from the implementation of the notary cyber has no strength in the manufacture does not qualify making notarial deed stipulated in Article 16 paragraph (1) c and m of the JN Law, so that the power of proof of a notary deed made based on the concept of a cyber notary in the form of an electronic document the same as the power of proof such as a letter or deed made under the hand.

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### 1. Introduction

Developments in technology and Internet use is affecting the way the people of Indonesia in living out the activities of life from the simple to the things that are important. Technological developments that provide ease for the community in activities in daily life, including in implementing legal acts. A legal act is every act of a legal subject (human or legal entity) whose consequences are regulated by law, because that result can be considered as the will of the person carrying out the law (Soeroso: 2011)<sup>[1]</sup>.

Related to this, there are legal actions that must be stated in an authentic deed. An authentic deed by R. Segundo interpreted ad defined as a deed made and formalized in legal form, by or before a public official, who is authorized to do so, at the place where the deed was made (R Soegondo: 1991)<sup>[2]</sup>. The definition of an authentic deed is legally regulated in Article 1868 of the Civil Code (here in after referred to as the Civil Code), which stipulates that an authentic deed is a deed made in the form determined by law by or before an authorized public official for that at the place where the deed was made. In Article 1 of Law Number 30 of 2004 concerning the Position of a Notary which has been amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary (here in after referred to as Law JN) that a Notary is a public official who has the authority to make an authentic deed and has other powers as referred to in this Law or based on other laws.

Based on this understanding, a notary has a position as a public official.

Notary as a public official who has the authority in making authentic deed is required to follow the development of technology to facilitate the making of an authentic deed.

The needs for ease of make create authentic act gave rise to a new concept known as cyber Notary. With the cyber Notary will play a role in the authentication of electronic documents on a legal act done by the parties electronically.

In Indonesian laws and regulations, the concept of a cyber-notary first appeared in the amendment to the JN Law. In Article 15 paragraph (3) of the Act JN post the changes stipulated that "In addition to the authority referred to paragraph (1 and (2), a notary has other powers stipulated in the legislation". Furthermore, in the elucidation of Article 15 paragraph (3), it is explained that what is meant by other authorities regulated in laws and regulations, among others, is the authority to certify transactions conducted electronically (cyber notary), make waqf pledge deeds, and aircraft mortgages. JN Act only mentions cyber Notary in explanation of Article but did not provide a clear understanding of what is meant by cyber Notary and how the application of task execution notary cyber Notary in causing blurring the meaning of the term cyber Notary in the Act.

The obscurity causes there to be no common perception of cyber notary in Indonesia. If the cyber notary in the explanation of Article 15 paragraph (3) is associated with the provisions of Article 16 letters c and m, it will cause problems related to fingerprints of the person who appears with electronic fingerprints and problems with the obligations of the parties to be present before a notary or known as the tablelionis officium fideliter principle exercebo, which means that a notary has to work traditionally.

The notary's authority to carry out electronic transaction certification results in documents made by means of a cyber-notary or what can be called a cyber-notary document.

In addition to what is regulated in the JN Law, the document creation of cyber notary is also possible in Law Number 40 of 2007 concerning Limited Liability Companies (here in after referred to ad the PT Law). Article 77 of the Limited Liability Company Law stipulates that the GMS can also be conducted through teleconference media, video conferences, or other electronic media facilities that allow all GMS participants to see and hear each other directly and participate in the meeting. One of the problems that can be discussed in the GMS is amendments to the articles of association, related to the Article 21 paragraph (4) of the Limited Liability Company Law requires that the amendment to the articles of association be loaded or declared in a deed notarial. With these conditions, if the GMS is conducted electronically and changes to the articles of association are included in a notary deed, a cyber-notary document will be created.

The deed made by or before a notary essentially functions as evidence. But in UU ITE deed notary excluded as electronic evidence. The existence of a regulation regarding the exception will cause a conflict between the arrangement regarding the deed made by a notary with a cyber-notary document as stated in the explanation of Article 15 paragraph (3) of the JN Law by not recognizing the notarial deed as electronic evidence as regulated in Article 5 paragraph (4).

Based on the description of the background of the problem, it is important and relevant to research regarding "legality Notari Deed Using Cyber Notary Documents as Evidence in the Perspective of the Tablelionis Officium Fideliter

Exercebo Principle".

## 2. Method

This research is structured using the type of normative legal research. Normative legal research is also called doctrinal law research, also referred to as library research or document study. The approaches used in this research are the statutory approach (statute approach), the conceptual approach (conceptual approach) dan the historical approach to the rule of law (historical approach). The legal materials in this study are sourced from primary legal materials, namely statements that have legal authority determined by a branch of government power and secondary legal materials, namely legal materials from literature related to research problems. The technique of collecting legal materials used is a literature study technique, then the legal materials that have been collected are analyzed using qualitative descriptive analysis, namely the analysis of data that cannot be calculated.

## 3. Discussion

### 3.1. The power of cyber notary documents in making a notarial deed

#### a. Maintane of services in the field of Notary Cyber Notary

Notaries are public officials who carry out the profession in providing legal services to the public. Notary as a public official presence is required by the community to meet the needs of the documents are authentic. An authentic deed contained according to the provisions of Article 1868 of the Civil Code is a deed made in the form determined by law by or in the presence of a public official authorized to do so at the place where the deed was made. The position of a notary as a public official that gave the authority to the notary to carry out the task of making an authentic deed.

In the development of notary services, it has become a community need, not only in making authentic deeds, but also playing as a mediator or sanctions for transactions carried out (Edmon Makarim: 2016) [3]. Therefore, notaries have a responsibility to serve the community by providing notarial services to the community. In providing notary services given powers set out in the legislation. One of the powers of a notary as regulated in Article 15 paragraph (3) is the authority regulated in laws and regulations. n the explanation of the article, it is explained that what is meant by authority regulated in laws and regulations, one of which is the authority to organize electronic transaction certification (cyber notary). This arrangement provides an opportunity for notaries to provide services in the field of notary cyber notary. In addition, cyber notaries are also recognized in the Limited Liability Company Law, which in the implementation of the GMS electronically, the notary can make the minutes of the GMS electronically.

#### 1. Implementation of Electronic Certification Services

On certain transactions carried out electronically, the role of a notary in it is required. Notary was instrumental in the process of legalization of documents in transactions conducted electronically. This causes the notary is also required to use electronic means to provide legal services in accordance with the above mentioned authority. The implication of the demand for a notary to provide services electronically is that the concept of a cyber-notary is currently developing. The provision of services by a notary through a cyber-notary in several countries has been accommodated an

its validity recognized. America has been regulating the

electronic notary since 2017. The regulation regarding electronic notary has been accommodated by the model law, namely the US Model Electronic Notarization Act 2017 (US MENA). US MENA is a progressive model for law enforcement in the state or region to draw up provisions related to electronic Notary Rezin into paper-based Notary existing ones to form a single, integrated system both for action and for measures of electronic Notary non-electronic notary (Edmon Makarim: 2016) [3]. In addition to American, cyber accommodation has also been carried out by Korea. In Korea Notary Public Act already contains arrangements regarding the digital notarization. In those settings using the term "designated Notary public" to refer to the role of the notary in the case of electronic transactions. Designated notary public is a public notary appointed by the Korean Ministry of Justice to regulate notary affairs related to electronic documents and computerized documents (Edmon Makarim: 2016) [3].

The provision of services in the field of notary cyber notary in Indonesia is due to changes in the JN Law which in Article 15 paragraph (3) gives the notary the authority to carry out other authorities regulated in the legislation. Furthermore, in the elucidation of Article 15 paragraph (3) it is explained that one of the authorities regulated in the legislation is the authority to certify transactions conducted electronically (cyber notary).

This electronic transaction certification aims to ensure certainty, order, and legal progress and the need for authentic evidence regarding acts, agreements, stipulations, and legal events made before or by authorized officials (Syamsul Bahria, Dkk :2019) [11]. The implementation of this electronic certification is regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions which has been amended by Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (here in after referred to as the ITE Law). Electronic certification is further regulated in the Regulation of the Minister of Communication and Informatics Number 11 of 2018 concerning the Implementation of Electronic Certification (here in after referred to as the Minister for the Implementation of Electronic Certification). Article 27 of the regulation stipulates that the Electronic Certification Operator may appoint a notary as the registration authority. Notary currently serves as the registration authority has a duty to carry out the correct identity verification and checking of documents. In the case of inspections conducted by the notary otherwise meet the requirements, the forward the request to the Operator notary Electronic Certification to issue certificates of Electronics. In this case, a cyber-notary occurs, namely a notary in providing cyber services.

Notary instrumental in identifying electronic signatures and signatures, as well as verifying the signed electronic document. The role of the notary together with the organizers of Electronic Certification (Certification authority) as a trusted third party (trusted third party) in securing and legitimize electronic transactions, organizers to ascertain or confirm a person's identity, and the charge that the key the public-private key pair used to create the digital signature belongs to that person (Emma Nurita: 2012) [4]. Verification of electronic data is an embodiment of cyber notary, because in this case the notary shall verify the data the applicant is not conventional but take advantage of advanced technology. This cyber notary verification process will produce a cyber-

notary document.

## 2. Provision of services for making the minutes of the GMS electronically

Notary cyber implementation opportunities other than that in providing certification services in electronic transactions is also provided by the Company Law. In the Company Law has accommodated the implementation of the GMS electronically which in certain cases require the minutes of the AGM are made electronically deed. Article 77 The Company Law provides new thinking in the organization of the AGM, to accommodate the development of increasingly sophisticated technology and the use of electronic media. Article 77 of the Limited Liability Company Law provides a new way of implementing the GMS with the following provisions:

In addition to the implementation of the GMS as referred to in Article 76, the AGM can also be conducted via teleconference, video conference or other electronic media that enables all participants to see and hear each other AGM in person and participate in the meeting.

AGM is conducted electronically can bring the participants as well as in one place despite the fact that the participants are in different places but still be able to hear and see other participants directly as a conventional implementation of the AGM. In the electronic implementation of the GMS there are also minutes of the GMS which must be made in the form of a notary deed, namely the implementation of the GMS related to changes to the company's articles of association which are stated expressly in the provisions of Article 21 paragraph (4) of the Limited Liability electronic certification is a trusted third party Company Law which stipulates that the amendments to the articles of association as referred to in paragraph (2) and paragraph (3) are contained or stated in a notarial deed in the Indonesian language.

In the process of making the minutes of the meeting became a notary deed made possible through two ways: First, by deed made directly by a notary public in the form of the minutes of the AGM in making the minutes of meetings must be present directly Notary follow the AGM. The second way is to of Resolution (PKR) is to authorize one of those who attended the meeting to make and restate the minutes of the meeting in the presence of a Notary. When the minutes of the meeting made by notarial deed then the mechanism of the minutes of meetings electronically is initiated by a deed of the AGM is conducted in a teleconference composed of a deed by a Notary, then read out in a teleconference that the parties that followed the AGM can know the contents of the deed. After the partie agree with the contents of the deed then the deed is signed electronically using a digital signature. The signing parties are the GMS participants, witnesses, and notaries, all of which are done digitally (Cyndiarnis Cahyaning Putri, Abdul Rachmad Budiono: 2019) <sup>[12]</sup>. The electronic minutes of the GMS is a cyber-notary document because in its manufacture the notary uses technology without dealing directly with the parties physically.

### b. The power of cyber notary documents in making a notarial deed

The provision of electronic notary services (cyber notary) in terms of electronic certification and the preparation of the minutes of the GMS which are carried out electronically as described in the previous discussion have resulted in a cyber-notary document. This cyber notary document is made based

on the authority granted to a notary by the laws and regulations, namely article 15 paragraph (3) of the JN Law related to the implementation of electronic certification and the authority granted by the PT Law relating to the electronic preparation of the minutes of the GMS.

### 1. The power of electronic certificates in making a notarial deed

Technological developments are followed by developments in the way people take legal actions, thus causing the government to make regulations that can accommodate these developments. Shifting all the original transaction method conventionally done now can be done electronically. In an effort to protect the public from the possible negative impact of electronic transactions, the government regulate electronic transactions in UU ITE, one that is regulated in UU ITE is the electronic certification. This Electronic Certificate functions as an authentication and verification tool for the identity of the owner of the electronic certificate as well as the integrity and authenticity of electronic information.

This electronic transaction certification can only be carried out by a certification body authorized by the ITE Law and the Electronic Transactions Ministerial Regulation. This Regulation arranged in that authority as a notary is in charge of the registration authority to verify the correctness and completeness check identity documents, if it has met the requirements of the notary forward the request to the Operator Certification Electronic Circuit to issue. The verification result issued by a notary is an electronic document is made by a notary in the context of exercising his authority to carry out electronic certification, the document is a cyber-notary document.

A document created by the new notary has the power as a notary deed when made in accordance with the procedures set forth in the Act JN. With the existence of these provisions will lead to problems when a document made by the notary but not in accordance with the procedures set forth in the Act JN. Notaries in implementing verification and checking of the correct identity documents for the purpose of certifying electronic transactions electronically. In this case the applicant notary certification is not facing directly to the place position notary and signatories also be done electronically.

The implementation of this verification by a notary if it is associated with the provisions of Article 16 paragraph (1) letter m of the JN Law, the cyber notary documents in the form of the result of notary verifications of the correctness of identity and checking the completeness of the electronic certification applicant's document does not have the power as a notary deed.

### 2. The strength of the minutes of AGM were made electronically in the manufacture of a notarial deed

Based on the provisions of Articles 76 and 77 of the PT GMS Law, it can be carried out directly or carried out electronically. If the GMS is made in connection with changes to the Company's article of Association, the Company law requires the minutes of the GMS to be made with a Notary Deed. Making the minutes of the GMS electronically in the form of a notarial deed based on this PKR will not cause problems because the PKR will be brought before a notary so that at the time the notary deed is formed it can be carried out in accordance with the provisions of Article 16 paragraph (1) letter c and letter m, namely attaching the letter and documents and fingerprints of the

appeared on the Minutes of Deed and read the deed before the appeared directly. As well as the notary will be able to carry out the obligations in accordance with the provisions of Article 38 paragraph (1) letter that regulate at the end or cover certificate must include a description of the reading of the deed referred to in Article 16 paragraph (1) letter m or Article 1 (7).

In making the deed of minutes of the GMS involving a notary directly in the GMS, it is included in the deed relays. Therefore notary directly involved in the GMS, Notary explain/give in his position as a public official testimony of all what is seen, witnessed and experienced, committed by the other party. In this case, the notary must be present at the electronic GMS from the beginning until the end of the GMS to record all legal actions that occur during the GMS. Under the provisions of Article 90 paragraph (2) if the minutes of the meeting made by notarial deed is not needed signatures chairman of the meeting and at least one (1) person appointed from among the shareholders and the participants of the AGM. If the GMS is held conventionally, the provisions of Article

90 will not cause problems because the notary has read and signed the minutes of the GMS in front of the GMS participants so that the minutes of the GMS have the power as a notarial deed.

However, problems may arise when the GMS conducted electronically. In this case there will be conflict between the Company Law and the Law JN particularly in terms of procedures for implementing the GMS. Company Law to allow implementation of the GMS electronically where possible there are participants of the meeting that followed the AGM of another without physically present in one place, so that a Notary is not dealing with the participants of the AGM. Meanwhile, JN Act requires Notaries to attend physically to deal directly with the appeasers and witnesses in the manufacture of a notarial deed. The notary's obligation to attend is expected by the parties in making the notarial deed regulated in Article 16 paragraph (1) letter c and letter m because it relates to the validity of the minutes of the GMS as a notary deed.

The notarial deed is an authentic deed made by or in the presence of a Notary according to the form and procedure set by law JN. In Article 16 paragraph (1) letter c, it is regulated that in carrying out its obligation to make a notarial deed, it is obligatory to attach letters and documents as well as the fingerprints of the appeasers to the Minutes of Deed. Minuta notary in Article 1 of Law number JN interpreted as the original deed that includes the signatures of the appeasers, witnesses and Notary, which are stored as part of the Notary Protocol.

Obligation to embed fingerprints appeared the deed minute motivated by the need to identify the presence appeaser's truth. The fingerprints is proof that the person present before the notary is indeed the person concerned who intends to make a notarial deed, not someone else. It is obligatory for the appeared to attach fingerprints on Minuta Deed aims to anticipate if one day the appeasers denies his signature on the minutes of the notary deed, then the presence of fingerprints can be used as additional evidence to prove that it is true that the person appears before a notary (Dewi: 2015) [13].

The minutes of the GMS which are conducted electronically are made by a notary from a separate place from the GMS participants' si that it is not possible to attach fingerprints soueced directly from the facing finger on the same day and

date before the notary in the minutes of the deed. The situation created problems regarding the fulfillment of obligations of the notary for embedding fingerprints electronically AGM participants in the minutes of the deed. Thus, the making of a notary deed based on the minutes of the GMS cannot meet the requirements for the obligation to attach fingerprints.

Minutes of the AGM in order to have the strength as a notary deed must also comply with the provisions of Article 16 paragraph (1) letter m, which requires the notary reads the deed before the appeared in the presence of at least two (2) witnesses and signed on the same time by the appeared, the witness, and Notary. In UUJN notary there are no special sense of the word "in front of the audience" whether to be physically present in the same place with a notary or expandable the meaning becomes facing electronically. Referring to the Big Indonesian Dictionary (KBBI) the word facing means coming to meet with; come see. According to the Chairman of the Notary Family Association of the Faculty of Law, University of Indonesia (IKA Notariat UI). The provisions of Article 16 paragraph (1) of the UUJN state that a notary must be physically present and sign the deed before an appearer. The text of the article has fulfilled legal certainty, is clear, firm and does not have multiple interpretations (Heriani: 2020) [18]. Thus, the meaning before the audience is limited to the physical presence of a notary, meaning cannot be required to be the electronic presence of a notary at the GMS.

The obligation to read the deed before an appearer can be excluded as regulated in Article 16 paragraph (7) of the JN Law, which states that the reading of the deed as referred to in paragraph (1) letter m not mandatory, if the appearer wants the deed not to be read out because the appearer has it himself, know and understand its contents provided that it is stated in the closing and on each page of the minutes of the deed initialed by the appeasers, witnesses and notaries. Nuzuarlita Permata Sari Harahap stated that the readings carried out by a notary as well as those read by the appeasers themselves, aims to make the appeasers who signed the deed understand the contents of the deed so that the notarial deed is actually made according to the wishes of those who signed it.

According G.H.S Lumban Tobing if the notary himself doing a reading of the deed, the parties on the one hand have a guarantee if they had signed what they heard before (reading made by a notary) and on the other hand the appeasers and notaries gain confidence if the deed was actually contained what was intended by the appearer (G.H.S Lumban Tobing: 1996). Based on this opinion, the reading of the deed before the appearer or the appearer has read it himself deed made are intended to provide assurance to appearer that the notary has made the deed according to the wishes of the appearer and the appearer agrees to sign the deed after knowing all the contents of the deed.

In the implementation of the GMS electronically the notary cannot carry out the reading of the deed directly before the appearer because the parties are not physically present before the notary. Not recited directly by a notary deed cause the deed does not meet the requirements as stipulated in Article 16 paragraph (1) letter m. in addition to having to be read before the audience, a new deed can have the power as a notarial deed if the deed is signed directly after being read by the parties, witnesses and notaries. These provisions are explicitly regulated in the provisions of Article 44 of the JN

Law which stipulates that:

1. Immediately after the deed was read, the deed was signed by ever appearer, witnesses and Notary, unless there is a appearer whois unable to affix his signature by stating the reasons.
2. Reasons referred to in paragraph (!) expressly set forth at the end of the Deed.
3. The deed as referred to in Article 43 paragraph (3) shall be signed by the appearer, Notary, witness, and official translator.
4. The reading, translation or explanation, and signing as referred to in paragraph (1) and paragraph
5. (3) As well as in Article 43 paragraph (3) is stated expressly at the end of the deed.
6. Violation of the provisions as referred to in paragraph (!), paragraph (2), paragraph (3), and paragraph (4) resulting in a deed only having the power of proof as an underhand deed and may be the reason for the party two suffers losses to demand reimbursement of costs, compensation, and interest to a Notary.

Based on the provisions of Article 16 paragraph (1) letter m and Article 44 of the JN Law mentioned above the notary must sign directly in front of the GMS participants. Direct understanding in this case is direct when the parties and the notary are at the same time and place, not signing using an electronic signature or digital signature used in electronic transactions. The notary's obligation to read and sign the notary deed directly in front of the audience because the Indonesian JN Law at this time still adheres to the tabellionis official fidelity exercebo principle, which means that a notary has to work traditionally.

### 3.2. Legality of Notary Deeds Using Cyber Notary

**Table 1:** Comparison of Understanding Conventinal Notaies *Cybernotary*, and *Electronic Notary*

| Notary Public  | CA/Cybernotary (ABA)  | Electronic Notary (TEDIS)   |
|--|---|---|
| 1. Should have a license;  | 1. Possible for unlicensed;                                       | 1. Possible for unlicensed;   |
| 2. Based on paper;   | 2. Based on electronic system;                                    | 2. Based on E- system;  |
| 3. Dut of care (physical appearance) based on law;                             | 3. Duty of care declared on their Certificate Practice Statement; | 3. Duty of care based on law;   |
| 4. Dirrevocable certificate best effort and best practices;                    | 4. Reasonableo best practices depend on law;                      | 4. Irrevocable certificate;   |
| 5. Verification based on (i) personal knowledge or (ii) satisfactory evidence. | 5. Verification based on satisfactor y evidence;                  | 5. Reasonable or best practices depend on law;                                    |
|  | 6. Combining the notary with technical experts.                   | 6. Verificati on based on (i) personal knowled ge, or (ii) satisfact ory evidence |
|  |   | 7. Electroni c notarial acts  |

**Source:** Edmon Makarim, Notary and Electronic Transaction Legal Studies in Cybernotary or Electronic Notary, Rajawali Pers, Jakarta.

The perception of the function and role of a public notary is built with a very conservative paradigm, so he deserves to be recognized as parties to the quality of the output of authenticity is assured so that the output is an authentic deed. Notaries who work conventionally are related to the principles that have been held so far, namely the principle of tabellionis officium fideliter exercebo, which means that a notary has to work traditionally. Electronic transactions have now also become part of everyday life either through conventional communication channels and global communication channel based computer system (internet).in the daily journey of word-making, Notaries are now using a computer system in their office, Notaries are now using a computer system in their office, it's just that the authenticity

### Documents as Evidence based on the Principles of Tablionis Officium Fideliter Exercebo

a. Legality of Notary Deed using Cyber Notary Documents Judging from the Principles Tabellionis Officium Fideliter Exercebo

Notaries have a very important position and role in the life of the nation and state, because it has the authority or outohority specified in the legislation. Notary authority specified in:

1. Article 15 of Law Number 30 of 2004 concerning the Position of a Notary;
2. Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

In current practice, a notary actually does not only have a role and authority in conventional transactions. Particularly in the manufacture of authentic deed alone, but also other work as determined statutory regulations. Within the scope of transactions that are not only conventional but also electronically, Notaries can play an important role in preventing fraud (fraud), the development of a conventional notary into a modern notary is not only judged by the use of computerization and the internet at any notary office administration, rather, it is more marked by the increasing function and role of a notary in an electronic transaction or even providing services electronically. In the development of these functions and role, it was popularized with the terms cyber notary and/or electronic notary. Although initially there were slight differences in concept and understanding between cyber notary, electronic notary or electronic notary, but in its development all the term has been narrowed to one definition. In its development, these differences are no longer significant, if indeed a public notary can carry out its functions and roles electronically.

paradigm is still seen from its final form (printed results signed and sealed by a notary) not in its basic electronic form. Notaries are required to be and is able to use the concept for the creation of a cyber-Notary services are quick, precise and efficient thereby encouraging a faster pace of economic growth. This concept implies that in carrying out their duties and positions, notaries work based on technology, namely cyber notaries, which are public notaries who provide notary services for documents electronically. Digital notary services are tools that help notaries in their work and organize communication between notaries and parties who carry out transactions though the data information cycle (Emma Nurita: 2012)<sup>[4]</sup>. With the concept of cyber notary, there is a shift, the use of technology or computerization in the field of

notary, namely making a deed not only to make a deed but still maintaining the principle of tabellionis officium fideliter exercebo i.e notary continued to meet with the parties, witnesses and read and there are nicks original signatures of the parties.

However, now with the concept of cyber Notary overall change basic form electronically.

With the concept of cyber Notary then the process of making authentic act can be done online or simply through cyberspace without having to meet directly between the parties, but of course it must be supported by facilities using advanced technology such as teleconferencing facilities that allow the deed to be read by a notary through the media by being heard and witnessed by the parties online. In the concept of cyber notary, the parties signatures use virtual/digital signatures because the parties do not meet each other. Notaries have the authority signature validation and assurance determination date of the letter under the hand by enrolling in a special book. This provisions is the legalization of underhand deeds made by individuals or by parties on paper that is stamped enough by way of registration in a special book provided by a notary.

In the concept of cyber notary, the legality of a notary deed is often questioned. In judicial practice often judged found several cases pertaining to electronic evidence, such as electronic documents. Then the question is whether the judges are willing to accept or not the electronic documents to be used as electronic evidence. Jika dihubungkan dengan konsep cyber notary, it can be used as a reference as one form of evidence, as claimed by Herlien Budiono it doesn't matter what material the article should be written on." (Herlien Budiono: 2007) [6]. So it can be said that a notary deed made cyber notary is an electronic documents that is legal or has legal force recognized but its power will be different from a notary deed made directly.

An authentic deed made by a notary in a civil law country has perfect proof power, while a deed made by a public notary does not. The strength of evidence is so strong that it emerged from the civil law notary in the country has a formal obligation born of the implementation of the principle tabellionis officium fideliter exercebo. The obligation is in the form of an obligation that the notary himself must come, see and hear in every deed making and signed by the notary himself and their respective appeasers directly at the place where the deed was read by the notary. The inscribed signature must be the original signature of the Notary and the appeasers are not electronic signature that can be inscribed on the deed. Expanding the definition of an authentic deed by including a deed in electronic form as a result of the practice of cyber notary will actually create new conflicts that might reduce the evidentiary power of the authentic deed. Referring to the provisions of Article 5 paragraph (4) of the ITE Law, an electronic deed does not have the perfect power of proof like an authentic deed. Until now, electronic deeds are only considered as private deeds which are equated with documents, letters and electronic certificates.

b. Rated Burden of Proof Deed using Cyber Notary Documents in Civil Case The dynamics of the law of evidence in the practice of civil justice, always refers to the principles of civil procedural law in general, but the interpretation of the tools and evidence provides a separate assessment. When proceedings before the courts, where judges particularly passive and always gives flexibility to the

parties to the conflict to give rational reasons, basing on the evidence convincing, so that an overview of the case can be obtained, and makes it easier for judges to end disputes fairly (Syaiful Bakri:2018). The general principle of the burden of proof as stipulated in Articles 163 HIR and 1685, 1244, 1394, 1769, 1977 (1), 252, 489, 533, 535, 468 (2) of the Civil Code. In civil procedural law, written evidence in the form of a deed, authentic deed, and letter evidence in the form of an underhand deed are evidence in the law of proving civil cases in addition to other evidence. Proof means that the proof justifies the legal relationship, the burden of proof in the practice of civil justice is the balance of interests of the litigants.

Deed is a letter as evidence that the signature, which contains the events that form the basis of the haka tau engagement, which is built in the first intentionally to proof (Mertokusumo: 2006) [8]. So to be able to be proven to be the deed of a letter to be signed. An authentic deed is a deed made in a form determined by law by or before an authorized official at the place where the deed was made (Article 1868 of the Civil Code). An underhand deed is a deed that is intentionally made for proof by the parties without the assistance of an official. So solely made between interested parties (Mertokusumo: 2006) [8].

In the decision of the Supreme Court No. 3917K/Pdt/1986, it is also emphasized that basically what is stated in the notary deed must be true to the will of the parties. Authentic deed is a deed made in the form prescribed by law or before the competent public authority for the place deed made (Vide Article 1868 of the Civil Code). The terms of the authentic act is as follows:

1. Made before an authorized official;
2. Attended by the parties;
3. Both parties are known or introduced to officials;
4. Attended by two witnesses;
5. Mention the identity of the notary (official), the witnesses;
6. Mention the place, day, month and year of making the deed;
7. A notary reads the deed before the appeasers;
8. Signed by all parties;
9. Confirmation of reading, translation, and signing at the closing of the deed.

In this regard, it can be seen formal correctness and the material truth in the assessment of evidence, for example about deliberately authentic act validly made before a public official authorized to it as mentioned Article 165 HIR, R.Bg Article 285, Article 1870 BW. The power of formally proving an authentic deed according to Article 1871 of the Civil Code, that what is contained in the deed is what must be acknowledged as long as nothing else can be proven. Authentic act must be understood in terms of a letter which is in legitimate presumption, meaning that as long as there has been no court rulings and binding which states that the lack of separation deed authentic deed that remain valid and serves as strong evidence (Erliyani dan Hamdan: 2020) [9].

From the above it can be seen in reference to the formation of the concept of cyber Notary because in terms of accurate, convenience and security had indeed been sought. Even data / electronic document that already has one advantage in terms of data acquisition can be done faster and more practical for removes the data compared to the shape of the letter as it has been used now (Emma Nutira: 2012) [4].

Along with the demands of the needs of the community who seek justice in the current era of globalization of information and telecommunications technology, It is indeed very necessary for a change to the evidentiary system in the context of dispute resolution through the courts from a closed system to an open system. If evidence deed made by cyber Notary accommodated possible as evidence proving the system an authentic meal should be made openly so that it can accommodate the evidence that does not exist in the law. The renewal of the evidentiary law, especially related to the concept of cyber notary, is a new thing in the legality of remote inspection procedures, digital signatures that are equated with direct signatures, and other new things which are absolutely necessary because of some laws has actually provided some support such as entering electronic documents as evidence, for example the ITE Law. Following up on this with the existence of the ITE Law, electronic information in Indonesia has also been accepted as evidence as stated in Article 5 of the ITE Law so that its form cannot be rejected just because it is electronic.

Currently on matters related to the use of information technology can no longer be approached through conventional legal system, considering that its activities can no longer be limited by the territory of a country, access is very easy to do from any part of the world, and losses can occur to anyone. In essence, by proving the parties try to convince the judges of the truth of the existence of an event or rights by using evidence. Through the evidence, the judge will acquire the basics to make a decision to resolve a dispute (Niniek Suparmi: 2009) <sup>[10]</sup>. Related to evidence authentic deeds, there are three (3) aspects that prove the notarial deed is said to be the authentic act and anyone bound by such deed, ie (Emma Nurita:2012) <sup>[4]</sup>:

### **1) Proof outwardly (Uitwendige Bewijskracht)**

Proof outwardly represents the ability of the deed itself to prove the validity as an authentic deed, probative value of the notarial deed outward aspect to be seen "what is" not viewed from the "what" as outwardly does not need to be contrasted with other evidence.

### **2) Proof formally (formale Bewijskracht)**

Formal proof is only to prove the truth and certainty about the day, date, month, year, at (time) facing and the parties who appear, initials and signatures of the parties/appearances and a notary, as well as proving what was seen, witnessed, heard by a notary (on the official deed/minutes) and record the statements or statements of the parties/appeasers (on the parties' deed).

### **3) Proof materially (Materiele Bewijskracht)**

Material proof is a word which is then poured or contained in the deed valid as true or every person who comes before a notary whose statement is then poured / contained in the deed must be judged to have correctly said so. A valid proof against those who made the deed or those who got the rights and generally applicable, unless there is proof otherwise. So, if during the trial it can be proved, that any one of these three aspects is not true, then the deed only has the power of proof as an underhand deed and the deed is degraded its evidentiary strength as a deed which has proof as an underhand deed.

Technically based on its content, an electronic information and/or electronic document can be categorized into two, namely: (1) an electronic information is outwardly only pay

attention to a fact only legal events so that by itself it can only serve as a guide only because its validity is only coupled her meeting with more information. And (2) an electronic information that outwardly not only shows a fact of a legal event but can also explain and refer to a legal subject who is responsible for it. (Edmon Makarim: 2016) <sup>[3]</sup>. In connection with this, Article 1867 of the Civil Code states that there are 2 (two) types of written evidence, namely:

(1) a deed under the hand made by the parties (private deeds) and (2) authentic deed made by an authorized official (authentic deeds). The two types of deeds have different evidentiary powers, whereas authentic deeds have perfect proof powers. In the explanation of UUJN it is stated that an authentic deed is considered perfect because it contains a formal truth.

In Article 1868 of the Civil Code it is explained that an authentic deed is a deed in the form determined by law, made by or before public officials who have power for that at the place where the deed was made. However, it should also be understood that Article 1869 states that an act that is because it is not in power or not cakapnya employees referred to above, atau karena suatu cacat dalam bentuknya, cannot be treated as a deed in its form, cannot be treated as an authentic deed, it only has the power of proof as written under the hand if the deed is signed by the parties. Furthermore, in Article 1877 of the Civil Code it is also stated that an authentic deed, in any form, is suspected of being false, then its executive power can be suspended according to the provisions in the Civil Procedure Regulation. If we examine more deeply about electronic evidence, it does have weaknesses in terms of proof, because the virtual requirements (deeds) are very vulnerable to change. Faked and even made by people who are not actually the parties who are authorized to make it but act like the real parties. In the concept of cyber notary, apart from the problem of signing the deed, the making of a notary deed also has problems related to the strength of proof. Evidence is the most important part in the process of resolving civil disputes in court, because through stages of evidence, the truth of the existence of an event and the existence of a right of convicted or not in advance of the trial. So if you refer to the UUJN, the Civil Code and the ITE Law, then the deed made by a cyber-notary, both in the form of a deed and a cyber-notary document, does not have perfect power because it has not fulfilled the elements of an authentic deed so that there is a need for legal reform or revision of related regulations.

### **4. Conclusion**

a. Notary as a public official presence is required by the community to meet the needs of the documents are authentic. Notaries provide cyber notary services in terms of the electronic transaction certification process based on the provisions of Article 15 paragraph (3) of the JN Law and the preparation of the minutes of the GMS meeting which is carried out electronically. The notary's authority to provide services electronically produces cyber notary documents. Notary cyber document resulting from the implementation of the Notary cyber has no strength in the manufacture of a notarial deed because in the manufacturing process it does not meet the requirements for making a notary deed as regulated in Article 16 paragraph (1) letters c and m of the JN Law.

b. notary deed made based on the concept of a cyber-notary

in the form of an electronic document or electronic deed does not yet meet the requirements as an authentic deed both according to the UUJN-P and the ITE Law so that the power of proof is the same as the strength of proof such as a letter or deed made under the hand. Therefore, to keep the authenticity of an authentic deed electronically through a cyber-notary concept that has perfect evidence strength can only be done if revisions or changes are made to the articles in the relevant laws and regulations, namely, among others to Law Notary, Law on Information and Electronic Transactions

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