



# Conceptualization of Notary Authority in Certifying Transactions Conducted Electronically in the Framework of Increasing Legal Awareness of Border Region in the Post Covid-19 Era

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**Abstract.** A notary is an appointed public official vested with legal authority to authenticate deeds and wield additional powers as outlined in the Notary Law (UUJN). or other pertinent legislations. With the Cyber Notary's authority as referred to in the Explanation of Article 15 paragraph (3) UUJN at this time, many interpretations still need to be clarified and certain in its implementation. Therefore, this study will discuss the urgency of Cyber Notary authority in Indonesia and the conceptualization of Cyber Notary authority in UUJN concerning the legal certainty of Notaries as Reliability Certification Institutions. The research methodology utilized to address legal matters in this study is normative juridical. This particular approach applies a statutory and conceptual method to effectively resolve issues within the legal system. The study results show that the urgency of the Cyber Notary authority in Indonesia is to provide website authentication services to guarantee trust in electronic transactions. The conceptualization of Cyber Notary authority in the Elucidation of Article 15 paragraph (3) UUJN is nothing but to provide legal certainty that there is a new authority for Notaries to act as part of the Professional Reliability Certification Institution, which has the task of auditing and issuing Reliability Certificates in Electronic Translation. Although currently, the granting of this authority in UUJN has yet to be specifically regulated and explained. However, several provisions can be used as a legal basis for a Notary as a Professional Reliability Certification Institution, namely Article 10 paragraph (1) of the ITE Law and Article 73 PP 71 of 2019.

**Keywords:** Notary, Authority, Reliability Certification.

## 1 Introduction

Notary public is a legal profession valued by the state, providing individuals with authentic written evidence of circumstances, events, and legal acts. The notary's purpose is to serve the public and ensure the validity of important documents [1]. Many people use a Notary's services so that every agreement or document he makes has legal force. The notary's service products have perfect evidentiary power before the court.

Juridically, the powers of a notary are governed by Article 15 of the 2014 Amendment to Act No. 30 of 2004 on the Position of Notary (UUJN), which grants the notary the power to authenticate documents, ensure the precise recording of the date of the document, secure vital documents, provide authentic copies and certify documents. Additionally, the notary has the power to validate signatures, confirm the date of private letters by registering them in a dedicated book, create copies of original private letters with detailed descriptions as outlined in the respective correspondence, validate photocopies against the original letters, offer legal advice pertaining to deed execution, draft land-related documents, and formulate minutes of auction deeds. In addition to the aforementioned authorities, a Notary also possesses additional authorities regulated by laws and regulations. According to the clarification in paragraph (3) of Article 15 in the UUJN, these additional authorities include the certification of electronically conducted transactions (Cyber Notary), creation of a pledge deed for waqf, and aircraft mortgages. The authority of the Cyber Notary, as referred the elucidation provided in Article 15, paragraph (3) of the Notary Law (UUJN) above presents an intriguing area for further exploration and study, bearing in mind that at the current theoretical and conceptual level, there are still many interpretations that are not clear and certain for implementing this authority. This means that until now, in the notary world, the authority of Cyber Notaries cannot be implemented with certainty, given that there are no clear regulations as guidelines for the implementation of Cyber Notaries in Indonesia.

The concept of Cyber Notary, according to Nurita [2], can be temporarily understood as a notary who performs his duties and powers through the use of information technology, especially in the execution of deeds [3]. Currently, there is no globally accepted, universally binding definition for the concept of a Cyber Notary, as noted by Benny [4]. Nevertheless, it can be construed as a Notary who fulfills their duties and exercises their authority through the utilization of information technology. Of course, it is not the legality to use a mobile phone zoom platform or google meet for communication between a Notary and his client in reading a Notary deed. Nonetheless, it is intricately linked to the duties and functions of a Notary, as elucidated in Article 15, paragraph (3) of the Notary Law (UUJN) [4].

Makarim pointed out a subtle misunderstanding in the interpretation of the phrase "in front of" as stated in Article 1868 of the Civil Code, particularly concerning its connection with Cyber Notary practices [5]. Some individuals associate the creation of a deed with teleconferencing, although this perception is not accurate. The working principle of a Cyber Notary is similar to that of an ordinary notary [6]. This implies that the involved parties are still required to personally attend and engage with the notaries. Hence, the deed is not executed remotely via webcam; instead, the parties meet in person with the notary. Moreover, the concept of the cyber-notary has been included, regarding the authority to issue and validate letters and/or deeds through the online system of the General Directorate of Legal Administration [7].

One example of understanding the jurisdiction of a Cyber Notary pertains to a Notary who conducts their duties and exercises their authority through the application of information technology in the execution of legal deeds. was once carried out by a Notary in Jakarta. In 2020, when the Covid 19 pandemic entered Indonesia, a Notary in Jakarta made and read the deed with the help of an electronic system (Zoom application). The

notary's reading of the deed is still online, followed by a circular signing from the appearers, witnesses, and notary. The notary also includes proof of the screen display of the reading of the deed in the attachment of the minutes of the deed and saves it in the report book, and states in the deed that the reading and signing of the deed are conducted through online means (virtually). The making of the deed received a reprimand from the Notary Central Supervisory Council (MPPN), which stated that until now, the deed still needs certainty and legal force [8].

According to the researcher, the authority of a Cyber Notary is a new authority possessed by a Notary. This jurisdiction aligns legally with the stipulations of Article 10, paragraph (1) of Law Number 11 of 2008 regarding Information and Electronic Transactions (UU ITE), which states that "Every business actor conducting Electronic Transactions can be certified by a Reliability Certification Agency." From these provisions, if connected with the authority of a Cyber Notary, a Notary can become part of a Reliability Certification Agency. In Article 1, point 26 of Government Regulation Number 71 of 2019 regarding the Implementation of Electronic Systems and Transactions (PP 71 of 2019), it delineates that a Reliability Certification Agency constitutes an autonomous institution comprising accredited professionals, duly recognized, authorized, and overseen by the government. This agency holds the authority to conduct audits and issue Certificates of Reliability in Electronic Transactions. However, until now, discussion regarding the authority of Cyber Notary is still interpreted as an instrument for Notaries in utilizing technology and information, not interpreted as a new authority, so in practice, the existence of this new authority still does not have legal certainty, especially the absence of provisions that specifically regulate Cyber Notary.

Based on the problems above, the researcher is interested in conducting further discussion and research regarding the authority of Cyber Notaries associated with Reliability Certification Institutions in a paper entitled "Conceptualization of Notary Authorities in Certifying Transactions Conducted Electronically concerning Notary Legal Certainty as a Reliability Certification Institution."

## **2 Goals**

The objectives of this paper are as follows:

- To study and analyze the urgency of Cyber Notary authority in Indonesia.
- To formulate the conceptualization of Cyber Notary authority in the UUJN concerning the legal certainty of a Notary as a Reliability Certification Institution.

## **3 Conceptual Framework**

In the conceptual framework, several conceptions and definitions are expressed to make the research more focused and concrete. The conceptual framework in this study is as follows:

- Conceptualization is developing and abstracting abstract or non-concrete ideas into manifest elements in behavior and characteristics.
- Authority refers to institutionalized power that can exist over a particular group of individuals or a particular sector of government.
- Notary publics are officials granted the authority to authenticate deeds and possess other powers as defined by the Notary Position Law or other legislation.
- Cyber Notary is the authority of a Notary in certifying transactions conducted electronically.
- Legislation consists of statutes and regulations created by the House of Representatives with the President's approval.
- Legal certainty is a principle that prioritizes adherence to laws and regulations, as well as seeking justice in every state administrative policy.
- The Reliability Certification Body is an independent organization composed of authorized professionals who are overseen by the government. Its purpose is to carry out audits and provide Reliability Certificates for Electronic Transactions.

## 4 Methodology

The research methodology utilized to address legal matters in this study is normative juridical. This particular approach applies a statutory and conceptual method to effectively resolve issues within the legal system [9]. This study highlights the importance of conducting library research to locate secondary data, including primary legal materials, secondary legal materials, and tertiary legal materials [9]. After the data has been collected, it is analyzed in a qualitative juridical manner emphasizing the use of norms, rules, theories, and doctrines to answer problems.

## 5 Discussion

### 5.1 The Urgency of Cyber Notary Authority in Indonesia

The term "Cyber Notary" comprises two syllables, culminating in a legal terminology. The first syllable, "Cyber," is derived from the term "cyberspace," signifying the digital realm. The second syllable, "Notary," straightforwardly translates to a notary—a legal professional designated to authenticate documents. According to the Notary Law (UUJN), these provisions pertain to public officials vested with attribution authority by the State to execute specific governmental tasks within civil law. Hence, these two syllables coalesce to create the term "Cyber Notary," which, in essence, can be understood as a Notary functioning as a Public Official while employing information and communication technology in the execution of duties, namely [2]:

- Activities based on electronic media digitization systems that can be carried out through teleconference media, video conferences, or other electronic media facilities,

- Activities that are connected directly to the internet network (online), which allows for patterns of unilateral relationships and long-distance reciprocal interactions,
- Activities with a working system that crosses space and time without boundaries that can involve many people.

Furthermore, as per Nurita's [2] insights into technical juridical aspects, the notion of Cyber Notary encapsulates the strategic utilization of technological advancements. This concept empowers Notaries to authenticate deeds within the digital realm, thereby enabling them to fulfill their daily duties in cyberspace. For instance, shareholders residing in America, Japan, or Singapore can participate in General Meetings of Shareholders (GMS) through teleconferencing, connecting with shareholders in Indonesia. The proceedings are overseen by a Notary in Indonesia, eliminating the necessity for these shareholders to be physically present. Shareholders located abroad are recognized as attendees of the aforementioned General Meetings of Shareholders (GMS) and retain their voting rights. Their participation is accounted for in determining the attendance quorum. Likewise, when signing the deed of the GMS, the shareholders whose presence is abroad can sign the meeting documents electronically. The objective is to facilitate parties residing at considerable distances. With the implementation of Cyber Notary, geographical separation no longer poses a hindrance [2].

Following the formal recognition of Cyber Notary authority, elucidated as an additional mandate in Article 15, paragraph (3) of the Notary Law (UUJN), the term "Cyber Notary" refers to the capacity to authenticate transactions conducted electronically. According to the researcher, this means that the State gives this authority to provide website authentication services to ensure trust in electronic transactions. Apart from that, Cyber Notary's authority exists in the context of realizing justice for the Notary profession in the era of rapid and massive advances in technology and information like today.

According to Makarim [10], the term Cyber Notary was first introduced by the American Bar Association (ABA) in 1994. This concept implies that someone who carries out Cyber Notary activities is "a person who has specialized skills in the field of law and computers."

In this context, the role of Cyber Notaries is similar to that of a Notary Public, particularly in their facilitation of international transactions. These individuals can electronically authenticate documents and are responsible for verifying both legal capacity and financial responsibility [10].

The American Bar Association (ABA) introduced the concept of Cyber Notary in 1994. However, it was not until 2014 that Indonesia followed suit with the implementation of Law Number 2 Year 2014, amending Law Number 30 Year 2004 on the Notary Position. The Cyber Notary concept is rooted in two distinct legal frameworks: the Common Law Legal System and the Civil Law Legal System. The terms "Electronic Notary" (E-Notary) and "Cyber Notary" are often used interchangeably. The concept of E-Notarization was first introduced by the French delegation during a legal workshop organized by the European Union in Brussels, Belgium in 1989. In essence, this concept designates the notary as the entity responsible for creating an unbiased record of electronic transactions conducted by the parties involved [10]. Meanwhile, the purpose of

Cyber Notary is to enable transactions between remote parties, eliminating the obstacle of distance [11].

In Indonesia, the implementation of the authority of Cyber Notary still needs to be improved in terms of meaning and conceptualization. This is caused by the legal gap between the interpretation and implementation of the concept of Cyber Notary. Although the regulation of the cyber notary institution has occurred, a legal vacuum remains regarding its conceptual framework. This discrepancy has significant implications for the Cyber Notary institution, leading to challenges in implementing one of the notary's newly acquired powers [3].

## **5.2 Conceptualization of Cyber Notary Authorities in the Law on Notary Position concerning Notary Legal Certainty as a Reliability Certification Institution**

Even though juridically, a Notary has Cyber Notary authority as stated in the Explanation of Article 15 paragraph (3) UUJN. In practical terms within the legal domain, only a handful of Notaries have been willing to embrace Cyber Notary practices. This hesitance predominantly stems from the absence of clear regulations governing the technical aspects of implementation. Consequently, Notaries lack a comprehensive framework or legal protection in the event that complications arise from the application of Cyber Notary procedures.

Notaries, as appointed public officials, are entrusted by legal provisions to fulfill a vital role in society by meticulously documenting specific events or legal actions in the form of written and original records. Grounded in this premise, it is essential for a Notary to possess a deep-seated commitment to community service, recognizing that their very establishment stems from the collective will of the community they serve [2].

According to Prastyo [12], the concept of Cyber Notary has yet to have a binding definition. Various interpretations exist concerning the essence of the concept, all sharing a common core: the notion wherein a Notary fulfills their official duties by harnessing electronic technology, specifically the internet. Scholars analyze this concept by dissecting the term Cyber Notary, which combines "cyberspace," denoting the digital realm, and "notary," referring to the official legal position, as elucidated in the preceding discourse. However, even though the notary's authority to carry out "other authorities regulated by law" in the form of certifying electronic transactions has been regulated in Article 15 paragraph (3) UUJN, there is still a vague meaning (vague norm) that has not yet received a clear understanding from the explanation This article [13]. The authorization for electronic certification seems to remain theoretical discourse, as the government has yet to establish comprehensive regulations for its practical implementation.

Determining the feasibility of translating a theoretical "discourse" into practical implementation, while ensuring it does not conflict with existing norms, necessitates in-depth examination through the lens of critical legal theory. Therefore, further studies are needed regarding the authority of this Cyber Notary with other laws and regulations so that there is harmony in the arrangement of Cyber Notary authorities [14] to create legal certainty.

If it is reviewed, the provisions of Article 1 number (4) of the ITE Law, which states that :

"Electronic documents are any electronic information that is created, forwarded, sent, received, stored in analog, digital, electromagnetic, optical or the like which can be seen, displayed and heard through a computer or electronic system but not limited to writing, sound, pictures, maps, plans, photographs or the like, letters, signs, numbers, access codes, or symbols that have meaning and can be understood by people who can understand them".

According to the above definition of electronic documents, electronic documents may be used as valid evidence in connection with Article 5, paragraphs (1), (2) and (3) of the ITE Law. It is important to note, however, the exceptions specified in paragraph (4) letter b of the ITE Law, which include letters and documents that must be made in the form of notarial deeds or deeds by officials who make deeds according to the law. The content of the paragraph indicates that the current Information and Electronic Transactions (ITE) Law poses obstacles to the adoption of Cyber Notary practices in Indonesia. As per the law, certain documents, including letters, are mandated to be in written form. One such obstacle arises from this requirement "... a letter used in the process of enforcing civil, criminal and state administrative, procedural law..." the primary role of a notary is to create impeccable and authentic evidence, admissible in court. These documents are deemed valid unless proven otherwise. This highlights a clash of norms concerning Cyber Notary practices between the Notary Law (UUJN) and the regulations outlined in the Information and Electronic Transactions (ITE) Law. The conflicts arising from these regulations have led to the non-implementation of Cyber Notary authority. This lack of clarity has created a legal vacuum, both in terms of interpretation and practical implementation of the regulations.

Through Article 15 paragraph (3) UUJN, the law has provided an opportunity to apply the Cyber Notary concept but only implicitly because the provision lies only in the article's explanation, not in the words of the article. A limited understanding can be seen in using the word Cyber Notary in less punctuation which means the word Cyber Notary is additional information or explanation from the previous phrase [3]. Even though it uses technology that does not require the parties and or appearers to be physically present, it does not reduce the strength of proof of an authentic deed. According to Makarim, in carrying out electronic transactions, the exchange of information electronically (digital) is related to carrying out a legal act. The relationship that arises in conducting electronic transactions is between the organizers of the electronic transaction system and the public interest or, in civil terms, with the parties in conducting electronic engagements [5].

The ITE Law's Article 5 provides the definition of electronic transactions, which establishes that information, electronic documents, or their printouts possess probative value in procedural law, and have been recognized as valid legal evidence. This aligns with the Cyber Notary concept to be applied to the Notary profession, so Notaries act as organizers of electronic transactions. Further arrangements regarding electronic transaction operators are regulated in Government Regulation Number 71 of 2019 concerning Electronic System and Transaction Operators (PP 71 of 2019). Article 73 PP

71 of 2019 states that it is possible for a Notary professional to form a Reliability Certification Institution whose job is to issue reliability certificates to carry out the authority of a Cyber Notary. This means that the State has given confidence to the Notary profession to form a Reliability Certification Institution whose job is to provide website authentication services to guarantee trust in electronic transactions.

In Article 1, point 26:

Government Regulation No. 71/2019, Article 1, Paragraph 26, explains that the Reliability Certification Body is an autonomous body composed of accredited professionals recognized, authorized and supervised by the Government. This agency is vested with the authority to conduct audits and issue Reliability Certificates for Electronic Transactions. Historically, the responsibility for electronic system management has been shared between governmental bodies and private entities. Cyber Notary is a new dream in the Notary world because, with this authority, a Notary can provide website authentication services to guarantee trust in electronic transactions.

Reliability certification proves that Business Actors conduct business/trade properly, and the Electronic System of Business Actors will display a certification logo (Trustmark). According to Setiawan [15], there are 5 (five) categories of Reliability Certificates, including: (1). security of identity, (2). Security against data exchange, (3). Security against vulnerabilities, (4). Consumer rating, and (5). They are securing the confidentiality of personal data [15]. Therefore, in order to guarantee the security and safety of electronic trade transactions, it is imperative to incorporate a reliability certificate (Trustmark logo) issued by a Reliability Certification Agency situated in Indonesia. This agency should be duly registered in the list of Reliability Certification Agencies sanctioned by the Minister of Communication and Informatics of the Republic of Indonesia. Including the Trustmark logo is an important matter in the electronic trading system as legal protection for e-commerce consumers. Here is an example of a Trustmark logo (Fig. 1):



Fig. 1. Example of reliability certificate.



The establishment of a Reliability Certification Agency is regulated in Article 73 PP 71 of 2019, which states that:

- Business Actors who carry out Electronic Transactions can be certified by a Reliability Certification Agency.
- Reliability Certification Institution must be domiciled in Indonesia.
- Reliability Certification Institution formed by professionals.
- Professionals who form Reliability Certification Institutions, as referred to in paragraph (3), at least include the following professions:
  - Information Technology consultant;
  - Information Technology auditors; And
  - legal consultant in the field of Information Technology.
- Reliability Certification Institutions must be registered in the list of Reliability Certification Agencies issued by the Minister.
- Further provisions regarding the requirements for establishing a Reliability Certification agency are regulated by a Ministerial Regulation

The aforementioned provisions underscore the pertinent link between the authority of the Cyber Notary and the establishment of a Reliability Certification Agency. Even though Article 73 paragraph (4) PP 71 of 2019 above does not mention the notary element, this provision states "at least," which means that it does not rule out the possibility for professional professionals such as Notaries to be able to form Reliability Certification Institutions. The role of a Notary in a Reliability Certification Institution is indispensable because, in essence, every transaction (including electronic) in the future requires the involvement of a Notary so that transactions made by business actors conducted electronically have legal force.

Thus, the purpose of granting Cyber Notary authority is to provide website authentication services to guarantee trust in electronic transactions. The authority of the Cyber Notary regulated in the Explanation of Article 15 paragraph (3) UUJN is given implicitly because it is stated not in the sound of the article but in the explanation of the article. Nevertheless, the authority of the Cyber Notary is accommodated in the provisions of Article 73 PP 71 of 2019, which stipulates that there is authority for Notaries to form Professional Reliability Certification Institutions [16]. The process of certifying electronic transactions by a Notary acting as a Professional Reliability Certification Body signifies that the Notary possesses the authority to issue a reliability certificate (Trustmark logo). This certificate serves as evidence that the website utilized by business entities for electronic transactions has been duly authenticated by a Notary, ensuring trustworthiness in electronic transactions. Thus, the existence of arrangements regarding the implementation of reliability certification regulated in the ITE Law and PP 71 of 2019 can be used as a legal basis for Notaries to form a Professional Reliability Certification Institution. Until now, UUJN still needs clear regulations governing the application of Cyber Notary authority through its derivative regulations [17].

## 6 Conclusion

From the results of the data analysis and discussion above, the urgency of the Cyber Notary authority in Indonesia is to provide website authentication services to guarantee trust in electronic transactions. The conceptualization of Cyber Notary authority in the Elucidation of Article 15 paragraph (3) UUJN is none other than to provide a legal certainty of a new authority for Notaries to act as part of the Professional Reliability Certification Institution, which has the task of auditing and issuing Reliability Certificates in Electronic Transactions. Although currently, the granting of this authority in UUJN and its derivative regulations has yet to be specifically regulated and explained. However, several provisions can be used as a legal basis for a Notary as a Professional Reliability Certification Institution, namely Article 10 paragraph (1) of the ITE Law and Article 73 PP 71 of 2019.

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