

## Digitalizing Notarial Practices: Law Number 2 of 2014 Study

Aman Al Muhtar<sup>1</sup> and Indrati Rini<sup>2</sup>

amanalmuhtar2511@gmail.com; indratirini1956@gmail.com

Universitas Narotama Surabaya

### Abstract

Cyber notary is proposed as a concept that can help notaries in their work more efficiently. However, problems will arise if the concept of cyber notary is linked to the UUJN which is the basis for notaries. This is what underlies this research. This research aims to evaluate the relevance of UUJN in the digital era and the Cyber notary concept. In its implementation, it will be carried out using a juridical analysis method with an approach to applicable legal regulations as a tool to conclude. It was found in the research that cyber notary cannot yet be implemented in the legal system in Indonesia because the laws governing the reading of deed contents online via video conference and digital signing are still unclear. For this reason, as a solution considering the urgency, evaluation and revision are needed to enable clear implementation of cyber notaries in Indonesia. For this reason, evaluation is needed so that notaries can serve the public more efficiently, considering the urgency of implementing cyber notary in the digital era.

**Keywords:** Cyber Notary; UUJN; Digital Era.

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### Introduction

Developments in the last few years have brought significant changes. The changes that occur cannot be separated from the massive development of technology and information in all areas, including in various professions related to services, because the convenience offered, time efficiency and service are strong reasons for moving systems from conventional to digital. Digital systems offer various conveniences because everything is done with electronic devices such as cellphones and PCs that are connected to the internet network to access them. In practice, in this era, everyone has moved towards an all-digital era. Almost everyone in the world uses cellphones to help with their daily affairs. Compiled from [statista.com](https://www.statista.com), the development of cellphone users in the world in 2023 will reach 4.25 billion users, and it is estimated that cellphone use will increase to 630 million users in 2024 and will continue to increase until in 2029 it is said to reach 6.38M users,<sup>1</sup> which means that in the future digital technology will

<sup>1</sup> J. Degenhard, 'Number of Smartphone Users Worldwide from 2014 to 2029' (*statista*, 28 February 2024).

become mandatory for use in the future. The points that make digital systems attractive to use in this era of life are ease of communication, reaching more networks, easier transactions, ease of sharing and receiving information and education, as well as ease of access to entertainment.<sup>2</sup> This is what makes various professions also make changes by moving from conventional to digital, which is usually called digital, including the notary profession.

In Law number 2 of 2014 doing which regulates the position of notary, it is explained that a notary is a public official who is appointed to carry out his duties and authority in doing authentic deeds.<sup>3</sup> In carrying out their duties and authority to serve the public, notaries often encounter obstacles and problems, including archival problems, namely queues that are too long, complicated work, lost files, employee turnover, and employee fraud.<sup>4</sup> This often occurs due to the lack of efficiency and effectiveness of the archival system. Not only that, in his official duties, the UUJN also states that a notary must read a description of the deed he has, made in front of interested parties and witnesses, attach the fingerprint of the person present, or sign the deed, so that it becomes an authentic deed, and if the, requirements of the notary's duties do not If you carry out or skip just 1 condition, the deed made can be legally flawed or what is usually called a private deed which does not have legal certainty as strong evidence. It can be interpreted that UUJN requires notaries to serve the public, namely face to face directly with presenters and witnesses. Of course, this makes notary work pile up because of time and distance inefficiencies. With the many obstacles for notaries in carrying out their official duties and in line with developments in the era that has shifted to a digital system, there is a need for transformation in services that are more efficient and easier by digitizing the service system in the notary position.

The concept of a digital or electronic notary could be the right solution to overcome these problems, for the convenience of the notary profession as well as for the party

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<sup>2</sup> Risky Amalia, '13 Dampak Positif Perkembangan Era Digital Bagi Kehidupan Manusia' (*Parapuan*, 30 March 2023).

<sup>3</sup> Undang-undang (UU) Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris 2014 (Peraturan Perundang-undangan).

<sup>4</sup> PrimaDoc, '5 Potensi Masalah Kearsipan dan Kinerja yang Sering Terjadi Pada Kantor Notaris' (*PrimaDoc*, 11 August 2022).

who will process the authentic deed. The concept of cyber notary was first put forward by The Information Security Committee of the American Bar Association in America in 1994 by carrying out digital data authentication.<sup>5</sup> In the digital notary concept, it is called a cyber notary or e-notary. The concept is to use tools that can assist the notary's duties and authority in digital form.<sup>6</sup> The urgency of implementing notaries is based on its constituency which requires legal relevance. In this way, the notary profession can keep up with technological developments and times in carrying out its duties.<sup>7</sup> However, despite the many benefits obtained by implementing a cyber notary, there are also various problems related to the legality of its implementation. In this case, the implementation of the cyber notary in Indonesia is legally constrained because, on the other hand, Indonesia is a legal country based on law. There are no laws. Indonesian law which explicitly and discusses the implementation of cyber notaries. In the UUJN, many articles were found that conflict with the concept of cyber notary. This is the basis for carrying out this research, in order to evaluate the law regarding the position of notary for revision and enable the legal implementation of cyber notary in Indonesia to become strong evidence as an authentic deed. With the problem formulation, namely, what is the position of a notary like according to Law number 2 of 2019? And what kind of evaluation can be carried out so that cyber notaries can be implemented?.

## **Research Method**

This research procedure uses normative juridical methods with an approach to applicable legal regulations as a tool to reach conclusions. In this context, the research will refer to the relevant legal framework to analyze issues related to Cyber Notary and UUJN. The data used in this research consists of primary data in the form of applicable laws and regulations, as well as secondary data in the form of library materials that

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<sup>5</sup> Indah Sugiarti, 'Kepastian Hukum Terhadap Penerapan dan Pemanfaatan Konsep Cyber Notary Di Indonesia' (2023) 2 *Officium Notarium* 13 <<https://journal.uui.ac.id/JON/article/view/25644>>.

<sup>6</sup> RN Aulia, 'Implementasi E-Notary Dalam Pelaksanaan Jabatan Notaris Berdasar Undang-Undang Jabatan Notaris.' (Thesist Magister, FAKULTASHUKUM UNIVERSITAS ISLAM INDONESIA 2021).

<sup>7</sup> Sri Maulina, M. Nur Rasyid, Yusri, 'Konsep dan Pelaksanaan Tugas Profesi Notaris Secara Elektronik (Electronic Notary)' (2021) 7 *Diversi Jurnal Hukum* <<https://ejournal.uniska-kediri.ac.id/index.php/Diversi/article/view/1842>> accessed 30 April 2024.

can support research. This primary data includes legal documents which are the main reference in evaluating the implementation of Cyber Notary. Meanwhile, secondary data from library materials will be used to support analysis and deeper understanding of related issues. Next, the data will be analyzed carefully to draw strong and relevant conclusions regarding the feasibility and implications of implementing Cyber Notary in notary practice in Indonesia. With this comprehensive approach, it is hoped that research can provide an in-depth understanding of the challenges and opportunities related to the digitalization of notaries in the context of applicable law.

#### **Position of Notary in Law Number 2 of 2014**

Notary is a position mandated to an individual who meets the criteria mentioned in Law number 2 of 2014 in article 3, including being an Indonesian citizen, religious, over 27 years old, physically and mentally healthy, graduated with a law degree and a master's degree in notary law, has undergone an internship as a notary employee for 2 years, has not held any position in government or civil service, nor has he ever been involved in criminal law involving imprisonment for more than 5 years. For the appointment of a notary, a notary who has fulfilled the requirements by article 3 will be appointed and dismissed by the relevant minister.

The appointment of a notary is carried out as a public official who is given the task and authority to serve the public regarding deeds of agreement as strong evidence in certain legal acts or what is usually called authentic deeds. UUJN has also explained the authority of notaries in article 15, paragraph 1 which reads "Notaries are authorized as officials appointed to serve the community in making authentic deeds regarding all deeds, agreements and stipulations required by statutory regulations and/or as desired by those who has an interest in being expressed in an authentic Deed, guaranteeing the certainty of the date of making the Deed, storing the Deed, providing grosses, copies and quotations of the Deed, all of this as long as the making of the Deed is not also assigned or excluded to another official or other person as determined by law".<sup>8</sup> Apart

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<sup>8</sup> Undang-undang (UU) Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris.

from the authority mentioned in paragraph 1, paragraph 2 states that the notary also has the authority “a. Validate the signature and determine the certainty of the date of the underwritten letter by registering it in a special book; b. record letters under hand by registering in a special book; c. make a copy of the original letter under your hand in the form of a copy containing the description as written and depicted in the letter concerned; d. validate the suitability of the photocopy with the original letter; e. provide legal counseling regarding the making of Deeds; f. make deeds relating to land; org. Make a Deed of auction minutes.<sup>9</sup> Apart from that, notaries also have the authority as intended in, article 15, paragraph 3, namely, the authority to certify transactions carried out electronically (cyber notary), make deeds of waqf pledges, and mortgage airplanes.<sup>10</sup> In carrying out their duties to serve the public, notaries also have obligations and professional ethics that must be adhered to in order to protect the notary profession from being exploited by actions that are not justified in notary ethics. The obligations that must be adhered to by a notary are written in article 16, including:

- a. Act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of parties involved in legal actions;
- b. Make a Deed in the form of Deed Minutes and save it as part of the Notary Protocol;
- c. Attach letters and documents as well as the person’s fingerprints to the Deed Minutes;
- d. Issue Grosse Deed, Copy of Deed, or Quote of Deed based on Minutes of Deed;
- e. Provide services in accordance with the provisions of this Law, unless there are reasons to refuse;
- f. Keep confidential everything regarding the Deed he or she makes and all information obtained for the purpose of making the Deed in accordance with the oath/promise of office, unless the law stipulates otherwise;
- g. Bind the Deeds he makes within 1 (one) month into a book containing no more than 50 (fifty) Deeds, and if the number of Deeds cannot be contained in one book, the Deeds can be bound into more than one book, and record the number of Minutes of Deeds, month and year of publication on the cover of each book;
- h. Make a list of deeds of protest against non-payment or non-receipt of securities;
- i. Make a list of Deeds relating to wills in order of when the Deeds were made every month
- j. Send the list of Deeds as referred to in letter i or the nil list relating to wills to the center for the will register at the ministry that handles government affairs in the field

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<sup>9</sup> *ibid.*

<sup>10</sup> Rossel Ezra Johannes Tuwaidan, ‘Kewenangan Notaris Menurut Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris’ (2018) 6 *Lex Privatum*.

- of law within 5 (five) days of the first week of each following month;
- k. Record in the repertory the date of delivery of the register of wills at the end of each month;
  - l. Has a seal or seal containing the state symbol of the Republic of Indonesia and in the space surrounding it is written the name, position and place of the relevant position;
  - m. Read the Deed in front of the presenter in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for making the Deed of Will privately, and signed at that time by the presenter, witness and Notary; and
  - n. Accepting prospective Notary interns.<sup>11</sup>

Notaries who do not carry out or violate the various conditions and obligations mentioned in article 16 will be given sanctions in accordance with article 16, paragraphs 11 to 13. Deeds made by notaries are made using the procedures and parts of deeds that are regulated in article 38 and the deed made must be attended by more than 1 witness, provided that the witness is over 17 years old, understands legal acts, understands the language in the deed, can sign the deed, and has no relationship by marriage or blood with the notary, not only that witness nor The presenter's identity must also be known or introduced to the notary, and Article 41 explains that if the requirements in Articles 38 to 40 are not implemented or violated, the deed made will result in a private deed.

### **Implementation of Cyber Notary is Reviewed from Law Number 2 of 2014**

The digital-based notary, which is usually called cyber notary, is a concept that is a solution or idea that can enable the notary profession to carry out its duties more easily and efficiently, assisted by developments in technology and information in the form of tools that can digitize the work of the notary profession as an official. Authorized to do authentic deeds. There are several cyber notary concepts that have been implemented in other countries following the legal system in that country, namely common law and civil law. In its application, more common law countries use the cyber notary concept, whereas in Indonesia itself the legal system adheres to a civil law legal system where deeds made before a notary are authentic deeds as perfect evidence in proving and legalizing certain legal acts.<sup>12</sup> In carrying out his duties and authority, notaries are given special authority

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<sup>11</sup> Undang-undang (UU) Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris.

<sup>12</sup> Bernadete Nurmawati and others, 'Keabsahan Akta Notaris Yang Menggunakan Cyber Notary Dalam Pembuatan Akta Otentik Menurut Undang-Undang Jabatan Notaris' (2023) 7 Action Research Literate 35.

to make authentic deeds based on agreements between interested parties with conditions that are in accordance with those written in Article 16 UUJN which, among other things, states that the notary is obliged to read the contents of the deed which is attended by more than 1 witness and is signed on time. This also applies to witnesses, notaries and presenters. Their identities and witnesses and presenters must also be known or introduced to the notary to be written in the deed. This is what will become a problem in the cyber notary concept that will be implemented in Indonesia, whose duties and positions are basically regulated in the UUJN. In implementing the digitalization of notaries, notaries can read and hold meetings attended by witnesses and presenters online using electronic devices using video calls together. Letter signatures can also be done digitally so that the minutes can be directly stored and archived by the notary in digital form, which does not take up space and time.<sup>13</sup> However, this is the obstacle notaries implementing cyber notary in Indonesia, where the law regarding the position of notary does not yet clearly and clearly regulate the implementation of cyber notary notaries, which has been described. In this case, there is no law that clearly explains whether the reading of the contents of a deed in the presence of a witness can be carried out online with a digital signature on the deed. The risk if the cyber notary concept continues to be implemented is that the legality of the deed that has been made will be legally flawed and become a private deed that has no power as evidence in certain legal actions.

Based on the explanation regarding cyber notary which is based on UUJN as the basis for carrying out notarial duties, it can be seen that existing laws and regulations have not been able to overcome the complexity of making notarial deeds in a digital environment. This creates uncertainty regarding the validity and acceptability of digital notarial deeds. In this context, the possibility of differences in interpretation or developing standards in the writing, legality and validity of digital notarial deeds may become a subject of uncertainty that needs further attention.

To bridge this gap, there is an urgent need to revise and update the legal framework to align with technological advances and ensure the integration of Cyber Notary into

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<sup>13</sup> Dini Awwalia, Eva Shofia Fitriati, Muhammad Haris, 'Digitalisasi Dalam Pembuatan dan Penyimpanan Akta Notaris Pada Era Society 5.0 (2023) 5 FALAH: Jurnal Hukum Ekonomi Syariah.

notarial practice. By revising laws and regulations to accommodate digital notary requirements, Indonesia can improve the efficiency and accessibility of notary services while upholding the authenticity and legality of digital deeds. Thus, efforts to revise the legal framework are an important step in facing the challenges and opportunities that arise due to digital transformation in notarial practice.

Furthermore, this analysis underscores the importance of balancing the potential risks and benefits of Cyber Notary, emphasizing the importance of building safeguards that protect the integrity of notarial acts in the digital realm. Maintaining the authenticity and legality of digital notarial deeds is very important to maintain the trust and credibility of notary services in the digital era, emphasizing the importance of regulatory updates and technology integration in maintaining the integrity of notarial practices. And the urgency of regulating cyber notaries in services provided by notaries is very urgent considering that notaries have to adapt to increasingly dynamic and instantaneous developments in society.<sup>14</sup>

## Conclusion

In conclusion, the efficient implementation of Cyber Notary in notarial practices in Indonesia necessitates a comprehensive legal framework and seamless integration of technology. The research underscores the importance of addressing the legal ambiguities surrounding the use of digital technologies in notarial services, particularly in relation to online deed readings and digital signing. Without clear regulations and guidelines, the legitimacy of digitally notarized deeds may be compromised, leading to potential legal challenges and uncertainties in their evidentiary value.

Moreover, the successful integration of Cyber Notary into Indonesian notarial practices hinges on developing software and applications tailored for notaries, facilitating online services while ensuring compliance with legal standards. As the digital era continues to evolve, there is an urgent need for the government to evaluate and revise existing legislation to accommodate the advancements in technology and meet the

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<sup>14</sup> Indah Aulia Putri, *Urgensi Penerapan Cyber Notary Dalam Pelayanan Jasa Notaris Berdasarkan UUJN* (Tesis Universitas Islam Indonesia 2021).



demands of modern society. By establishing a robust legal framework and promoting technology integration, notaries can enhance their efficiency, adaptability, and service delivery, ultimately benefiting both notarial professionals and the public seeking their services.

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