ANALYSIS OF MAKING CYBER NOTARY AS A FORM OF LEGAL PROTECTION FOR THE PARTIES

THESIS

By:

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Student Number : 18410270

INTERNATIONAL PROGRAM

UNDERGRADUATE STUDY PROGRAM IN LAW

FACULTY OF LAW

UNIVERSITAS ISLAM INDONESIA

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THESIS

Presented as the Partial Fulfillment of the Requirements to Obtain a Bachelor's Degree at The Faculty of Law Universitas Islam Indonesia Yogyakarta

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ORISINALITAS KARYA TULIS ILMIAH BERUPA TUGAS AKHIR

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Bismillahirrahmanirrahim

Yang bertanda tangan di bawah ini, Saya:

Nama : **RUHI HAIRUL**

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Adalah benar-benar Mahasiswa Fakultas Hukum Universitas Islam Indonesia yang telah melakukan penulisa Karya Tulis Ilmiah (Tugas Akhir) berupa Skripsi dengan judul:

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Demikian surat pernyataan ini saya buat dengan sebenar-benarnya, dalam kondisi sehat jasmani dan rohani, dengan sadar dan tidak ada tekanan dalam bentuk apapun dan oleh siapapun.

Yogyakarta,   Oktober 2022
Yang Membuat Pernyataan

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MOTTO

"Keep praying and trying until God has no reason to reject it"

- Ruhi Hairul -

DEDICATION

This thesis is wholeheartedly dedicated to:

Allah *Subhanallahu wa ta'ala,*

Thanks Allah SWT who always gives me strength, health and broad knowledge which made it possible to complete my thesis;

My Parents, Brother and Family,

who always provided me love, continuous support and affection;

My Alma Mater,

Universitas Islam Indonesia

All of my lectures of Faculty of Law, Universitas Islam Indonesia,

who have taught and guided me to complete my study;

All Staff of Faculty of Law,

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During the process of making this thesis, the writer realized that the thesis will never be finished without any contribution, assistance, guidance and support from various parties. All gratitude shall be honored to:

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5. My Parents, **Giyarno** and **Nurhaliyah,** I dedicate this thesis to those who always pray for me when the world is cruel to me, to those who always support and believe in whatever I do when I lose confidence, I believe this will not be in vain, and I promise to be the best that I can be, I love you.
6. **Putri ariqah,** my friend from Aceh, there is not much that I can convey, too much of your participation in helping me do this final project, thank you very much for your contribution so that I can complete this task.
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Finally, the author realized that there are still a lot of things that need to be improve, hence any kind of suggestion will be gladly accepted and considered for better future knowledge. Hopefully this thesis can be useful for anyone who reads this.

Yogyakarta, Oktober 18th, 2022
Author,

Ruhi Hairul

TABLE OF CONTENT

ABSTRACT

Authentic deed is a means of evidence that has very high position in the civil law. This reason becomes very important why in the process of making authentic deed it is hoped will change using the concept of cyber notary. This study aims to find out how to make a notary deed in electronic form that can provide protection for the parties and find out the obstacles faced in making a notary deed in electronic form. Type of research is normative legal research conducted by examining library materials or secondary data. This study concludes there are 4 (four) stages in making an e-notary, first, the parties come appear before the notary through electronic media and then convey the goals and intentions of each party, second, parties through the teleconference media show their identity and matched by the notary. Third, make the deed according to the form determined by law and read the deed in front of the parties through teleconference media. Fourth, the signing of the notary deed by the parties using a digital signature. While the obstacles faced in e-notary acts are the obligation to be physically present in the making of a notary deed and while the obstacles faced in making e-notary are the obligation to be physically present or real both in the process of making, reading, and signing the e-notary, as well as there is a statement in regulation that the notarial deed is not an electronic information and document.

Keywords: Authentic Deed, Cyber Notary, Evidence, Obstacles, Procedures.

CHAPTER I

INTRODUCTION

A. BACKGROUND OF STUDY

A notary is a public official who is given a mandate and authority by law in the form of a task, one of the mandates or duties and authority held by a notary is to provide public services in the civil sector to the general public. (KUHPer), is not only given the task and authority to provide public services in the civil sector, but a notary is also obliged to carry out office administration activities like a company.[1] Office administration in a notary can be interpreted as writing activities (administrative activities) such as writing a list of deeds, a list of legalized letters, a list of registered letters, a protest register, a will register, and a limited liability company register. Notary administrative activities are inseparable from the managerial ability of the notary to carry out filing procedures. Notaries are also in carrying out their duties based on legislation known as the Notary Position Act (UUJN) Number 2 of 2014 Jo. Law Number 30 of 2004, in the provisions of the Notary Position Regulations and the Notary Position Act (UUJN), which essentially states that the main task

[1] Anita Afriana, "Kedudukan Dan Tanggung Jawab Notaris Sebagai Pihak Dalam Penyelesaian Sengketa Perdata di Indonesia Terkait Akta Yang Dibuatnya", *Jurnal Poros Hukum Padjadjaran,* Vol. 1 No. 2, padjadjaran university, 2020, p.248.

of a notary is to make authentic deeds to ensure certainty, order and legal protection.[2]

A notarial deed or authentic deed is a notary product which essentially contains formal, material, and birth truths in accordance with what has been conveyed by the parties and then poured into the form of a deed during the process of making the deed before a notary. This is contained in Article 1870 of the Civil Code, "an authentic deed gives to the parties who make it a perfect proof of what is contained therein". [3]it means that what has been contained in the deed must be considered correct by the judge if the deed is not denied by the parties, but for the authentic deed that has been made by the authorized official there are several weaknesses in the form of security for the minutes of the deed stored as a notary protocol which is the authority of the notary.

In making authentic deeds and storing notary protocols, a careful process is needed, so that the notary protocols are not scattered, lost or damaged.[4] The obligation to keep the notarial protocol for a period of 25 (twenty five) years. Another obligation is to submit a report on the list of activities related to the making of the deeds, letters, and documents under the authority of the notary every month to the Regional Supervisory Council

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[2] Considering letter b of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary

[3] Article 1870 of Indonesian Civil Code

[4] Triyanti, Kekuatan Pembuktian Dokumen Elektronik Sebagai Pengganti Minuta Akta, *Jurnal Repertorium*, Volume.II No.2 Semarang State University, 2015, p.21.

(MPD) in the work area of the notary concerned, and specifically regarding wills, it is reported to the Central List of Wills of the Ministry of Law and Human Rights of the Republic of Indonesia. As stated in Article 16 paragraph (1) letter b that a notary must make a deed in the form of a minutes of deed and save it as a notary protocol. The deed is a state archive which one day will be needed if there is a case in the future, as stated in Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the position of a notary, article 1 number (13) The Notary Protocol is a collection of documents constituting a state archive that must be stored and maintained by a notary in accordance with the provisions of the legislation.[5]

In fact, not a few of the making of notary deeds experience problems both in making and during the storage of notary deeds which become notary protocols, these obstacles can even result in the loss or disappearance of the minute of of the deed kept by the notary. Base on MEMPAWAH NEWS – Notary Office or Land Deed Making Officer (PPAT) Fam Joehanes, SH is one of 27 buildings that were victims of the fire at the Sungai Pinyuh Market Complex on Damai Street, Mempawah Department, Wednesday (13/7/2022) around 08.00 WIB. Most of the land documents belonging to his clients failed to be saved from the raging fire.

[5] Article 1 Paragraph (13) of Law No. 2 of 2014 amendments to Law No.30 of 2004 concerning the Position of a Notary.

“Some of the documents can still be saved, especially those on the lower floors. While the documents upstairs were all burnt," said Fam Joehanes, SH to reporters.[6] besides the copy of the deed received by the parties who initially had the power of proof The full deed becomes a deed with weak legal evidence if there are parties who deny the copy of the deed, in such circumstances it is necessary to have the minutes of the deed stored as a notary protocol to strengthen the proof, as stated in Article 1888 of the Civil Code. Then copies and quotations can only be trusted as long as the copies and quotations are in accordance with the original which can always be ordered to be shown.[7] So that if the minutes of the deed are damaged or lost, it will cause losses to the related parties in this case if there is a dispute over the deed made.

This problem has caused the emergence of a solution to make a legal breakthrough regarding the procedure for making a notary deed which was originally carried out in the classical or (conventional) way into a notarial deed which is contained in the form of a Cyber Notary electronic deed, considering the development of technology is also so fast it should be able to provide many benefits and advantages, benefits not only for economic actors but also for

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[6] Kantor Notaris Fam Joehanes ikut terbakar, sebagian dokumen tanah gagal diselamatkan contained in https://www.mempawahnews.com/2022/07/kantor-notaris-fam-joehanes-ikut.html last accessed on november 2022.

[7] Article 1888 of Indonesian Civil Code

public officials in providing public services to the community, one of which is a notary.

The essence of Cyber Notary currently has no binding definition. However, it can be interpreted as a notary who carries out his duties or authority based on information technology. Cyber Notary itself is a concept that utilizes technological advances for notaries to make authentic deeds in cyberspace and carry out their duties every day. For example: electronic deed signing and the General Meeting of Shareholders by teleconference.[8] Basically the concept of Cyber Notary has existed since 1995, however, the development of the cyber notary concept, especially in Indonesia itself, is experiencing obstacles due to the absence of laws governing the manufacture and legalization of authentic deeds in electronic form, so that they cannot guarantee maximum legal protection. However, the development of the cyber notary concept, especially in Indonesia itself, is experiencing obstacles due to the absence of laws governing the manufacture and legalization of authentic deeds in electronic form, so that they cannot provide maximum legal protection guarantees.

Reporting from REPUBLIKA.CO.ID, JAKARTA - Entering the 'New Normal' era is a challenge for notary workers. Apart from needing adaptation, regulatory support from the government is also very much needed.

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[8] Emma Nurita, *Cyber Notary Pemahaman Awal dalam Konsep Pemikiran,* Refika Aditama, Bandung, 2012, page. 53.

This was conveyed by Otty H.C. Ubayani, general chairman of the Indonesian Legal Scholar Community Foundation (YKCHI) and the Diponegoro University Notary Alumni Association (Ikanot) in a virtual discussion entitled 'Avoiding Legal Snares in New Normal Circumstances in Jakarta. During the Covid-19 pandemic, said Otty, notary work uses technology a lot. For that, a legal umbrella is needed so as not to ensnare in the future. If there are no clear rules, it is feared that the notary could be caught in a legal case. In fact, as a public official, a notary must be protected by the rule of law, he said in a written statement in Jakarta, Sunday (31/5).

According to Prof. Gayus Lumbuun, one form of significant adjustment in the practice of notary services is the recognition of electronic document management, as regulated in Article 5 paragraph (1) of Law No. 11 of 2008, which states that electronic information and/or electronic documents and/or or the printout is a valid legal evidence.[9] Another adjustment that needs to be made in the 'New Normal' era is an activity that does not have to be physically present. Current technological advances make it very possible for document management to not have to physically appear before a notary anymore. So even though the parties are in different places, which means far away but with guaranteed authenticity of the parties or is a real or virtual crime, Gaius said.[10]

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[9] *Ibid.*

[10] Liputan6.com, *Diskusi Virtual YKCHI dan Ikanot Undip, Menggagas Kepastian Hukum Bagi Notaris di Era 'New Normal,* contained in https://www.liputan6.com/news/read/4261332/diskusi-virtual-ykchi-dan-ikanot-undip-gagas-kepastian-hukum-notaris-di-era-new-normal last accessed on April 7, 2022.

Another resource person, Udin Narsudin, a Notary Practitioner/PPAT, described the cyber notary application in the digital era, namely utilizing technological advances for notaries in carrying out their daily tasks, such as digitizing documents, electronically signing deed, holding the General Meeting of Shareholders by teleconference and other similar things.

Basically the concept of cyber notary was introduced in 1995. However, due to the absence of facilitation in the form of a law that regulates cyber notary, the concept of cyber notary is only a concept, so that in the context of the current digital era 4.0 it is still not connected. In principle, continued Udin, the concept of a Cyber Notary is intended to facilitate transactions between parties who live far apart, so that distance is no longer a problem.[11] According to Emma Nurita, the concept of a Cyber Notary can temporarily be interpreted as a notary who carries out his duties or authority based on information technology, which is related to the duties and functions of a notary, especially in making deeds.[12] Basically all notarial activities are the result of a combination of theory and practice at an ideal level. In theory and practice, notarial activities should work together, but it also does not rule out the possibility that theory and practice notary activities are sometimes inconsistent with each other, this means that not

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[11] *Diskusi Virtual YKCHI dan Ikanot Undip, Menggagas Kepastian Hukum Bagi Notaris di Era 'New Normal*, contained in, https://innews.co.id/diskusi-virtual-ykchi-dan-ikanot-undip-menggagas-kepastian-hukum-bagi-notaris-di-era-new-normal/ last accessed on 7 April 2022.

[12] Emma Nurita, *Cyber Notary*, *Pemahaman Awal dalam Konsep Pemikiran*, Bandung: Refika Aditama, 2012, page. xi

always theories in notary practice support all practical activities, so that notaries in this case do not only rely on theoretical developments. Theories from existing legal sciences, but notaries are also required to independently develop theories to support the implementation of the notary's duties and positions.[13] In addition, Notaries are also required to be able and able to use the concept of Cyber Notary in order to create a service that is fast, precise and efficient, so as to accelerate the rate of economic growth.[14] The concept of a Cyber Notary in Indonesia became clear after the promulgation of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (changes to the UUJN) which regulates the authority to certify transactions conducted electronically, even though it is only listed in the Elucidation of Article 15 paragraph 3 other authorities regulated in laws and regulations", among others, the authority to certify transactions conducted electronically (cyber notary), make waqf, pledge deeds, and aircraft mortgages.[15]

From the description of the background, the author will discuss in a thesis entitled **"ANALYSIS OF MAKING CYBER NOTARY AS A FORM OF LEGAL PROTECTION FOR THE PARTIES".**

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[13] Emma Nurita. *Cyber Notary Pemahaman Awal dan Konsep Pemikiran*. Jakarta: Refika Aditama, 2014, page. 2.
[14] Kadek Setiadewi, I Made Hendra Wijaya. *Legalitas Akta No.taris Berbasis Cyber Notary Sebagai Akta Otentik*, 2020, Page. 128.
[15] Habib Adjie, "Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global*", Jurnal Hukum Respublica,* Vol. 16, No. 2, 2017, p.201.

B. PROBLEM FORMULATION

Based on the previous descriptions, the following problems can be formulated:

1. How to make an authentic deed electronically that can provide legal protection for the interests of the parties?
2. What are the obstacles faced in making authentic deeds electronically that can provide legal protection for the parties?

C. RESEARCH OBJECTIVES

The objectives to be achieved by the authors in this study are:

1. To find out how the making of authentic deeds electronically can provide legal protection for the parties
2. To find out the obstacles faced in making authentic deeds electronically that can provide legal protection for the parties.

D. RESEACH ORIGINALITY

To confirm the authenticity of this study and prevent replication or reproduction of themes with the same emphasis on research. So to assess the originality of the research, a search was first carried out on previous studies, both written by Indonesian authors and writers from other countries. several studies that are relevant to the writing of this study have been compiled as a comparison with previous studies.

First, a thesis entitled "Legal Analysis of the Use and Making of Notary Deeds Electronically" written by Tiska Sundani, Faculty of Law, University of North Sumatra. In this study, the author writes about the government's efforts to provide legal certainty for the manufacture and use of a notarial deed made electronically. Meanwhile, this research differs by discussing how the making of a notary deed should be done conventionally and then stored as a notary protocol in electronic form as a form of legal protection for the interests of the parties. Then the similarity of the two studies lies in the object under study, namely a deed made by a notary in electronic form.[16]

Second, a thesis entitled "Cyber Notary in Indonesia Judging from Law Number 2 of 2014" written by Benny, Faculty of Law, University of North Sumatra. In this study, the author writes about the application of the concept of Cyber Notary which increases the effectiveness and efficiency of Notaries in terms of Law Number 2 of 2014. While this study has a difference by discussing how the notary deed should be made by a notary which is then made in electronic form as a form of protection. law in the interests of the parties. Then the similarity of the two studies lies in the object under study, namely a deed made by a notary in electronic form.[17]

Third, a thesis entitled "The Legality of Notary Deeds Electronically in E-Commrece" written by Prayudicia Tantra Atmaja, Faculty of Law, Sebelas Maret University. In this study, the author writes about technological developments that affect the making of a notary deed into an electronic deed that requires a strong legal basis so that it has strong evidentiary power in accordance with applicable laws and regulations. then made in electronic form as a form of legal protection against the interests of the parties. Then the similarity of the two studies lies in the object under study, namely a deed made by a notary in electronic form.[18]

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[16] Tiska Sundani, "Analisis Hukum Atas Penggunaan Dan Pembuatan Akta Notaris Secara Elektronik", Thesis, Fakultas Hukum, Universitas Sumatera Utara, Medan, 2017.
[17] Benny, "Penerapan Konsep Cyber Notary Di Indonesia Ditinjau Dari Undang-Undang Nomor 2 Tahun 2014", Thesis, Fakultas Hukum, Universitas Sumatra Utara, Medan, 2014.
[18] Prayudicia Tantra Atmaja, Keabsahan Akta Notaris Secara Elektronik Dalam E-Commrece", Thesis, Fakultas Hukum, Universitas Sebelas Maret, Surakarta, 2019.

Fourth, a legal communication journal entitled "The Legality of Notary Deeds Based on Cyber Notary as an Authentic Deed" written by Kadek Setiadewi and I Made Hendra Wijaya, Faculty of Law, Mahasaraswati University Denpasar. In this study, the author writes about how the strength of evidence that exists in a notary deed with the concept of cybernotary (electronic deed) which does not have perfect evidentiary power like a conventional notary deed based on article 1868 of the Criminal Code. While this research has a difference by discussing how the notary deed should be made by a notary which is then made in electronic form as a form of legal protection for the interests of the parties. Then the similarity of the two studies lies in the object under study, namely a deed made by a notary in electronic form.[19]

Fifth, a notary law journal with the title "Cyber Notary Concepts in Guaranteeing Authenticity of Electronic Transactions" written by I Putu Suwantara and Putu Angga Pratama Sukma, Faculty of Law, Mahasaraswati University Denpasar. In this study, the author writes about the application of the cyber notary concept in ensuring the authenticity of electronic transactions and examines notary arrangements in ensuring the authenticity of electronic transactions. While this research has a difference by discussing how the notary deed should be made by a notary which is then made in electronic form as a form of legal protection for the interests of the parties. Then the similarity of the two studies lies in the object under study, namely a deed made by a notary in electronic form.[20]

Sixth, the Journal of Law and Humanities with the title "Value of Proving Deeds Made Electronically by Notaries" which was written by Andi

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[19] Kadek Setiadewi, I Made Hendra Wijaya. "Legalitas Akta Notaris Berbasis Cyber Notary Sebagai Akta Otentik", *jurnal hukum*, Vol. 6 No 1, 2020, hlm. 133.

[20] I Putu Suwantara, Putu Angga Pratama Sukma, "Konsep Cyber Notary Dalam Menjamin Keautentikan Terhadap Transaksi Elektronik", *jurnal hukum kenotariatan*, Vol. 06 No. 01, 2021, p.173.

Putri Rasyid, Muhammad Ashri, Andi Tenri Famauri Rifai, Faculty of Law, Hasanuddin University. In this study, the author writes about the value of proof of a deed made electronically by a notary in court. While this research has a difference by discussing how the notary deed should be made by a notary which is then made in electronic form as a form of legal protection for the interests of the parties. Then the similarity of the two studies lies in the object under study, namely a deed made by a notary in electronic form.[21]

Seventh, the student journal of the law faculty with the title "The Validity of Notary Deeds Using Cyber Notaries as Authentic Deeds" written by Zainatun Rossalina, Postgraduate of the Faculty of Law, Universitas Brawijaya. In this study, the researcher wrote about the resolution of the conflict of norms that occurred between Article 15 paragraph (3) and Article 16 paragraph (1) letter m of Law Number 02 of 2014 and also to find out and analyze the certification of transactions carried out by cyber notary as legal deed. authentic, while this study has a difference by discussing how the notarial deed should be made by a notary which is then made in electronic form as a form of legal protection for the interests of the parties. Then the similarity of the two studies lies in the object under study, namely a deed made by a notary in electronic form.[22]

E. BENEFITS OF RESEARCH

The benefits of this research are:

[21] Andi Putri Rasyid, Muhammad Ashri, Andi Tenri Famauri Rifai, "Nilai Pembuktian Akta Yang Dibuat Secara Elektronik Oleh Notaris", *Jurnal Ilmu Hukum Dan Humaniora*, Vol. 9 No. 1, 2022, p.563.

[22] Zainatun Rossalina, "Keabsahan Akta Notaris Yang Menggunakan Cyber Notary Sebagai Akta Otentik", *Jurnal Mahasiswa Hukum*, 2016. p.3.

1. The results of this study can provide benefits or use values in science in the field of law, especially civil law, especially regarding the systematics of making a notary deed made in electronic form

2. This research can also be useful as material for further research.

F. LITERATURE REVIEW

1. Overview about notary

The definition of a notary itself can be found in Law No. 30 of 2004 concerning the position of a notary, while Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the position of a notary is contained in Article 1 verse (1), namely "Notaries are a public official who is authorized to make an authentic deed and has other authorities as referred to in this law or based on other laws."[23] A notary is an official or legal professional who is sworn in to act in accordance with the proper law, so it can be said that a notary is indispensable for the certainty of the legality of the act as well as to prevent any unlawful acts.[24]

2. the principles of proportionality and the principle of notary professionalism

[23] Article 1 paragraph (1) Law No.2 of 2014 concerning amendments to law No. 30 of 2004 concerning the Position of a Notary

[24] Rudyanti Dorotea Tobing, *Aspek-Aspek Hukum Bisnis, Pengertian, Asas, Teori dan Praktik.* Yokyakarta: Lasbang Justia, 2012, p.6.

In carrying out his position a notary must also refer to the principles of good governance, the principle of proportionality and also the principles of professionalism, as for the substance of these principles, namely:

a. The principle of equality

A notary in carrying out his duties and functions to provide public services to the community is prohibited from discriminating between one another based on social status, economic status, or other reasons. However, a notary can only refuse to provide services to the parties with reasons justified by law.

b. Principle of trust

One form of implementation of the principle of trust, namely, a notary is obliged to keep everything related to the deed made by him/her and also all the information that has been obtained for the making of the deed in accordance with the oath/promise of office, except for other matters determined by the law, this is based on article 16 paragraph (1) letter f UUJN and article 4 paragraph (2) UUJN.[25]

c. The principle of legal certainty

[25] Article 16 paragraph (1) latter f and Article 4 paragraph (2) Law No.2 of 2014 concerning amendments to law No. 30 of 2004 concerning the Position of a Notary.

A notary in carrying out his duties and positions is required to be normatively guided by the rule of law in matters relating to the actions to be taken which will then be poured into a deed. In other words, the deed made by a notary must be in accordance with the applicable laws and regulations, so that in the future problems that arise in the deed can be used as guidelines for the related parties.

d. Principle of prudence

A notary must examine all the evidence shown to him and listen to all statements or statements of the parties submitted as the basic material in making the deed. In addition, a notary is obliged to introduce the parties, based on the identity of the parties, as well as ask and listen to the wishes of the parties, provide advice to the parties, then fulfill the techniques in making a deed and fulfill other obligations related to the implementation of his duties as a notary.

e. The principle of giving reasons

Every deed made before or by a notary must be based on reasons and supporting facts.

f. The principle of prohibition of abuse of authority

Regarding the principle of abuse of authority, it is stated in Article 15 of the UUJN, if a notary does things or acts that deviate from his authority as stipulated in the law, his actions can be said to be an act of abuse of authority.

g. The principle of the prohibition of acting arbitrarily

The notary must consider and look at all the documents presented to him. in this case the notary has a role to determine whether an action can be stated in the form of a deed or not, and the decisions taken must be based on legal reasons that must be explained to the parties.

h. The principle of proportionality

The principle of proportionality can be found in Article 16 paragraph (1) letter of the UUJN, in which a notary is obliged to protect the interests of the parties involved in legal actions or in carrying out his duties, must prioritize the balance between the rights and obligations of the appearers.

i. The principle of professionalism

A notary in carrying out his duties must prioritize expertise (scientific) based on the UUJN and the Notary Code of Ethics. this is manifested in serving the community and the deed made before or by a notary.

3. Overview about notarial deed

A notarial deed is an official document issued by a notary which is also part of an authentic deed, the meaning of this authentic deed can be found in the UUJN. According to Article 1 point 7 of the UUJN, the definition of a notary deed is an authentic deed made by or before a notary according to the forms and procedures stipulated in this law.[26] Meanwhile, in Article 1868 of the Criminal Code, what is meant by an authentic deed is a deed which in the form determined by law is made by or in the presence of public officials in power for that purpose where the deed was made.

According to R. Subekti, what is meant by public employees are notaries, judges, bailiffs at a court, or civil registration employees.[27]

4. Overview about electronic deed

In the law itself, the electronic deed does not yet have a clear definition, but according to Edmon Makarim, defines an electronic deed with the term electronic contract (electronic contract).

According to him, an electronic contract (e-contract) which is then defined as an online contract is an engagement or legal relationship which is then carried out electronically by combining the network (networking) of

[26] *ibid*, page. 72.
[27] R. Subekti, Pokok-pokok Hukum Perdata, intermasa, Jakarta, cet.ke-32, 2009, page. 178.

computer-based information systems and communication systems based on telecommunications networks and services. which is then facilitated by the existence of an internet network.[28]

G. OPERATIONAL DEFINITION

To avoid multiple interpretations in understanding the research, the following are the definitions of the terms given as follows:

1. Legal protection

The term legal protection theory comes from English, namely legal protection theory, while in Dutch it is called *theorie van de wettelijke bascherming,* and in German it is called *theorie der rechtliche schutz.* Grammatically the protection is:

1) Shelter, or
2) Things (actions) protect.

According to Satjipto Raharjo, legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law.[29]

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[28] Cita Yustia Sefriani, et. al. *Buku Pintar Bisnis Online dan Transaksi Elektronik*, Jakarta: Gramedia Pustaka, 2013, p.101.
[29] *Ibid,* page. 262.

2. Legal interest

Legal interests (*rechtbelang*) are in the form of all interests needed in various aspects of human life, both as individuals, members of society, or a country that must be guarded and defended so as not to be violated by human actions, all of which are aimed at implementing and ensuring order in the country. in all areas of life.

3. **The parties** are any person who appears before a notary with the intention of taking legal action.

H. RESEARCH METHOD

1. Type of research

The type of research that the author uses in the preparation of this legal writing is normative legal research or literature, namely legal research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. These materials are arranged systematically, studied, then a conclusion is drawn in relation to the problem under study.[30]

2. Research approaches

[30] Soerjono Soekanto, Penelitian Hukum Normatif Suatu Tinjauan, Rajawali Pers, Jakarta, 2013, p.13

The method written by the author in this study uses a statutory approach and a conceptual approach, the statute approach referred to in this study is the approach used to examine and analyze all laws and regulations that have relevance or have has to do with the legal issues at hand. The conceptual approach is an approach that departs from the views, doctrines that already exist and develop in the science of law.[31]

3. Research Legal Materials

The data sources used in this study are secondary data sources consisting of primary legal materials, secondary legal materials, and tertiary legal materials, namely:

a. Primary legal materials

The primary legal materials in question are legal materials that have legally binding legal force consisting of applicable laws and regulations and are closely related to the issues or problems being studied, including:

1. The 1945 Constitution of the Republic of Indonesia

2. Civil Law Code

[31] Peter Mahmus Marzuki, *Penelitian Hukum*, six print, Jakarta, Kencana Prenada Media Group, 2010, p.93.

3. Law Number 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of a Notary
4. Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions

b. Secondary legal material

Then secondary legal materials, in this case secondary legal materials, are legal materials that do not have legally binding legal force as primary legal materials, while secondary legal materials include, among others, legal books, scientific journals.

c. Tertiary legal materials

Tertiary legal materials, in this case tertiary legal materials as intended are legal materials whose function is to provide explanations for primary legal materials and secondary legal materials. The tertiary legal materials include a large Indonesian dictionary, legal dictionary, and an English dictionary.

4. Legal Material Collection Method

Document study technique is a technique for reviewing and processing data that has been collected by the author into official documents, statutory regulations, journals and scientific studies as well as books related to the background of the problem including activities to collect data. Through electronic media and other media that have relevance to the issues discussed.

5. Data analysis Method

The data analysis method used by the author in this study is a qualitative descriptive analysis method, namely data obtained from written materials such as legislation and books that are described qualitatively first and then analyzed.

According to Waluyo, descriptive research is research that aims to describe something in a certain area and at a certain time. Usually in this research, the researcher has got/has an overview in the form of initial data about the problem to be studied.[32]

I. STRUCTURE OF WRITING

The systematics of writing the results of this study are divided into 4 (four) chapters, each of which is related to one another. The writing systematic is as follows:

CHAPTER I is an Introduction, in this chapter, the author describes the background of the problem which is the theme of the research and this chapter

[32] Eray Hendrik Mezak, "Jenis Metode dan Pendekatan Dalam Penelitian Hukum", *Law Review*, Fakullas Hukum Universitas Pelita Harapan, Vol. V, No.3, 2006, p. 88.

consists of the background which contains a general description whose content is a consideration of the reasons the author is interested in conducting research with the title "Analysis of the Making of a Notary Deed in Electronic Form. As a form of protection against the legal interests of the parties, then the author also describes what is the formulation of the problem that arises from the background as well as the objectives and benefits of this research. And the author also describes the research method used and explains the writing system used by the author

CHAPTER II is <u>Theoritical Review</u>, in this chapter, the author explains the definitions, theories and concepts sourced from laws and regulations and the literature regarding the Analysis of Making Notary Deeds in Electronic Form as a Form of Protection of the Legal Interests of the Parties.

CHAPTER III is <u>Finding and Results</u>, in this chapter, is the result of research that answers and analyzes the problem formulation regarding the Analysis of Making Notary Deeds in Electronic Form as a Form of Protection of the Legal Interests of the Parties in terms of the notary position law as well as from the electronic information and transaction law.

CHAPTER IV is <u>Closing</u>, in this chapter the author conveys the conclusions and suggestions from the research results that have been written by the author, then in this chapter the author also presents the author's conclusions regarding the formulation of the problem proposed by the author and is equipped with suggestions as recommendations from the research results.

CHAPTER II

LITERATURE REVIEW

A. OVERVIEW OF NOTARY POSITION

1. Notary as a public official

In Indonesian, the term official itself has the meaning or understanding as a government employee who holds a position (leading element) or someone who holds a position.[33] A position is a personification of rights and obligations that can be carried out by humans. Meanwhile, those who carry out their rights and obligations and are supported by a position are referred to as officials, in this case an official only acts through the intermediary of his position. Position as a legal subject (person) is a permanent work environment that supports rights and obligations (personification) and can guarantee a continuity between rights and obligations.

Thus, the relationship between a position and an official is that a position is a permanent position or position (within the scope of permanent work) which can only be carried out or carried out by humans as supporters of rights and obligations so that humans who carry out these positions are referred to as officials. Officials (who occupy positions) are not permanent, meaning that in this case the official has a term of office or is always changing or

[33]Arti kata pejabat dalam kamus Bahasa Indonesia,contained in,https://kbbi.lektur.id/pejabat#:~:text=Menurut%20Kamus%20Besar%20Bahasa%20Indonesia,amat%20jujur%20dalam%20melaksanakan%20tugasnya. Last accessed on june 2022

changing or can be replaced by other humans, while the position has a sustainable nature or remains as long as an organizational or government structure is needed that will only run if there are officials who run it.

Furthermore, the phrase official refers to a person (legal subject) who holds an office. In the event that all actions taken by the holder or office holder in accordance with their authority are the implementation of the position itself.

Furthermore, the term public office is a translation of *openbaare ambtenaren* which is contained in article 1 number 1 *Reglement op het Notary Ambt in Indonesie* and article 1868 *Burgerlijk Wetboek* (BW). Article 1 number 1 *Regulation op het Notary Ambt in Indonesie* states that:[34]

> *"Dez dektek daversen zijn openbare ambtenaren, uitsluitend bevoegd, om authentieke op te maken wegens alle handelinggen, overeenkomsten en beschikkingen, waarvan eene algemeene, dat bij authentiek geschrift belanghebbenden bewaring te houden en daarvan grossen, afschriften en uittreksels uit te geven; alles voorzoover het opmaken dier akten door eene algemeene verordening niet ook aan andere ambteneren of personen opgedragen of voorhebehouden."*

> *A notary is a public official who is only authorized to make an authentic deed regarding all actions, agreements, and stipulations required by a general regulation or by an interested party to be stated in an authentic deed, guaranteeing the certainty of the date, keeping the deed and giving grosse. copies, and quotations thereof, all as long as the making of the deed by a general regulation is not assigned or excluded to other officials or people."*[35]

[34] Muhammad Hadin Muhjad, "Jabatan Notaris Dalam Perspektif Hukum Administrasi", *Lambung Mangkurat Law Journal*, Volume.3 No. 1, 2018, p.81.
[35] Article 1868 of the Civil Code.

Furthermore, based on article 1868 Burgerlijk Wetboek (BW) states that:

"Eene authentieke acte is de zoodanige welke in de wettelijken vorn is verleden, door of ten overstaan van openbare ambtenaren die daartoe bevoegd zijn terplaatse alwaar zulks is geschied." "(An authentic deed is a deed made in a form determined by law by or before a public official authorized for that at the place where the deed was made)."

Furthermore, according to the legal dictionary, one of the meanings of the word *ambtenaren* is official. Thus, *openbare ambtenaren* are officials who have duties related to the public interest. So that it is appropriate if the phrase or word *openbare ambtenaren* is translated or interpreted as a public official. Especially in this case a notary is a public official who is given the authority to make an authentic deed that serves the public interest. Based on the explanation of the above provisions, a notary is qualified as a public official but a notary qualification.

2. Duties and authority of a notary

a. Notary duties

In UUJN it is not fully explained about the duties of a notary, especially in Article 1 of the UUJN in addition to the task of making authentic deeds, a notary also has the duty to certify letters and deeds under the hand. Furthermore, a notary also provides advice and explanations regarding the law to the parties concerned, in this case the appearers.

In essence, the task of a notary is to make an authentic deed, whether it is determined by law or to formulate the wishes of the parties in the form of an authentic deed by observing or fulfilling the requirements determined by legislation. Then a notary is not allowed to be a witness against the deeds that have been made before him.

b. notary authority

The existence of the position of a notary is required by the rule of law with the aim and purpose of providing assistance and services to the public who require authentic written evidence regarding all matters, both actions, actions, and legal events. Based on this, it can be understood that a notary has the authority to carry out his duties and functions.

The authority of a Notary is enshrined in Article 15 paragraph (1) of the Law on Notary Positions which states that:[36]

"Notaries are authorized to make authentic Deeds regarding all actions, agreements, and stipulations required by laws and regulations and/or desired by interested parties to be stated in authentic Deeds, guarantee the certainty of the date of making the Deed, save the Deed, provide grosse, copies and quotations. Deed, all of that as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law.

[36]Article 15 Number 1 of Law Number 2 Of 2014 Amendments to Law Number 30 Of 2004 Concerning The Position of a Notary

Furthermore, the authority of a notary is regulated in article 15 paragraph (2) of law number 2 of 2014 amendments to law number 30 of 2004 concerning the position of a notary which states that:[37]

In addition to the authority as referred to in paragraph (1), a Notary is also authorized to:

1. *Ratify the signature and determine the certainty of the date of the letter under the hand by registering it in a special book;*
2. *Book a letter under the hand by registering in a special book;*
3. *Make a copy of the original handwritten letter in the form of a copy containing the description as written and described in the letter concerned;*
4. *Validate the compatibility of the photocopy with the original letter;*
5. *Provide legal counseling in connection with the making of the deed;*
6. *Make a deed related to land; or*
7. *Make a deed of auction minutes.*

Furthermore, other authorities of a notary have also been mentioned in article 15 paragraph (3) of the UUJN which states that in addition to the authority as referred to in paragraph (1) and paragraph (2), a notary has other powers regulated in the legislation.[38]

The authority of a notary in carrying out its duties and functions is an authority that is obtained by normative attribution and is regulated by Law 2 of 2014 amendments to Law No. 30 of 2004 concerning the position of a notary. The standard regulated in the law for a notary is the authority

[37] Article 15 Number 2 of Law Number 2 Of 2014 Amendments to Law Number 30 Of 2004 Concerning The Position of a Notary
[38] Article 15 Number 3 of Law Number 2 Of 2014 Amendments to Law Number 30 Of 2004 Concerning The Position of a Notary

of a notary in carrying out legal actions in the form of making or making perfect (authentic) evidence.

Furthermore, the authority must be based on the applicable rules, if there is a violation of the authority that has been given by the law, it can cause or lead to legal liability for the holder of the notary office. Based on this description, it can be concluded that the authority of a notary in carrying out its functions is an authority that is obtained by attribution because authority is an authority that is obtained from the provisions of the law on the position of a notary and is not a gift from any institution and is given by humans.

1) General authority
2) Special authority
3) Authority to be determined in the future

3. Notary obligations and notary prohibitions

a. obligation

As for the authority of a notary in carrying out its duties and functions, it is regulated in paragraph 16 UUJN in carrying out his position a notary is required to:[39]

[39] Article 16 of law number 2 of 2014 amendments to law number 30 of 2004 concerning the position of a notary

a) act trustworthy, honest, thorough, independent, impartial, and protect the interests of the parties involved in legal actions

b) make a Deed in the form of Minutes of Deed and save it as part of the Notary Protocol;

c) attaching letters and documents as well as the fingerprint of the appearer on the Minutes of Deed;

d) issue a Grosse Deed, Copies of Deeds, or Deed Quotations based on the Minutes of Deeds;

e) provide services in accordance with the provisions of this Law, unless there is a reason to refuse it;

f) keep everything about the Deed he made and all information obtained for the making of the Deed in accordance with the oath/promise of office, unless the law provides otherwise;

g) bind the Deed he made in 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 Deed can be bound into more than one book, and record the number of Minutes of Deed, month and year of manufacture on the cover of each book;

h) make a list of the deed of protest against the non-payment or non-receipt of securities;

i) make a list of Deeds relating to wills according to the order in which the Deed was made every month;

j) send the list of Deeds as referred to in letter i or the list of nil relating to wills to the center of the will register at the ministry that administers government affairs in the field of law within 5 (five) days in the first week of each following month;

k) record in the repertoire the date of sending the list of wills at the end of each month;

l) has a stamp or seal containing the state symbol of the Republic of Indonesia and in the space surrounding it the name, position, and place of domicile of the person concerned are written;

m) read the Deed in front of an audience in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a private will, and signed at the same time by the appearers, witnesses, and a Notary; and

n) accept internship candidates for Notary Public.

b. Prohibitions

As for the prohibition against notaries as regulated in Article 17 paragraph 1 of Law No. 2 of 2014 amendments to Law No. 30 of 2004 concerning the position of a notary, which states that:[40]

Notaries are prohibited:

a) *carry out a position outside the area of his office;*
b) *leaving his/her area of office more than 7 (seven) consecutive working days without a valid reason;*
c) *concurrently as a civil servant;*
d) *concurrently serving as a state official;*
e) *concurrently serving as an advocate;*
f) *holding concurrent positions as a leader or employee of a state-owned enterprise, regional-owned enterprise or private enterprise;*
g) *concurrently serving as Land Deed Making Officer and/or Class II Auction Officer outside the Notary's domicile;*
h) *become a Substitute Notary Public; or*
i) *Perform other work that is contrary to religious norms, decency, or propriety that can affect the honor and dignity of the position of a Notary.*

4. Requirements to be appointed as a notary

basically anyone can become a notary, but currently to be appointed as a notary is only someone or a citizen who has met several qualifications or must meet the requirements that have been regulated by law, as for the terms and conditions are:[41]

a) *Indonesian citizens.*
b) *Fear God Almighty.*
c) *Aged at least 27 (twenty seven) years.*
d) *Physically and mentally healthy as stated by a health certificate from a psychiatrist.*

[40] Article 17 point 1 of Law Number 2 of 2014 Amendments to Law Number 30 of 2004 concerning the Position of Notary

[41] Stikharisma Harnum, Akhmad Khisni, Perbedaan Kewenangan dan Syarat Tata Cara Pengangkatan Antara Notaris dan Notaris Pengganti, *Jurnal Akta*, Vol. 4 No. 4, 2017. p. 512.

e) *Graduated with a law degree and a bachelor's degree in notarial degree*
f) *Have undergone an internship program or have actually worked as a notary employee for at least twenty-four consecutive months at a notary office on their own initiative or on the recommendation of a notary organization after graduating from a notary degree.*
g) *Does not have the status of a civil servant, state official, advocate, and does not hold other positions which are prohibited by law from concurrently with the position of a notary.*
h) *Never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal offense punishable by imprisonment of 5 (five) years or more.*

These conditions are cumulative conditions, which means absolute conditions and must be fulfilled in their entirety by a notary. And if one of these conditions is not met by a notary, then the notary cannot be given a practice permit.

B. OVERVIEW OF NOTARY DEED

1. Definition of notarial deed

A Notary Deed is an official document issued by a Notary according to the Civil Code article 1870 and HIR article 165 (Rbg 285) which has absolute and binding evidentiary power in UUJN. A Notary deed is also referred to as an authentic deed.[42] According to R. Subekti in the legal dictionary, the word *acta* is the plural form of *actum* which is taken from Latin which means actions.[43] While the meaning of authentic in the form of a law is made by an authorized official.[44] Then the authentic deed itself in the Big Indonesian Dictionary says that the meaning of the word deed is a letter of evidence containing a statement

[42] Article 1870 of the Civil Code
[43] Daeng Naja, *Teknik Pembuatan Akta*, Pustaka yustisia, yogyakarta, 2012, p. 1.
[44] *Ibid*, p.11.

(description, confession, decision, etc.) Authentic words according to the Big Indonesian Dictionary (KBBI) are trustworthy, original, genuine, legitimate.[45] While the meaning of the word authentic deed according to the Big Indonesian Dictionary (KBBI) is a deed made by or before a public official who is authorized to make a deed in the form determined by law.[46]

a. according to law

Apart from being found in the KBBI, the definition of an authentic deed is also explained in the legislation. as stated in article 1866 of the Criminal Code that an authentic deed is a deed whose form has been determined by law by or before a public official authorized to do so at the place where the deed was made.[47] Meanwhile, in Article 1 number 7 of Law Number 2 of 2014 amendments to Law No. 30 of 2004 concerning the position of a Notary also states that a Notary deed, hereinafter referred to as a deed, is an authentic deed made by or before a Notary according to the form and procedure stipulated in this law.

b. According to legal experts

According to Sudikno Mertokusumo, a deed is a signed letter containing the events that form the basis of a right or an engagement, which

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45 https://kbbi.web.id/autentik last accessed on 22 April 2022
46 https://kbbi.kata.web.id/akta-autentik/ Last accessed on 22 April 2022
47 Article 1868 of the Civil Code

was made from the beginning intentionally for proof.[48] According to Subekti, the deed itself is different from a letter. According to him, a deed is a writing that was deliberately made to serve as evidence about an event and signed.[49] According to Prof. R. Subekti the definition of an authentic deed is binding evidence, in the sense that what is written in the deed must be trusted by the judge, that is, it must be considered true, as long as the untruth is not proven.[50]

Based on the description above, it can be concluded that an authentic deed is a deed that contains legal events or events that are intentionally made by interested parties before an authorized public official whose form and procedure for making it have been determined by law at the place where the deed is made.

2. Legal basis for authentic deeds in Indonesia

The provisions governing authentic deeds are contained in article 1868 of the Civil Code which states that an authentic deed is a deed made in the form determined by law by or before a public official authorized to do so at the place where the deed was made. In addition to being contained in the KUHPer, the provisions governing authentic deeds are also contained in Article 1 number 7

[48] Ayu Riskiana Dinaryanti, Tinjauan Yuridis Legalisasi Akta di Bawah Tangan Oleh Notaris, *Jurnal Ilmu Hukum Legal Opinion,* Vol 1, No.3, 2013, p. 4.
[49] Dedy Pramono, Kekuatan Pembuktian Akta Yang Dibuat oleh Notaris Selaku Pejabat Umum Menurut Hukum Acara Perdata di Indonesia, *jurnal Lex Jurnalica*, Vol.12 No.3, Desember 2015. p. 252.
[50] R.Subekti, *Op.Cit.*, p. 73.

which states that a Notary Deed, hereinafter referred to as a Deed, is an authentic deed made by or before a Notary according to the form and procedure stipulated in this Law.[51] In the process of making it, the authentic deed must also fulfill what is required in Article 1868 of the Civil Code, which is cumulative, meaning that all of these conditions must be fulfilled.[52]

3. Authentic Deed Function

The deed made by the Notary himself has a function which is divided into two, namely:

a. Formal Functions

An authentic deed can have a formal function (formality causa) which means that to complete or complete a legal act a deed must be made, but the formal function of an authentic deed does not determine whether or not a deed is valid, but as a formal requirement that there has been or it is true that an act or legal event has occurred.

b. Function as Evidence

Regarding the function of an authentic deed as evidence, according to Kohar, an authentic deed serves as evidence which for the parties

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[51] Article 1 number 7 of Law Number 12 of 2014 Amendments to Law Number 30 of 2004 concerning the Position of a Notary

[52] Article 1868 of the Civil Code

concerned has perfect evidentiary power, but even though it has full (perfect) evidentiary power as evidence, an authentic deed also has the possibility of being crippled by opposing evidence. And for third parties, an authentic deed has the power of free proof, meaning that as evidence, the proof value of an authentic deed is left to the judge.

Furthermore, the function of an authentic deed as evidence that has perfect evidentiary power is also explained in the 1870 Civil Code which reads:

"A deed to provide between the parties and their heirs or people who have this right from them, a perfect proof of what is contained therein."[53]

This perfect power of proof is attached to the deed as long as the deed was made according to the provisions of Law Number 2 of 2014 amendments to Law Number 30 of 2004 concerning the position of Notary. In addition, the authentic deed contains three evidentiary values that make it a means of evidence that has perfect evidentiary power, namely;

1) outward proving value;
2) formal and;
3) material.

a) External evidentiary value *(uitwendige bewijskracht)*

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[53] Article 1870 of Indonesian of Civil Code

To prove the authenticity of a deed that is seen from the physical or external. In other words, the ability of the deed itself to prove the validity of an authentic deed, when viewed from the outside (outwardly) the deed has met the requirements or the making is in accordance with the provisions of the legislation. This means that until someone can prove that the deed is not an authentic deed, in this case the proof is charged to the denying party. The authenticity parameter of an authentic deed can be seen from the signature of the relevant public official in the case of a Notary deed, meaning that there is a Notary's signature in a deed, whether it is stated in the minutes of the deed or in a copy, in addition to the beginning of the deed starting from the title to the end the deed is also a parameter of the authenticity of a deed.[54]

b) The value of formal proof *(formele bewijskracht)*

To prove that the parties have explained what is written in the deed. This means that a notary deed must explain that every event or fact stated in a deed is actually carried out by a notary and explained by the parties who appear. Formally, as a parameter of truth and certainty, a Notary deed in its manufacture must contain the day, date, month, year, time appear before, the parties who appear, the initials and signatures of those who

[54] Komang Ayuk Septianingsih, I Nyoman Putu Budiartha dan Anak Agung Sagung Laksmi Dewi, Kekuatan Alat Bukti Akta Otentik Dalam Pembuktian Perkara Perdata, *Jurnal Analogi Hukum*, Vol 2, No. 3, 2020. P. 338.

appear, witnesses and Notaries, as well as prove what is seen, witnessed, and heard by the Notary in the official deed / official report, as well as include the statements or statements of the parties in this case on the deed of parties.[55]

c) material proof value *(meteriele bewijskracht)*

To prove that all the events listed in the deed really happened. In other words, the strength of this material proof is a certainty regarding the material content that is poured into an authentic deed, because what is stated in the deed is a valid proof of the parties and related parties get rights that apply to the public, then any information or statement that is poured into official deed/minutes must be considered correct.[56]

The legal consequence of the value of perfect evidentiary power attached to a Notary deed in a dispute is that the judge must be bound and consider the authentic deed to be true and perfect. So that it must be used as a basis for consideration in making decisions in dispute resolution.

4. Requirements for a Notary deed to become an authentic deed

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[55] *Ibid.*

[56] Christin Sasauw, Tinjauan Yuridis Tentang Kekuatan Mengikat Suatu Akta Notaris, *Jurnal Lex Privatum*, Vol.III No. 1, 2015, p. 100.

As in the provisions of Article 1868 of the Civil Code in making an authentic deed, the following elements must be met:

"An authentic deed is a deed made in a form determined by law by or before public officials who have the power to do so, at the place where the deed was made."

a. The deed must be made by or before a public official.

The first requirement, is that an authentic deed must primarily contain all the statements of a public official, the statement containing what he has done and what has been seen before him. As a public official's statement mandated by law in making an authentic deed, all the information he/she makes must be considered true and has occurred before him/her, then the provisions of evidence apply and are binding on everyone, until the denies can prove otherwise. Because the authentic deed is a treatise from the relevant official, it is only evidence of any legal events that have occurred before him.[57]

While what is meant by public officials themselves are officials who have been given authority by law within the limits of authority that have been firmly and clearly defined by the relevant legislation. For example: Notary, judge, bailiff of a court, civil registration officer. For example, a

[57] Sudikno Mertokusumo, *Op. Cit*, page. 123.

deed made by a Notary in accordance with the limits of authority that has been determined by legislation is generally an authentic deed concerning civil matters, as has been regulated in Law Number 2 of 2014 amendments to Law Number 30 of 2004 concerning the position of a Notary. However, in certain cases, a deed in the civil sector can also be made by other public officials, for example; TUN officials who make a marriage certificate in front of a marriage registration officer (PPN).[58]

b. The deed is made in the form determined by law

The second condition, in making the authentic deed, the public official is bound by the terms and conditions that have been regulated in the law, so that it is a guarantee that the official can be trusted, then the authentic deed is enough to be proven by the deed itself.

c. Public officials by or before whom the deed was made, must have the authority to make the deed.

The third condition, the public official is authorized to make an authentic deed both from the type and content of the intended authentic deed, as well as in terms of the party facing or in terms of the party requesting to be made by him, the authentic deed is based on his position

[58] H.R. Daeng Naja, *Teknik Pembuatan Akta (Buku Wajib Kenotariatan)*, first Printing, Pustaka Yustisia, Yogyakarta, 2012, p.15.

either because of the appointment or the appointment ordered by him legislation.

d. The general official makes a deed in his/her working area/area.

The fourth condition, in the event that the public official in making an authentic deed is only authorized to make the deed within the boundaries of his working area and or the boundaries of his domicile, as stated in the decree on his appointment or appointment based on the provisions of the relevant laws and regulations.[59]

5. Various notarial deeds

Notary deeds are divided into 2 types of deeds. That is:[60]

a. This deed made by a notary *(door)* is also known as a deed of ralas or an official deed *(ambtelijke akten).* That is, a deed made by a notary, in that deed contains authentic descriptions from a notary regarding an action or an event that is seen or witnessed by a notary. For example, the deed of minutes/minutes of the GMS meeting of a limited liability company, the deed of recording the bundle, etc.

b. Deed made before a notary *(ten overstaan)* or what is often referred to as a *partij* deed *(partij akten).* The *partij* deed made by the parties at the notarial

[59] I Ketut Tjukup, Dkk, "Akta Notaris Akta Otentik Sebagai Alat Bukti Dalam Peristiwa Hukum Perdata", *Jurnal Ilmiah Prodi Magister Kenotariatan*, 2015 – 2016. p.181.
[60] *Ibid.*

stage contains descriptions of what is explained or told by the parties facing, for example, sale and purchase agreements, credit agreements and so on.

C. OVERVIEW OF ELECTRONIC DEEDS

1. Definition of Electronic Deed

Regarding electronic deeds, up to now there is no binding definition. This is due to the absence of a statutory regulation that governs the conference regarding cyber notary, but cyber notary comes from English which means "virtual/invisible" the term cyber itself. Also often used in a law enforcement process, for example: cybercrime, or in the economic field it is also often known as a cyber eco number.[61] Based on this definition, it can be concluded that cyber notary is a change in working methods, especially in notary activities which are generally carried out conventionally (face to face) towards a more modern way of working (done without face to face). Regarding the basis for making an electronic deed itself, it has been mentioned in Article 15 paragraph 3 of Law Number 2 of 2014 amendments to Law Number 30 of 2004 concerning the position of a Notary.

[61] R.A. Emma Nurita dan Habib Adjie, "Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global", *Jurnal Hukum Respublica,* No.2 Vol. 16, 2017, p.201-218.

a. **Definition according to experts**

According to Edmon Makarim, Cayber Notary is the role of a Notary in electronic transaction activities (cyberspace).[62] According to Theodore Sedwick who is the manager of the Cyber Notary Project-US for International Business who stated that the term cyber Notary is a concept used to describe a conventional public Notary function and its application in the implementation of electronic transactions. So that Cyber Notary can be likened to a security in the implementation of electronic transactions via the internet through the application of the conventional public Notary function which means that it is authentic automatically or electronically by using the existing public infrastructure and using an electronic signature.[63]

Furthermore, Prof. Hikmahanto Juwana also the term cyber Notary appeared in 1994 issued by The Information Security Committee of the American Bar Association, this committee illustrates that there is a profession that is similar to a public notary, but the documents that are made and that exist in the profession electronically based, which the profession has a function to increase trust in the documents made. Within this scope, cyber Notary has a role to authenticate electronic-based documents, which

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[62] Edmon Makarim, "Modernisasi Hukum Notaris Masa Depan, Kajian Hukum Terhadap Kemungkinan Cyber Notary di Indonesi", *Jurnal Hukum & Pembangunan*, No.3 Vol. 41, 2011, p.466-499.

[63] Ahmad Budi Setiawan, *Infrastruktur Kunci Publik dalam Penyelenggaraan Sertifikat Elektronik*, Mitra Cendekia Media. Sumatra Barat. 2022.p.48

of the authentication documents can be printed out wherever they are and at any time. Cyber Notary also has a role to provide certainty to parties residing in other countries whether when conducting transactions in a country really on their own awareness and without any coercion or threat to sign the electronic-based document.[64]

D. OVERVIEW OF LEGAL PROTECTION

1. Definition of legal protection

In English the word protection is protection which is defined as: (1) protecting or being protected (2) system protecting (3) person or thing that protects. Whereas in the Indonesian dictionary the word protection itself is defined as: (1) a place of refuge; (2) actions or things and so protect.[65] If we look at the two definitions, it can be concluded that protection is an act (thing) or an act of protecting, for example protection given to the weak or in other words legal protection given to a person or person with the aim of protecting the rights of the weak.

Harjono explained that the word legal protection in Dutch is called *rechtsbecherming.* In addition, Harjono also defines legal protection as the use of legal means or in other words protection by law which aims to protect certain interests or rights, namely by making the interests that must be

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[64] Hikmawanto Juwana, delivered at the Cyber Notary Seminar, *Tantangan Bagi Notaris Indonesia*, Grand sahid jaya Hotel, Jakarta, 2011.
[65] Indonesia Dictionary, https://kbbi.web.id/. last accessed on 04 January 2019

protected a legal right.[66] Furthermore, Setiono stated that legal protection can also be defined as an action or effort taken to protect every person or community (citizen) from arbitrary actions by authorities that are not in accordance with the rule of law, which aims to create order and tranquility, so that by creating it can make everyone can enjoy his dignity as a human being.[67]

Basically, legal protection has a close relationship with the right of everyone to be under legal protection and the right to a sense of security. As stated in Article 28 latter G of the 1945 Constitution of the Republic of Indonesia which states:[68]

1) *Everyone has the right to protection for himself, his family, honor, society, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right.*
2) *Everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country.*

This article means that everyone has the right to protection by the state for himself, his family, honor, as well as the dignity and property under his control. In addition, every person has the right to have the right to feel safe and protect himself from threats to act or act that is not in accordance with human rights.

[66] Jh. Sinaulan, "Perlindungan Hukum Terhadap Warga Masyarakat", *Jurnal Ideas Pendiikan, Sosial, dan Budaya*, Vol 04 No 01 Februari 2018, p. 83.
[67] Marjan Miharja, Yudianto, "Jamiatur Robekha, Studi Putusan Hakim: Perlindungan Hukum Tenaga Kerja yang di Phk Sepihak Oleh Rumah Sakit", *Jurnal Ilmiah Hukum,* Vol 10 No 1, 2021, p. 54.
[68] Article 28 letter G of the 1945 Constitution of the Republic of Indonesia

Furthermore, every citizen has the right to avoid or be free from acts of torture and treatment that can degrade his degree and dignity as a human being, therefore the state establishes an institution in the field of law to prevent things that can cause violations of the rights and interests of every citizen. People who can be in the form of crime and violence in society. In addition to this, everyone is also given the right to be elected or to obtain political votes from other countries. For anyone who intentionally commits an act of violence, crime or violation of the rights of others, then those who commit acts of crime, violence or violations can be punished according to the laws in force in the country concerned. Further, regarding the protection of a sense of security, it is regulated in Article 35 of Law Number 39 of 1999 concerning Human Rights which reads:[69]

"Everyone has the right to live in a peaceful, safe, and peaceful society and state order, which respects, protects, and fully implements human rights and basic human obligations as regulated in this Law".

The article has the meaning that everyone has basic rights that are carried or attached since he was born or even since he was in the womb and cannot be revoked even by the state (derogable rights). Therefore, this becomes the basis that everyone has the right to live in a peaceful, safe and secure society and

[69] Article 35 Of Law Number 39 Of 1999 Concerning Human Rights

state that respects and protects and fully implements human rights as stated in Article 35 of Law Number 39 of 1999 concerning Human Rights.

2. The concept of legal protection

Humans as or who are social beings, both consciously and unconsciously, will continue to carry out legal actions *(rechtshandeling)* and legal relationships *(rechtsbetrekkingen)*.[70] These legal relationships will be the cause of the emergence or emergence of an obligation to fulfill the rights and obligations to a person as determined by legislation. So that if the provisions of these provisions are violated, the violator can be held accountable before the court.

In the context of fulfilling the rights and obligations, each person or society has different legal interests and which may cause conflict or conflict between each of these rights and obligations. To reduce this conflict, law emerged as a tool to regulate and protect these interests, which was then termed legal protection. Legal protection is a protection given to legal subjects in the form of preventive and repressive legal instruments, both written and unwritten.

According to Satjipto Rahardjo, the aim is to protect human rights that are harmed by others and this legal protection is also given to every human being to enjoy the rights granted by others.[71] In order to protect the interests of

[70] Niru Anita Sinaga, "Implementasi Hak dan Kewajiban Para Pihak Dalam Hukum Perjanjian", *Jurnal Ilmiah Hukum Dirgantara*, Vol 10 No 1, 2019, p.4.
[71] Sajipto Raharjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 2014. p.53.

human interests (legal subjects), the law gives power to everyone to fulfill these interests. The power in question is a right which is then exercised in a measurable, breadth and depth.

Thus legal protection can be interpreted as protection provided by law or a protection through legal institutions and means. which can be done in the following ways:

a. Making regulations, aiming to:
    1) Giving rights and obligations
    2) Guarantee the rights of legal subjects
b. Enforce regulations, through:
    1) State administrative law that functions to prevent (preventive) violations of consumer rights, with licensing and supervision;
    2) Criminal law which functions to overcome (repressive) violations of UUPK, by imposing criminal sanctions and penalties;
    3) Civil law which functions to restore rights (curative; recovery; remedy), by paying compensation or compensation.

3. Forms of legal protection

According to Philipus M. Hadjon legal protection is divided into two, namely:[72]

[72] Maria Alfons, *Implentasi Perlindungan Indikasi Geografis Atas Produk-Produk Masyarakat Lokal Dalam Prespektif Hak kekayaan Intelektual*, Universitas Brawijaya, Malang, 2010, p.18.

a. Means of preventive protection

Preventive legal protection is legal protection given to legal subjects that provide opportunities for legal subjects to file objections or opinions before a government decision gets a definitive form. Its purpose is to prevent disputes from occurring. Legal protection itself has a very big meaning for a government action based on freedom of action because with this preventive legal protection it can encourage the government to be more careful in making all decisions based on discretion. In Indonesia, there is no specific regulation regarding preventive legal protection. However, preventive legal protection can be done through 3 methods, namely:

1) Coaching
2) Supervision
3) Legislation

b. Means of repressive legal protection

Repressive legal protection is legal protection that aims to resolve disputes. Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed. The handling of legal protection by the General Courts and Administrative Courts in Indonesia belongs to this category of legal protection. In repressive legal protection, it can be done through:

1) Enforcement

2) Giving sanctions (Civil, criminal, and administrative)

While muchsin distinguishes legal protection into 2 (two) forms:[73]

a. Preventive legal protection

What is meant by preventive legal protection is the protection provided by the government or power holders to citizens (humans) with the aim of preventing or prior to the occurrence of a violation. Likewise, this is also regulated in legislation with the aim of preventing a violation and to provide signs or limitations in carrying out an obligation.

b. Repressive legal protection

The legal protection referred to by muchsin is final legal protection which can be in the form of fines, imprisonment, or additional penalties, which can be given if a dispute has occurred or a violation has occurred.

So based on the two views above, it can be concluded that what is meant by legal protection is all forms, efforts or legal actions that must be provided by law enforcement in the form of a set of rules or laws that are carried out both

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[73] Dr. Dyah Permata Budi Asri., S.H., M.Kn, "Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional Di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta", *Journal Of Intellectual Property*, Vol. 1 No. 1, 2018, p.18.

preventively and repressively to every citizen (human) to protect and guarantee human dignity and value as well as provide a sense of security and as a form of recognition of all human rights.

E. OVERVIEW OF THE MAKING OF NOTARY DEED ACCORDING TO ISLAM

The word Witness according to etymology in Arabic comes from the word *Asy-syahadah*, the word is a form of *isim masdar* from the word *syahida-yasyhadu* which means attending, knowing or witnessing (with your own eyes). The word *shahadah* has the meaning of *al-bayinan* (proof) *yamin* (oath) *iqrar* (confession). In Indonesian the word witness means a person who hears, sees and knows. According to the term *syar'i,* the word witness itself has the meaning as a person who is responsible and gives testimony because he is the one who witnessed something (event) that was not witnessed by others.

In terms of *fiqh*, the word witness means any person who presents a statement to establish a right against another person. In court, especially in the process of proving witnesses, it is a very important instrument, moreover, there are habits in society that take legal actions without recording.

Islam itself has also regulated the issue of witnessing, as stated in the word of Allah SWT in the Qur'an Surah (Surat Al-Baqarah: 283) which means:

"And do not hide your testimony. And whoever hides it, then indeed he is a sinner in his heart."

In addition, Islam also regulates the conditions for a person to be a witness, while these conditions in Islam are:

1) Islam
2) mans
3) Adult / mature and intelligent
4) Fair

The legal basis for witnesses has been stated in the Qur'an Surah al-Baqarah verse 282:

In Islamic law, the contract is a meeting between *ijab* and *qabul* as a form of statement of the will or desire of two or more parties with the intention of giving birth to a legal relationship on the object. So, *ijab* and *qabul* are actions or statements that aim to show or prove a pleasure in a contract between 2 (two) or more parties. So that this makes him avoid or deviate from a bond that is not based on *syar'i* law, therefore what can be considered as a contract in Islam is only a contract that is clearly in accordance with the pleasure and based on *syar'i* law (Islamic law).

In addition, according to the sharia banking law, the definition of contract is a written agreement between a Sharia bank or UUS and another party that contains rights and obligations for each party in accordance with Sharia principles.[74]

Furthermore, in Islam, the contract must meet the pillars and requirement of a contract:

1. terms of the contract
    a. *al-aqidani* are the parties who are directly involved in the contract
    b. *Mahalul akad* is the object of the contract or an object to be contracted, right?
    c. *sighatul aqd* is a statement of contract sentences that are usually or commonly spoken at the time of *ijab* and *qabul* in Islamic law

    In Islamic law these conditions are called the formation of a contract *(syuruth al-in'iqad).*

2. The pillars of the contract

    The pillars of the contract that must be fulfilled by the parties as specified in Islamic law are:

[74] Article 1 number 13 of the Law of the Republic of Indonesia Number 21 of 2008 concerning Sharia Banking

a. Reaching an agreement or in other words there must be an adjustment between *ijab* and *qabul.*

b. Unity of the contract assembly

c. The object of the contract, in carrying out a contract the object of the contract (the object to be contracted) must meet 3 conditions for the formation of the contract, namely:

    1) The object of the contract can be submitted

    2) Certain or determinable

    3) The object of the contract can be transacted.

d. Does not conflict with Islamic *Shari'ah*

the goods or services to be contracted must be lawful, if in this case the object to be contracted is an item that is not clear (haram) against the law of the contract, it will make it null and void (Islamic law). Then the price of goods and services must be clear, besides that the place of delivery of the goods or services in the contract must also be explained because this will have an impact on transportation costs, and finally the goods or services in the contract must not be outside the ownership of the parties to the contract. as happened in short sale trading in capital market trading.[75]

In the realm of Islamic law, the most important thing is to prioritize or emphasize the outer and inner elements, on this basis the term *iltizam* which is a

[75] Muhammad Yasir Yusuf, "Dinamika Fatwa Bunga Bank Di Indonesia, Kajian Terhadap Fatwa MUI, Muhammaddiyah dan Nahdhatul Ulama", *Jurnal Ilmiah,* No.2 Vol. XIV, media syariah, 2012, p.155.

technical term used to refer to engagements in general appears. At first the term *iltizam* was a term used to indicate an engagement that arises on the basis of the will of one party only, besides that this term is also used for an engagement that arises as a result of an agreement, but at this time the term along with the times has been used to describe refers to an engagement as a whole, or general (universal).

In sharia economic law, the term *iltizam* is a term for the fulfillment of a dependent *(dzimmah)* of a person or party for the rights and obligations that are carried out to someone or another party. Meanwhile, Mustafa Ahmad al Zarqa defines the term *iltizam* in Islamic engagement law as a condition where a person is obliged to do or not to do an act for the benefit of another party based on sharia law.

Further review of the provisions in Article 1 paragraph 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, in the article has emphasized that Notaries are public officials who are authorized to make authentic deeds and have the authority to others as referred to in this Law.[76]

Furthermore, the provisions regarding Notaries are also regulated in Article 15 paragraph 1 of the UUJN that a Notary is the only Public Official authorized to make authentic deeds regarding all acts, agreements and stipulations required by a general regulation or by those with an interest who are required to be stated in an authentic deed, guaranteeing the certainty of the date, keeping the deed and providing grosse,

[76] Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary

copies and quotations, all as long as the deed is not assigned or excluded by an official or other person.[77]

Based on this, when viewed through the basis of acceptance of *saddu dzariah* as a source or principal of Islamic law which is the result of an act that mediates in obtaining legal provisions, it is the same as the act that is the target. Either the occurrence of the act is the result of being desired or not, but if the act leads to something that has been ordered (good) then he is ordered to fulfill it, on the contrary, but if an act leads to a bad act the act or engagement becomes prohibited or forbidden.[78]

Judging from Islamic law, the making of an authentic deed by a notary based on general guidelines as a form of internalizing universal Islamic legal principles in sharia business practice can specifically be categorized into 2 (two), namely:

First, things that are prohibited in business activities *(muamala),* namely the object being contracted must be halal and *thayyib* based on the voluntary principle *('antaradhin).* Both management of the object must be based on trust or mutual trust. In this case, the concept of the object being contracted must be a halal object, emphasizing the halal element, in other words, not allowing the contract with an (object) that is haram or forbidden in Islam.

[77] Article 15 point 1 of law number 2 of 2014 amendments to law number 30 of 2004 concerning the position of a notary
[78] Mahmud Huda, "Metode Sadd al-Dhari"ah Menurut Al-Shatibi", *Jurnal Studi Islam,* No.1 Vol. 6, jombang, 2015, page. 202.

Certainty, order, and legal protection demand that: the scope of law in society requires the existence of a written evidence in the form of authentic evidence that can determine with certainty and clarity regarding rights and obligations.

Authentic deeds as the most powerful evidence and fulfilled by the community, be it business, banking, defense, social activities, and so on, all of these activities have been confirmed in the Koran regarding a person's right to maintain his religion, soul, lineage, mind and property. In addition, Islam has also guaranteed full ownership of a person when authentic evidence is found that the property is his. So it takes a notary in recording or known by the authorities in conducting transactions or evidence.

CHAPTER III

FINDINGS AND RESULTS

A. Establishment of Electronic Notary Deed That Can Provide Legal Protection for the Interest of Parties

An authentic deed is a deed made according to the legal provisions that have been determined and by/or before a public official who is authorized to do so at the place where the deed was made.[79]In addition, an authentic deed contains information from a public official regarding all legal events, both committed and seen before him.[80] In the *Herziene Inlandsch Regulation* (HIR) a notarial deed is regulated in the provisions of article 165 (article 1868 of the Civil Code), based on that article which states that an authentic deed is a deed made by or before an official authorized to do so, is a complete evidence between the parties and their heirs and those who have rights from them about what is contained therein and even about what is contained therein as mere notification, but this last one is only as long as what is notified is closely related to the subject matter of the deed.

The task of a notary is to make a deed, store and publish a grosse, in addition to these duties a notary also has an obligation or duty to make a copy and a

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[79] Article 1868 of the Civil Code
[80] M.Syahrul Borman, "Kedudukan Notaris Sebagai Pejabat Umum Dalam Perspektf Undang-Undang Jabatan Notaris", *Jurnal Hukum Dan Kenotariatan*, Volume.3, No.1, 2019. p.78.

summary of the deed he made.[81] A notary only checks what happens and is seen before him and then puts it into a deed based on the provisions of Article 1 number 7 of the Notary Position Regulation, S.1860 Number 3.[82]

As for what is meant by an authentic deed as contained in the provisions of Article 1808 of the Civil Code, namely:[83]

1) Made in the form prescribed by law.
2) Made by Public Officials.
3) The public official is authorized where the deed was made.

The position of a notary as a public official is given the authority to make authentic deeds, which is different from civil servants or ASN even though they are also public officials who have an obligation to provide public services to the community, but these civil servants are not public officials as referred to in article 1868 of the Civil Code. Furthermore, in carrying out his position a notary must be sworn in first, this has consequences for the notary in carrying out it must be independent, in other words not taking sides with anyone in carrying out his duties and functions which causes the notary position to become a trusted position.[84] In

[81] Edwar, Faisal A. Rani, Dahlan Ali, "Kedudukan Notaris Sebagai Pejabat Umum Ditinjau Dari Konsep Equality Before the Law", *Jurnal Hukum & Pembangunan*, No.1, 2019. p.181.
[82] Sudikno Mertokusumo, *Op. Cit*. p. 3.
[83] Rahmad Hendra, "Tanggungjawab Notaris Terhadap Akta Otentik Yang Penghadapnya Mempergunakan Identitas Palsu Di Kota Pekanbaru", *Jurnal Ilmu Hukum*, Volume. 3 No.1, 2022. p.3.
[84] Cannary Desfira, Widodo Suryandono, "Kewenangan Majelis Pengawas Notaris Dalam Memeriksa Dan Mengadili Notaris Yang Sedang Menjalankan Jabatannya Selaku Pejabat Pembuat Akta Tanah (Studi Kasus Putusan Majelis Pengawas Wilayah Notaris Provinsi Nusa Tenggara Timur Nomor 02.Um.Mpwn/Ix/2019)", *Jurnal Fakultas Hukum Ui*, Volume. 2 No. 3, 2020. P.75-76.

addition to the position of trust, a notary has a role in providing public services in writing and authentically regarding the legal relationship between parties who unanimously request the services of a notary, therefore a notary is required to have extensive knowledge and has great responsibility for the deed he made.

The development of information technology in the community has a significant influence on interaction activities in the community itself, which initially the interaction was carried out directly or real, which later became the interaction carried out in the scope of the virtual world (virtual).[85] The social relationships that are formed in cyberspace are related to the duties and authorities of a notary, especially matters related to trade and then also various other commercial contracts which of course are carried out through the internet, such as buying and selling agreements and others. It should be acknowledged that the development of information technology has brought about very fundamental and radical changes or influences on the transaction process in today's society. The development of information technology at this time makes the problem of distance and time is no longer a big problem in conducting transactions as experienced by transaction activities carried out, conventionally or face-to-face, with the existence of technology, everyone will be easier and faster in communicating and transacting.[86]

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[85] Aidil Haris, "Teknologi Komunikasi Dan Pengaruhnya Terhadap Interaksi", *Jurnal Communiverse (CMV)* Vol.4 No.1, 2018. P.31.
[86] *Ibid.*

Based on considerations of time and cost efficiency, it is what causes the emergence of a discourse to utilize and apply the development of information and communication technology into the activities of making a notarial deed. Furthermore, based on the phenomena that occur in the field the concept of making a notary deed in electronic form has in fact also been applied and practiced by notaries in Indonesia.[87] One of the deeds made in the form and through electronic media is the deed of ratification which is in the implementation of the general meeting of shareholders (GMS) of a limited liability company.[88] The implementation of a Cyber Notary at the GMS itself is based on Article 77 of Law Number 40 of 2007 concerning Limited Liability Companies, holding the General Meeting of Shareholders (GMS) can be done through teleconference media, video conferences, or other electronic media facilities that allow all GMS participants to view and hear and directly participate in the meeting.[89] Then the use of computers in making deeds and the application of information and communication technology systems in the process of registering legal entities through the administrative system of legal entities *(sisminbakum)* is also a sign that the notary has applied computer and internet systems in carrying out his duties and positions.[90]

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[87] Zainatun Rosalina, "Keabsahan Akta Notaris Yang Menggunakan Cyber Notary Sebagai Akta Otentik", Tesis, Universitas Brawijaya Malang, Malang, 2016. p.54.
[88] *Ibid.*
[89] Article 77 of Law Number 40 Of 2007 Concerning Limited Liability Companies
[90] Zainatun Rosalina, *Op.Cit*. p.55.

Sisminbakum is a computerized system created by the ministry of law and human rights to carry out several types of transactions such as will reporting, legal entity registration and registration to be appointed as a notary itself.[91] It is different with the deed of ratification in the general meeting of shareholders in a limited liability company, the deed of *partij* which requires a notary to see and hear directly in the reading and signing carried out by the parties, witnesses and the notary himself (Article 16 paragraph (1) letter m). Law Number 2 of 2014), but if it is possible to make a word *partij* using cyber notary as is the case with a deed of rallies in the general meeting of shareholders of the GMS in a limited liability company, a clause should be added that the signing and reading is carried out in more than one city in accordance with the presence of the shareholders. the parties concerned and carried out by means of electronic media, for example, made, signed and inaugurated in City A and City B through Teleconference, on the day and date as stated at the beginning of this deed.[92]

Based on the type, the notary deed has 2 (two) forms, namely;[93]

1) *Official deed/real acte*

The deed of arbitration / deed of officials is a deed made by an authorized official in this case a notary based on what the official has

[91] *Ibid.*
[92] *Ibid.*
[93] *Ibid* p.56.

seen, experienced and done himself.[94] The hallmark of the deed of ralaas is that there is no comparison in the deed section and an official is fully responsible for proving the deed.[95]

2) *Partij deed*

Partij deed is a deed made before an authorized official in this case a notary for that purpose and the deed is made based on the wishes and desires of the parties who appear.[96] The characteristic of the *partij* deed series is that it has a comparison that mentions the parties that state the authority of the parties to carry out legal actions contained in the deed.[97]

Furthermore, as for the implementation of a Cyber Notary, there are also some general criteria that are used as considerations in making a Cyber Notary in Indonesia. The general criteria are, namely;[98]

1) *Authenticity*

This requirement relates to the authenticity of the parties who are present and involved in the process of making a notarial deed in electronic form

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[94] *Ibid.*
[95] Pebry Dirgantara, "Tanggung Jawab Saksi Pengenal Terhadap Keterangan yang Diberikan dalam Pembuatan Akta Autentik", *jurnal hukum kenotariatan*, Vol. 4 No. 2, 2019. p.191.
[96] *Ibid.*
[97] Zainatun Rosalina, *Op.Cit.* p.56
[98] Agung Fajar Matra, "Penerapan Cyber Notary Di Indonesia Ditinjau Dari Undang Undang No. 30 Tahun 2004 Tentang Jabatan Notaris", Tesis, Universitas Indonesia, Jakarta, 2012. P.45

through online communication media. This requirement is a requirement in business practice as in general, including in the practice of a notary, to prove the authenticity of the parties supporting things are needed that can ensure that these requirements are met, such as electronic signatures and certificate authority.

2) *Integrity*

This requirement relates to the provision and completeness of a communication. This means that messages, data and communications sent and received must be the same and complete. To support the fulfillment of these requirements, supporting infrastructure is needed, such as public key infrastructure

3) *Non repudiation*

The communicating parties cannot deny what has been done in the online communication.

4) *Writing and signature*

Requirements for written evidence and signatures of the parties.

5) *Confidentiality*

This requirement is important in order to protect someone's confidentiality.

Furthermore, in addition to the main criteria as mentioned above, there are main criteria regarding the electronic system or device or facility that will be used in making the deed that must be considered and fulfilled in the application of making a notary deed in electronic/e-notary form. The general criteria are, namely;[99]

a. Laws/regulations

This is related to the implementation of cyber notary, that there must be a definite law or regulation regarding this matter. Whether it's the notary rules themselves or the rules that still have to do with making cyber notary.

b. Technology infrastructure

The technology infrastructure in this case is divided into 2 (two) namely; The first is the data center infrastructure which includes servers, storage subsystems, network devices, such as (switches, routers, and physical cables) and special network equipment such as network firewalls. Second, infrastructures related to transmission media such as; fiber optic cables, satellites, space antennas, router aggregators, repeaters, load balancers, and other components that control transmission lines.

c. Human resources

This requirement relates to notaries and other institutions involved in the implementation of cyber notary. There need to be socialization and the like regarding electronics so that it can be implemented properly.

d. Self-protection

[99] Ridho Novia Aulia, "Implementasi E-Notary Dalam Pelaksanaan Jabatan Notaris Berdasarkan Undang Undang Jabatan Notaris", Tesis, Universitas Islam Indonesia, yogyakarta, 2021. p.80.

This requirement concerns the client's personal data and notary personal data provided and stored through electronic media. Considering that there is no law regarding the security of personal data in Indonesia and considering the illegal sale of personal data, there must be a law that regulates this right.

e. Electronic signature

That there must be a regulation regarding electronic signatures in the law related to notaries. Regarding the assurance given and the electronic signature at the same time when facing through electronic media.

f. Laws/regulations regarding (the area under the authority of the notary)

There must be certainty regarding the area when providing services electronically, so that there is no competition between notaries that arises due to the absence of rules regarding the range of areas that can provide services. Electronic can be implemented but does not eliminate the manual procedure that has long been carried out by a notary.

Furthermore, in addition to the main criteria as mentioned above, there are main criteria regarding the electronic system or device or facility that will be used in making the deed that must be considered and fulfilled in the application of making a notary deed in cyber notary form. The criteria are;[100]

[100] *Ibid.*

1) The existence of an electronic notary administration system, which is then referred to as a cyber notary, this system or facility is an electronic system used to support the provision of notary services electronically.
2) Registered as an electronic system operator from an authorized agency in accordance with statutory provisions.
3) Meet the minimum standards of information technology systems, both in terms of information technology security, system disturbances and failures, as well as transfer of management of information technology systems; and
4) Storage of all data electronically.

From some of the general criteria as described above, so that they can be used as benchmarks in providing notary deed services in electronic form and become the basis for revising the law on the position of a notary, so that words made in electronic form can be recognized and can be realized with changes in the filing system. Notarial deed and can run in harmony both normatively and practically. Further discussion regarding the making of a notary deed there are at least 4 (four) stages that must be carried out by the parties, as for the stages in the mechanism for making a notary deed, namely:[101]

a) The interested parties come and appear before a notary and convey the intention or will of each party to be poured into the form of a deed

[101] *Ibid.* p.64.

b) After the notary hears what is the will or desire of each party, then the parties must then be known by the notary through the identity of each party facing such as identity cards and marriage certificates.

c) Then after the deed is made in the form determined by law, it is continued with the reading of the deed in front of the appearers and witnesses by a notary.

d) After reading the deed, the signature of each party is affixed to the deed, either notary, appearers, or witnesses. Except if there are presenters who cannot sign or only affix a thumbprint by stating the reason.

The mechanisms also accommodate how an authentic deed in electronic form should be made, but in making a notarial deed in electronic form there are several procedures that distinguish it from the conventional notarial deed. Physically, but in terms of making a notarial deed in the form of an electronic deed facing itself, it can be done by using electronic tools or media such as, for example a teleconference or video conference, as well as the affixing of signatures by the parties using a digital signature in the deed.[102]

The procedures or mechanism for making a notary deed using a Cyber Notary (e-notary) are as follows;[103]

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[102] Muhammad Farid Alwajdi, "Urgensi Pengaturan Cyber Notary Dalam Mendukung Kemudahan Berusaha Di Indonesia", *Jurna Rechtvinding,* Volume. 9 No.2, 2020. p.271.

[103] Zainatun Rosalina, *Op.Cit.* p.70.

1. The related parties come and appear before the notary through electronic media or teleconference media and then convey what the goals and intentions of each party appear and convey the type of deed to be made.
2. Then at the next stage, each party who appears before the notary through teleconference media is required to clearly show the identity of the appearer and send it at that time via facsimile electronic media, then check and match the identity of the appearer by the notary.
3. After checking and matching the identities of the appearers, the notary makes a deed according to the form determined by law and reads the deed at that time in front of the parties through teleconference media.
4. After being read and understood by each party concerned, the notarial deed is signed by the parties, witnesses and the notary who made the deed using a digital signature.

Furthermore, regarding the media used, basically there is no requirement for the parties to only use teleconference media in the process of making a notary deed electronically if it refers to the provisions of Article 77 of Law Number 40 of 2007 concerning Limited Liability Companies. As the only law that regulates the procedure for facing the parties and a notary in the process of making the deed, the parties can also use other electronic media such as video conferences which allow the parties to see, hear, and participate in the process of making the deed, or in other words alternative with the condition that the electronic media must meet the cumulative requirements as follows:[104]

a. Participants must see each other directly.
b. Participants must hear each other directly.
c. Participants participate in the meeting.
d. Participants must be within the specified area.

Based on the requirements as mentioned above, if one of these conditions is not met, then the electronic media cannot and does not meet the requirements to be used as media in the implementation of the electronic notarial deed.

Furthermore, in the case of affixing an electronic signature to a notarial deed that has been made through electronic media, it usually uses an electronic signature which is also referred to as a digital signature.[105] based on Article 1 number 19 of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions explains that, electronic signature is a signature consisting of electronic information that is attached, associated or related to other Electronic Information used as a means of verification and authentication.[106] Then based on article 1 number 20 of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, it is stated that

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[104] *Ibid.* p. 71-72.
[105] Lyta Berthalina Sihombing, "Keabsahan Tanda Tangan Elektronik Dalam Akta Notaris", *Jurnal Education and Development,* Volume.8 No.1, 2020. p.135.
[106] Article 1 Number)19) Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions

the meaning of a Signer is a legal subject that is associated with or related to Electronic Signatures.[107] In this case, electronic signatures have functions as regulated in the provisions of Article 53 paragraph (1) of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, namely:[108]

1) Electronic Signature functions as an authentication and verification tool for:
    a. Signer's identity and
    b. Integrity and authenticity of electronic information
2) Then the electronic signature is also the signer's approval of the electronic information and/or electronic document affixed with a digital signature.

Furthermore, in the application of digital signatures using algorithms and special computer techniques so as to prevent changes to the contents of the document.[109] The position of electronic signatures as evidence has been regulated in Article 11 paragraphs (1) and (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions which states that:

"Electronic signatures have legal force as long as they meet the following requirements:[110]

a. Electronic signature creation data is related only to the signer.
b. The electronic signature creation data at the time of the electronic signing process is only in the hands of the signer.

[107] Article 1 Number (20) Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions
[108] Article 53 number (1) Number 19 Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions
[109] Lyta Berthalina Sihombing. *Loc.Cit.*
[110] Article 11 Numbers (1) and (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions

c. *Any changes to the electronic signature that occur after the time of signing are known.*
d. *Any changes to the electronic information related to the electronic signature after the time of signing can be noticed.*
e. *There are certain methods used to identify who the signer is; and.*
f. *There are certain ways to show that the signer has given consent to the associated electronic information".*

Based on the explanation of these articles, if each of the requirements can be fulfilled and if it is related to the use of a digital signature into a notarial deed made in electronic form, it can be concluded that the electronic signature or digital signature is based on Law Number 11 of 2008 concerning Information and Transactions and Regulations. Other governments can apply legally and legally binding regardless of one's position and profession.

Furthermore, for digital signatures before being affixed to the deed, there are at least 2 stages carried out, namely;[111] *first*, the formation of digital signatures using a kind of fingerprint generated from documents and private keys, *secondly*, digital signature verification which functions as a check of a digital signature by referencing the original document and the given public key. So that it can be determined whether a digital signature is created for the same document that uses a private key.

Based on the explanation above, if the two stages are met, the digital signature can fulfill the juridical element as virtual contained in a conventionally made signature, in addition to the addition of the digital signature on the deed that has been made in electronic form, the parties are considered has agreed and acknowledged all the

[111] Agung Fajar Matra, *Op.Cit.*

provisions contained in the deed. This the digital signature has a "one signature document" in other words, if there is even the slightest change in the text sent, in this case the form of the signature, the signature will become invalid. So based on this, it can provide legal protection for the parties from the non-authentic identity in making a notarial deed in electronic form.

Furthermore, the author argues that based on some of the explanations above, it can be concluded that there are at least 4 conditions that must be met in the implementation of making a notary deed in electronic form in Indonesia. As for the requirements, *firstly*, the fulfillment of the general criteria used as considerations in making the deed which includes; laws regarding the application of e-notary, technology infrastructure, human resources, personal security, electronic signatures as well as regulations regarding the boundaries of the territory of the notary in making e-notaries. *Second*, the fulfillment of the general criteria for a system, device or electronic means used in making an e-notary which is the minimum standard for an information technology system, both in terms of information technology security, system disturbances and failures, as well as the transfer of information technology system management. *Third*, in making an e-notary, of course, using electronic media in terms of facing, the electronic media, both teleconferencing media and video conferencing, must meet cumulative requirements, namely; can make the parties see each other directly, hear each other directly, participate in the meeting and is in the specified area. *Fourth*, digital signatures used in e-notaries must at least meet the requirements as stipulated in provisions 11 paragraphs (1) and (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions so that they have legal force. Thus, it can prevent forgery of the signatures of the parties by unauthorized parties and can ensure the authenticity of the signatures as a form of preventive legal protection for related parties. If the conditions as described are met, the e-notary can be implemented and can be recognized as an authentic deed that has perfect legal force, and provides legal certainty for the parties.

B. Obstacles in the Implementation of the Making of E-Notary Arising Results of Legal Norms Conflict

In making a notarial deed in electronic form, there are several obstacles that arise as a result of the occurrence of a conflict of norms in positive law, as for the legal norms that become these obstacles, namely;

1) Article 15 point 3 of law number 2 of 2014 amendments to law number 30 of 2004 concerning the position of a notary which states that other authorities regulated in laws and regulations, one of the powers mentioned is to certify transactions conducted electronically by a notary (cyber notary), this authority is used as the legal basis for making a notary deed in electronic form.[112]

[112] Cyndiarnis Cahyaning Putri, Abdul Rachmad Budiono," Konseptualisasi Dan Peluang Cyber Notarydalam Hukum", *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan*, Volume.4 No.1, Fakultas Hukum Universitas Brawijaya, 2019, p.30.

2) Article 1 number 7 which states that the making of a notary deed is made by or before a notary, in this case the word before, facing, in a juridical sense is interpreted as being present in real terms.[113] However, in the implementation of making an e-notary, it is not done by being present in front of a notary but facing through electronic media.
3) Article 16 number 1 letter m of law number 2 of 2014 amendments to law number 30 of 2004 concerning the position of a notary that regulates the obligation to read the deed before an audience in the presence of at least 2 (two) witnesses, or 4 (four) witnesses) and signed at the same time in front of the parties, witnesses and a notary so that if the provisions in the article are not fulfilled, the electronic deed will be degraded into a private deed.[114]
4) Article 1 number 8 and article 44 point 1 UUJN which requires the parties to put a signature at that time after the deed is read. Meanwhile, in the process of signing using a digital signature, it takes time for the digital signature to be applied to e-notaries because at least the digital signature goes through 2 (two) stages, namely the formation of a digital signature using a kind of fingerprint generated from a document or private key, and verification. Digital signature which is a process of checking digital signatures by referring to the original document and the given public key.[115]

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[113] Habib Adjie, "*Hukum Notaris Indonesia Tafsir Tematik Terhadap UU. No. 30 Tahun 2004 Tentang Jabatan Notari",* third print, Refika Aditama, Bandung, 2011, p. 147.
[114] Cyndiarnis Cahyaning Putri, Abdul Rachmad Budiono, op.cit. p.35
[115] Agung Fajar Matra, *op.cit.*

5) Article 5 paragraph 4 of law number 11 of 2008 on electronic information and transactions which states that the provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) do not apply to letters which according to the law must be made in the form of written; and, the letter and its documents which according to the law must be made in the form of a notarial deed or a deed made by the official making the deed.[116] Of course, all legal actions carried out through electronic media must refer to the law, in making an e-notary carried out by a notary of course it must also refer to the law, as stated in the article, it clearly and unequivocally provides limits regarding the classification of information and electronic documents that the notarial deed does not include information and electronic documents so that it gives legal consequences to the strength of the proof of the deed which is not recognized as electronic evidence and does not have perfect evidentiary power and legal certainty as an authentic deed has.[117]

Analysis of the application of information and communication technology in the process of making a notary deed electronically cannot be separated from the influence of legal *dogmatics*, legal *dogmatics* aims to describe and systematize and

[116] Article 5 number (4) law number 11 of 2008 concerning about Information and Electronic Transactions

[117] Adjie Pranantoa, Layanan Notaris Secara Elektronik Dalam Masa Pandemi Covid-19, *Jurnal Spektrum Hukum*, Vol.18 No.2, 2021.

in another sense also to explain the applicable positive law.[118] In addition, legal *dogmatics* also view law as an autonomous, independent one because for adherents of this school the law is only a collection of legal rules. So it comes to the conclusion that the purpose of law for legal dogmatic adherents is to realize legal certainty.[119] *Bruggink* defines dogmatic law as a conceptual system of legal rules whose core part has been determined or positive by the bearers of natural authority, this is the regulator in a particular society.[120]

Based on the explanation above, the legal dogmatic link to the application of making a notary deed in electronic form is to ensure that each legal rule can provide clarity of norms so that it can be used as a guide for the community in concrete matters.[121] Law as a tool for community renewal is the core of realism legal pragmatic thinking which was later developed by Moctar Kusumaatmaja in the theory of development law.[122]

Furthermore, there are obstacles for notaries in their efforts to implement advances in information and communication technology systems into the making of notarial deeds in electronic form. Based on the substance of article 1 number 7, it is explained that a Notary Deed, hereinafter referred to as a Deed, is an authentic

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[118] Nurita Emma R.A, *"Cyber Notary (Pemahaman Awal Dalam Konsep Pemikiran)",* PT. Rafika Aditama, Bandung, 2012, p.19.
[119] Achmad Ali, *"Menguak Tabir Hukum (Suatu Kajian Filosofis Dan Sosiologis)",* Toko Gunung Agung, Jakarta, 2002, p. 82-83.
[120] Nurita Emma R.A, *Op.Cit.* p. 58.
[121] Van Apeldoom, *"Pengantar Ilmu Hukum",* Cetakan Ke-24, Pradnya Paramita, Jakarta, 1990, p.24-25.
[122] H.S. Salim, *Perkembangan Teori Dan Ilmu Hukum*, PT. Raja Grafindo Persada, Jakarta, 2010, p.70.

deed made by or before a Notary according to the form and procedure stipulated in this Law. The use of the words facing, and in front of is a translation of the word *verschijnen* which has the meaning of coming to face what is meant in the juridical sense is real presence.[123] Based on the explanation of the article, if it is related to the making of an e-notary which is carried out before a notary through teleconference media or video conference or electronic media, the power of proof of an authentic deed does not have perfect evidentiary power as a deed in general because it does not meet the requirements for the validity of the authenticity of a deed.[124]

Furthermore, in addition to the obstacles in the requirement to be physically present in the process of making an e-notary based on Article 16 paragraph 1 letter m, it also obliges the notary concerned to read the deed that has been made before an audience in the presence of at least 2 (two) witnesses and requires to each party, both witnesses, appearers and notaries signed the deed at the same time after the deed was read.

Based on the provisions of Article 16 paragraph 1 letter m, it can be understood that in the process of making a notarial deed, either by conventional means or through electronic means, it is an obligation for a notary to read the

[123] Habib Adjie, *Loc.Cit*.
[124] Dendik Surya Wardana, Iswi Hariyani, Dodik Prihatin AN, "Pertanggung Jawaban Notaris Terhadap Keabsahan Akta Outentik Yang Dilakukan Secara Electronic Dalam Pembuktian Di Pengadilan", *jurnal ilmu kenotariatan,* Volume.2 No.2, 2021. p.18

deed, whether it is the related notary, witness witnesses, or presenters at the time also after the deed is read. In addition, the provisions of the article also explain that the meaning before an audience is that a notary is obliged to be physically present to convey his advocacy to the parties concerned regarding the deed made by him and the legal relationship of the parties as stated in the deed. The purpose of reading the deed before the parties is so that the parties or appearers are considered to have clearly understood the aims and objectives as outlined in an authentic deed.

The reading of the deed in front of the parties by a notary is part of the verification or inauguration of the reading and signing by the related parties of the deed that has been made. According to G.H.S Lumbun Tobing, if the notary himself reads the deed he made in front of the parties, on the one hand, the parties in this case have the assurance that they have signed what they have heard previously from the notary concerned, and the notary also gains confidence regarding the deed he made is really contains what is the will of the audience.

The reading of the notary deed when it is connected with the context of making a notarial deed in electronic form, which is actually a notarial deed, is recognized as an authentic deed and has perfect evidentiary power. put forward the physical obligations of the appearers, witnesses, and the notary itself, but through virtual media or electronic media as a liaison between the notary and the appearers. In the case of reading the deed, although there are exceptions as stated in Article 16 point 7 of the UUJN which states that the reading of the deed as referred to in paragraph 1 letter m is not mandatory if the appearers want the deed not to be read due to the condition that the parties have read it themselves, know and understand thoroughly the contents are clear provided that it is stated in the closing and on each page the deed is required to be signed by the appearers, witnesses and notaries.

A notary who does not fulfill the elements of the article as referred to in article 16 number (1) letter m and number (7) UUJN, namely reading the deed before the public before signing the deed, a notary is considered to have been negligent and made an error in the process carry out their duties and functions as a public official who is given the authority to make authentic deeds. Furthermore, after the deed is read, the deed must be immediately added to the signature of each party, including the witnesses and the notary who made the deed, apart from being based on article 1 number 8, the same thing is also confirmed in the provisions of article 44 paragraph 1 UUJN, which give obligations to each party, witness, notary to immediately affix a signature after the deed has been read out except by stating the reasons if one of the parties is unable to affix his signature.

Based on the explanation of the articles above, if each of the terms and elements of the article is linked in the context of the application of digital signs regarding e-notaries, then the elements of the article will be difficult to fulfill considering that in making digital signatures at least go through 2 (two) stages, namely, the formation of a signature. Digital signatures use a kind of fingerprint generated from documents or private keys and digital signature verification which is a process of checking digital signatures by referring to the original document and the public key that has been given, so that it can be determined whether the digital signature was made for the same document that uses the private key.[125] So that if the elements of the articles as mentioned above are not fulfilled by the notary, they will have legal problems, one of the legal consequences of the non-fulfillment of the articles is the degradation of the deed, the degradation of the deed is a condition of changing the status of the notarial deed which was originally an Authentic deed which has perfect proofing power becomes a deed under the hand. This is stated in Article 16 point (9) UUJN.[126]

Furthermore, if the making of this electronic deed is reviewed from the ITE law, then in article 5 paragraph 4 of the law it expressly and clearly limits the making of a notarial deed electronically, so that with the provisions governing all forms of legal actions carried out through the media. The electronic information makes the desire to make a notary deed electronically impossible, as stated in Article 5 paragraph 4 letter b of the ITE Law which reads: the provisions for electronic information and/or electronic documents as

[125] Agung Fajar Matra, *Op.Cit.* p.27

[126] Dwi Merlyani, et.all,''Kewajiban Akta Autentik oleh Notaris Dihadapan Penghadap Dengan Konsep Cyber Notary'', *Repertorium Jurnal Ilmiah Hukum Kenotariatan*, Volume 9, No.1 2020. p. 37-41.

referred to in paragraph (1) do not apply. For: a letter and its documents which according to the law must be made in the form of a notarial deed or a deed made by the official making the deed. the editor of the provisions of the article provides an understanding that letters and documents that have been stated by law must be made in written form or in the form of a notarial deed cannot be made in electronic form so that in other words the editor in article 5 paragraph 4 letter b provides prohibition against notaries from making notarial deeds in electronic form.[127]

Furthermore, this occurs due to the inability of the "regulator" to see the problems that occur in society, even though it is known that in the formation of regulations on an issue it is not an easy thing to do because it must pay attention to and consider sociological, philosophical and juridical aspects. Although at this time there is no specific regulation that explicitly regulates the making of a notarial deed electronically, it does not mean that the regulation regarding the making of a notarial deed in electronic form has never been made before. The inaccuracies of the legislators regarding the electronic notarial deed can be analyzed by the existence of Article 77 paragraph 1 of the Company Law which states that the GMS can be conducted through teleconference media, video

[127] Pryudicia Tantra Atmaja, *Op.Cit.* p. 94.

conferences or other electronic means that allow all members or meeting participants to attend, hear, witness, and participate directly in the meeting.

Furthermore, with the provisions of Article 77 paragraph (1) of the Limited Liability Company Law, the regulation regarding the making of a notarial deed in electronic form should be reaffirmed in Law No. 11 of 2008 concerning electronic information and transactions as a regulation made and issued after the Company Law. On the other hand, the ITE Law provides exceptions and limitations to notarial deeds, so that this not only makes the UUJN disharmony with the ITE Law but also makes the Company Law inconsistent with the ITE Law, this causes legal uncertainty over deeds made in the form of electronic deeds. Legal certainty is the existence of a norm or rules that are general in nature providing knowledge to each individual about what actions can be done and what actions cannot be done. With the emergence of the issue of Legal Certainty, the meaning of the Notary's authority over the cyber notary which was originally not clearly known regarding the actions in terms of making a notary deed in electronic form may or may not be carried out due to the existence of a legal vacuum (rechtvacuum) becomes clear the limits apply legally, limitative to electronic transaction certificates.[128]

[128] Cyndiarnis Cahyaning Putri and Abdul Rachmad Budiono, *Op.Cit.* p. 33-34.

With this explanation, Article 77 of the Company Law which regulates the permission for a GMS which is part of the authority of a notary made through teleconference media, video conferences or other media or electronic means makes its authenticity as a notarial deed to be questioned again, in addition if Article 77 of the Company Law This is related to Article 5 number 4 of the ITE Law, it will further increase the uncertainty regarding the legal position of the GMS made by a notary through teleconference media or other electronic media whether authentic or not.

Then in addition to the issue of the legality of making a notary deed electronically as referred to the various laws described above, other obstacles to carrying out the making of a notary deed in electronic form are also experiencing difficulties in terms of proof and problems in the format or form and procedures for making the deed. In making an electronic deed, apart from the emergence of problems with the signing of the deed by the related parties, there are also problems regarding the strength of proof of a notarial deed made electronically. In terms of evidence, notary deed made electronically until now is not known clearly and with certainty regarding the legal status, whether it is qualified as an authentic deed or only considered as under the hand deed.

Regarding this matter, Brian Praseteo actually argues that a notarial deed made by a notary at this time cannot be made or poured in electronic form, if the position of the electronic deed is only the same as an underhand deed.

Because the form of the electronic deed is only an agreement of the parties, then Brian Prasetyo also put forward several reasons why a notarial deed is not an authentic deed, the reasons for these reasons are.[129]

1. An authentic deed should be determined by laws and regulations but until now there is no legislation stating that an authentic deed can or may be made in electronic form.
2. For authentic deeds, all related parties, whether witnesses, notaries or appearers, are required to sign but until now there is no regulation that specifically regulates *(lex specialis)* which states that e-signature may be used on authentic deeds.
3. The process of making and signing an authentic deed must be attended by the parties, but until now there is no regulation that states whether or not the process of making and signing an electronic deed can be witnessed through teleconference media.

This opinion is in line with Article 5 point (4) of Law no. 11 of 2008 concerning information and electronic transactions which states that electronic documents as referred to in paragraph (1) do not apply to, (a) Letters which according to the law must be in written form (b) The letter and its documents which according to the law must be made in the form of a notarial deed or a

[129] Angie T.H Sitohang, “Legalitas Pembuatan Akta Risalah Rapat Umum Pemegang Saham Dan Berita Acara Rapat Yang Dibuat Berdasarkan Pasal 77 Ayat 1 Undang-Undang Nomor 40 Tahun 2007”, *Premise Law Jurnal*, Volume.7, 2018. p.16

deed made by the official making the deed. These provisions have meaning that an electronic deed cannot be equated with an authentic deed/or notarial deed which is made in written form and has the minutes of the deed (original notarial deed). Evidence is in civil procedural law, and regulates the handling of various kinds of written evidence recognized by civil procedural law. In judicial practice in Indonesia, electronic evidence itself is still considered as an evidence tool, an evidence itself has been determined enumeratively by law, meaning that the law has determined one by one the legal and valuable evidence as a tool independent evidence. The position of a notarial deed in electronic form itself in a civil court cannot be said to be an authentic deed because in the process of making it there are still many legal issues and regarding its authenticity also still has to be proven. One of the opportunities to make electronic documents as legal evidence is Law No. 11 of 2008 concerning Electronic Transactions (ITE), but in its own application the law has given strict and clear boundaries regarding any type of electronic document. Which can and cannot be categorized as valid evidence. According to the ITE Law, an electronic information/electronic document is declared valid as evidence if it uses an electronic system that complies with the provisions stipulated in the

ITE Law, namely a reliable and secure electronic system, and fulfills the minimum requirements, namely:[130]

1. Can display electronic information and/or electronic documents in full in accordance with the retention period as determined by law.
2. Can protect the availability, integrity, authenticity, confidentiality, and accessibility of electronic information and the organizers of the electronic system.
3. Can operate in accordance with procedures or instructions in the operation of the electronic system
4. Equipped with procedures or instructions announced with language, information, symbols that can be understood by those concerned with the electronic system operator, and
5. Have a sustainable mechanism to maintain the novelty, clarity and accountability of procedures and instructions.

In this case, when viewed from the current electronic administration system, the making of a notarial deed in electronic form does not yet have a reliable and safe electronic information administration system to accommodate the desire to reform the workings of a notary in making a deed from the conventional method to a more modern technology by utilizing information and

[130] Edmon Makarim, "Keautentikan Dokumen Publik Elektronik Dalam Administrasi Pemerintahan Dan Pelayanan Publik", *Jurnal Hukum & Pembangunan*, Volume 45, No.4, 2015. p.532.

communication technology, as well as the existence of several obstacles from legal substance regarding the procedure for making a notarial deed makes the discourse of making a notarial deed in electronic form impossible.

CHAPTER IV

CONCLUSION AND RECOMMENDATION

A. CONCLUSION

1. The procedure or mechanism for making a notary deed using a Cyber Notary (e-notary) which can provide protection for the parties are as follows;

a. The related parties come and appear before the notary through electronic media or teleconference media and then convey what the goals and intentions of each party appear and convey the type of deed to be made.

b. Then at the next stage, each party who appears before the notary through teleconference media is required to clearly show the identity of the appearer and send it at that time via facsimile electronic media, then check and match the identity of the appearer by the notary.

c. After checking and matching the identities of the appearers, the notary makes a deed according to the form determined by law and reads the deed at that time in front of the parties through teleconference media.

d. After being read and understood by each party concerned, the notarial deed is signed by the parties, witnesses and the notary who made the deed using a digital signature.

2. As for the obstacles in making an e-notary are, *the first*, provisions or obligations to parties related to the procedure for making a notary deed that must be present and appear before a notary, *secondly*, the obligation regarding the signing of a notary deed before the parties, witnesses, or notaries which in the sense of Juridically read out and signed in fact in front of the related parties after the deed is read, *the three,* obligations related to the process of affixing signatures by the parties that must be affixed on the day the deed is read out, *fourth,* related to e-notary information or electronic

documents that provide legal consequences for the deed is not recognized as electronic evidence.

B. RECOMMENDATION

1. Make changes to article 16, article 1 number 7, and 8, and article 44 regarding the necessity of physical presence in the process of making a notarial deed with a clause that can change the mechanism so that it can be carried out through teleconference media or other electronic media.
2. Make changes to article 5 number 2 of law no. 11 of 2008 concerning electronic information and transactions which stipulates that notarial deeds are excluded from electronic documents that are recognized as legal evidence in the system. And establish a legal rule that explicitly regulates the procedure for making and limiting the boundaries of the area of authority in making a notary deed in electronic form in order to prevent competition between each notary.

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