



Law and Humanities Quarterly Reviews

Lubis, I., Murwadji, T., Sunarmi, Sukarja, D., Azwar, T. K. D., & Sitepu, F. (2022). Development of the Concept of Cyber Notary in Common Law and Civil Law Systems. *Law and Humanities Quarterly Reviews*, 1(4), 30-39.

ISSN 2827-9735

DOI: 10.31014/aior.1996.01.04.32

The online version of this article can be found at:
<https://www.asianinstituteofresearch.org/>

Published by:
The Asian Institute of Research

The *Education Quarterly Reviews* is an Open Access publication. It may be read, copied, and distributed free of charge according to the conditions of the Creative Commons Attribution 4.0 International license.

The Asian Institute of Research *Education Quarterly Reviews* is a peer-reviewed International Journal. The journal covers scholarly articles in the fields of education, linguistics, literature, educational theory, research, and methodologies, curriculum, elementary and secondary education, higher education, foreign language education, teaching and learning, teacher education, education of special groups, and other fields of study related to education. As the journal is Open Access, it ensures high visibility and the increase of citations for all research articles published. The *Education Quarterly Reviews* aims to facilitate scholarly work on recent theoretical and practical aspects of education.



ASIAN INSTITUTE OF RESEARCH
Connecting Scholars Worldwide

Development of the Concept of Cyber Notary in Common Law and Civil Law Systems

Ikhsan Lubis¹, Tarsisius Murwadji², Sunarmi³, Detania Sukarja⁴, T. Keizerina Devi Azwar⁵, Faradillah Sitepu⁶

¹ Student at Doctoral Program in Law, Faculty of Law, Universitas Sumatera Utara, Jl. Universitas No.4, Kampus USU, Padang Bulan, Kec. Medan Baru, Kota Medan, Sumatera Utara 20155.

Email: ikhsanlubis@students.usu.ac.id

² Professor at Faculty of Law, Universitas Padjadjaran, Jl. Dipati Ukur No.35, Lebakgede, Kecamatan Cobleng, Kota Bandung, Jawa Barat 40132. Email: t.murwadji@unpad.ac.id

³ Professor at Faculty of Law, Universitas Sumatera Utara, Jl. Universitas No.4, Kampus USU, Padang Bulan, Kec. Medan Baru, Kota Medan, Sumatera Utara 20155. Email: sunarmi@usu.ac.id

⁴ Lecturer at Doctoral Department of Law, Faculty of Law, Universitas Sumatera Utara, Jl. Universitas No.4, Kampus USU, Padang Bulan, Kec. Medan Baru, Kota Medan, Sumatera Utara 20155.

Email: detasukarja@usu.ac.id

⁵ Lecturer at Doctoral Department of Law, Faculty of Law, Universitas Sumatera Utara, Jl. Universitas No.4, Kampus USU, Padang Bulan, Kec. Medan Baru, Kota Medan, Sumatera Utara 20155.

Email: Keizerina@usu.ac.id

⁶ Lecturer at Doctoral Department of Law, Faculty of Law, Universitas Sumatera Utara, Jl. Universitas No.4, Kampus USU, Padang Bulan, Kec. Medan Baru, Kota Medan, Sumatera Utara 20155.

Email: faradillah@usu.ac.id

Abstract

This paper aims to identify the development of the cyber notary concept in the common law and civil law legal systems. This study uses a normative juridical approach. The type of data used in this paper is secondary data. This secondary data was acquired through document studies that were carried out by exploring libraries and the internet to find different library items, including textbooks, thesis/dissertation journal articles, and other library materials. Additionally, the notion of a cyber notary, which emerged from the Common Law System's legacy, has been extensively used in reality. Indonesia, a contemporary nation that belongs to this tradition of nations that follow the Civil Law System, is no exception. The rule of law and developments beyond the law are inextricably linked.

Keywords: Cyber, Notary, Law

1. Introduction

Technological developments occur very quickly and affect human life in various aspects. Many of these advances are present as disruptive innovations, namely innovations that tend to disrupt existing markets and will eventually replace those markets (Peter C. Verhoef et al., 2021). The influence of technology in the form of electronization in notary activities disrupts the existing balance, modern notaries will make changes and use technology assistance,

while those who are not familiar with the technology will choose to stick with the procedures that have been carried out so far (Mark Ishman and Quincy Maquet, 1999).

In Indonesia itself the concept is often put forward using the term cyber notary. This concept raises various opinions, some support and some reject. The main problem that arises is the debate regarding the validity of the deed made in the cyber notary work system. There are also those who argue that cyber notary is contrary to the principle that has been held so far, namely the principle of the *table lionic officium fideliter exercebo*, which means that a notary must work traditionally.

The State of the Republic of Indonesia as a country of law guarantees certainty, order and legal protection for every citizen. To ensure order and legal protection, authentic written evidence of legal acts, agreements, determinations and events is needed that are made before or by authorized officials (M. Luthfan Hadi Darus, 2017)

Before discussing further regarding the validity of a deed in cyber notary practice, it is necessary to explore the roots of the emergence of this concept. Through this concept a notary in America has the authority to perform various authentications for documents made in electronic business communications (John C Anderson and Michael L Closen, 1999).

In practice, this concept has been applied in Florida and Alabama, but there are often denials by other state jurisdictions regarding the validity of the deed. The thing to remember is that notaries in America as a country that adheres to the common law system have differences with notaries in Indonesia who come from the civil law system. Notaries in America who are known as public notaries are not responsible for the accuracy or legality of the documents that are stamped by them, the implication of this lies in the difference in the strength of proof of the deed made. An authentic deed made by a notary in a civil law country has perfect proof power, while a deed made by a public notary does not (Ikhsan Lubis and Duma Indah Sari Lubis, 2021).

Furthermore, such a robust evidentiary power arises from the actual fact that notaries in civil law countries have a proper obligation that arises from the implementation of the *table lionic officium fideliter exercebo* principle (Ikhsan Lubis et al., 2021).

The duty is within the sort of an obligation that the notary public himself should come, see and listen to in each deed creating and be signed by the notary himself and also their individual appearers directly at the place wherever the deed is scan by the notary. The inscribed signature must be the initial signature of the notary public and the appearers don't seem to be electronic signatures which will be inscribed on the deed (Felicia et al., 2020).

This formal obligation, within the author's opinion, contains a terribly deep that means and benefit, particularly in making certain that the party getting in the agreement is admittedly the party whose name is expressed in the comparison, that he's not beneath coercion, deception or oversight, conjointly the } agreement in accordance with the needs of the parties. This obligation makes the notary public accountable not just for his signature as a public notary however also for the contents of the authentic deed created by him (Luh Anastasia Trisna Dewi, 2021).

This opinion is in line with the arrangement of an authentic deed supported Article 1867 of the Civil Code that could be a good proof if it meets the necessities within the sort of having to create it before or by a public official.

Expanding the definition of the associate authentic deed as well as a deed in electronic kind as a result of the follow of cyber notary public can really produce new contradictions that may scale back the evidentiary power of the authentic deed. Concerning the provisions of Article five paragraph (4) of the ITE Law, electronic deeds don't have good proof power like authentic deeds. till now, electronic deeds are solely thought-about as non-public deeds that are equated with documents, letters, and electronic certificates (David López Jiménez, Eduardo Carlos Dittmar, and Jenny Patricia Vargas Portillo, 2021).

Thus, the author is of the opinion that the concept of a cyber notary that comes solely from America should not be applied immediately considering the differences in the functions and authorities of a notary and a public notary (Ika Yuli Agustin and Ghansham Anand, 2021).

In addition, changes to the provisions, both understanding and conditions related to authentic deeds, must be studied in more depth to the philosophical reasons that created these understandings and conditions which, although they look old-fashioned and seem to force a notary to continue to work traditionally, have better legal considerations and provide stronger protection so as to maintain the integrity of the evidentiary power of the authentic deed, which is related to three things, the power of formal proof, the strength of material evidence, and the power of outward proof.

As a solution, Indonesia as a civil law country can provide its own understanding of cyber notary and apply restrictions on the use of technology in order to maintain the validity of an authentic deed so that it remains in line with the main spirit of the notary profession as a public official (Miftahurrahman Kurniawan Djumardin, 2021).

For example, as applied in Georgia, a country in Eastern Europe, where electronization there does not negate the party's obligation to appear before a notary, as a solution the notary understanding is expanded that both parties do not have to be present at the same notary, but each of them is present before a notary in his domicile area and then the notaries act as the party facilitating the dissolution of the agreement via video conference (Fani Martiawan Kumara Putra, 2021).

This example provides confirmation that cyber notaries in practice in civil law countries do not eliminate the obligation of a notary to continue to uphold his traditions in order to maintain the integrity of the power of proof of the deed he made.

Based on historical literature, the term Cyber Notary and Electronic Notary was born from two different concepts, namely the term "e-notary" which was popularized by legal experts from countries that inherited Continental European traditions, while the term "CyberNotary" was popularized by legal experts from common law (Choky Ramadhan, 2018). Therefore, this study aims to analyze the Development of the Concept of Cyber Notary in Common Law and Civil Law Systems and its influence on Indonesia.

2. The Existence and Legislation of Cyber Notary in Civil Law Countries (Belgium and France)

The rapid advancement of technology today has made various actions that we do cannot be the term authentic deed in English, is called authentic deed, while in Dutch, it is called authentieke deed van, which has been regulated in Article 1868 of the Civil Code (hereinafter referred to as the Civil Code) and various other laws and regulations (H.S. Salim, 2015).

Economic development in Indonesia is currently growing, in fact there are many legal subjects who carry out legal activities, one of which is a limited liability company expressly recognized by law as a legal entity and as a legal subject who is capable of carrying out legal actions or entering into legal relations with various parties like humans (Azizah, Hukum, 2015).

separated from various kinds of electronic equipment. These actions include both ordinary actions that do not cause legal consequences and actions that cause legal consequences. Acts carried out with the intention of causing legal consequences are known as legal acts. In the context of legal actions carried out using electronic devices, in accordance with the provisions of the Law on Information and Electronic Transactions (UU ITE), they are called Electronic Transactions. The intended public official is generally known as a notary (Luthvi Febryka Nola, 2011). Thus, it can be understood that in general the person authorized to make an authentic deed is a notary, but in the context of the auction implementation of an authentic deed in the form of auction minutes, the auction official at the KPKNL can also make an authentic deed. In the construction of such an understanding, it can be seen that in making the minutes of the auction, the auction officer at the KPKNL essentially exercises the authority possessed by a notary. Explicitly, Article 15 paragraph (2) letter "j" UUJN also gives authority to a notary to make a deed of

auction minutes. As the main issue in this paper, in the context of implementing notary authority, the concept of cyber notary is also known.

Civil law is a legal system that has binding power, because it is realized in the form of laws and regulations that are systematically arranged in a codification. Countries in the world that adhere to the civil law system include Indonesia, Belgium, and France. In terms of implementing a cyber notary, this research involves a comparative study with Belgium and France which have modified their laws to accommodate authentication or what is often called electronic system authentication (David Tan, 2019).

The two countries have changed the articles in their Civil Code, in particular regarding the article on authentic deeds that provide an opportunity for electronic signatures to be implemented.

In addition to the Netherlands, the United States has also passed an e-signature law that stipulates that electronic signatures are as valid as signatures on paper (Ninieki Suparni, 2009).

The existence of the article indirectly emphasizes that any technology, as long as it can meet several main requirements, namely identification, content integrity, and content approval, can be accepted in court as evidence (H Marshall Jarrett and Michael W Bailie, 2002).

Article 1322 of the Belgian Civil Code states that “data in electronic form which can be attributed to a determined person and which maintains the integrity of the content of the instrument comply with the legal requirement of a signature”, which means that any data in electronic form, if related with a party that has been determined to maintain the integrity of the contents of the instrument, it is said to meet the legal requirements of a valid signature.

Power of attorney can be granted and received in a general deed, in a handwritten, even in a letter or orally. Acceptance of a power can also occur tacitly and be inferred from the exercise of that power by the power. From these provisions it can be seen that the grant of power is free from a certain form of formality with other words being a consensual agreement meaning that it is binding on the second that an agreement is reached between the giver and the beneficiary of the power of attorney (R. Subekti, 2014).

The binding agreement for the sale and purchase of land rights is made by the parties before a notary, because the parties have not been able to meet the requirements or documents to make a deed of sale and purchase of land rights (AJB) before the Land Deed Making Officer (PPAT) (Suhendro, 2014).

Likewise, the Belgian Notary Act 16 March 1803 or hereinafter referred to as the Belgian State UUJN, has considered its amendments related to the decision to improve the conditions for making cyber notary laws under the control of the Belgian National Council of State Notaries. In connection with this, the Belgian Law Potpourri V dated 6 July 2017 or Potpourri V Law dated 6 July 2017 which discusses cyber notary, specifically emphasizes specifically that it is very possible to carry out a notary deed to be made remotely or via video conference. Similar but not the same, currently more than 70% of actions received by Notaries in France are carried out in paperless form. The first authentic act signed in electronic media was carried out in 2008. Notaries involve video conferencing on a computer network to facilitate remote deed making with an appearance.

Article 1317 of the French Civil Code states "Authentic instruments are instruments received by public officials who are authorized to compile the instrument at the place where the instrument was written and with the required formalities. It can be created on electronic media created and stored under specified conditions." Basically, the French state assumes that a notarial deed can be made on electronic media provided that there is preservation of the deed and the conditions for obtaining an electronic signature must be fulfilled (Antoine Meissonnier and Françoise Banat-Berger, 2015).

In this condition, the act may retain all its elements or qualities, such as legal date, strength of evidence, and enforcement. This has been reinforced in Article 1316 of the French Civil Code which states that “A document in electronic form can be accepted as evidence in the same way as a paper-based document, provided that the person

who gave it can be properly identified and produced and stored in conditions calculated to secure its integrity” (Sabine Marcellin and Pauline Ascoli, 2010).

The laws and regulations of the Belgian and French countries have clearly regulated the legality of implementing an electronic-based authentic deed, even in real life, notaries in both countries have implemented paperless authentic deed making and involved video conferencing with their appearers. Seeing the existence of a clear legal umbrella related to cyber notary in Belgium and France, the implementation of cyber notary and its regulations in Indonesia must reflect on the two countries. Indonesia needs amend many laws, including the Law on Notary Positions, Article 1868 of the Civil Code, and Article 5 paragraph (4) letter b of the Law on Information and Electronic Transactions, in order to provide a solid legal foundation for cyber notaries. It is envisaged that the implementation of a cyber notary in Indonesia would be able to ensure and prioritize the principles of certainty, benefit, and law order as well as have a clear legislative framework connected to cyber notaries with the adjustments made to certain of these rules (Devi Alincia and Tundjung Herning Sitabuana, 2021) (Mutiaratu Astari Rafli, 2022).

The provisions of Article 15 paragraph (3) in the body of the UUJN regulates the existence of other powers possessed by a notary other than those stipulated in the UUJN itself. In the Elucidation of the Article, it is then explained that these other authorities are "the authority to certify transactions made electronically (cyber notary), make *waqf* pledge deeds, and aircraft mortgages." The sound of the explanation is considered as the entry point for the implementation of the cyber notary concept in the Indonesian legal system. However, no further regulation has been found regarding this matter and how the procedures for implementing the cyber notary's authority are at the implementation level.

The lack of clarity has resulted in the absence of an understanding in interpreting the concept of cyber notary in Indonesia. If you read the explanation of the article, the question may arise, "which is done electronically"? Is it the "transaction certification" or the "transaction"? Answering this question, there is an opinion which states that what is done electronically is the transaction, not the authority. This opinion is based on a grammatical interpretation, which is related to the presence of conjunctions in the form of the word "yang", so that the conjunction is an integral part of "transactions conducted electronically".

In addition to the method of grammatical interpretation, according to the author, if the interpretation is carried out systematically, then the UUJN actually has the spirit of requiring that what is done electronically is the transaction. So it can be understood that the certification process is not electronic, but the certification is carried out on a transaction that is carried out electronically (Toryanto & Yunanto, 2022).

This is based on the arrangement in Article 16 paragraph (1) letter "c" of the UUJN which stipulates that the appearers are required to attach letters and fingerprint documents to the minutes of the deed, meaning that the arrangement requires the physical presence of the appearers directly before a notary. This certainly cannot be done if the process is carried out electronically. The arrangement in the UUJN can be a reflection of the spirit of the law, and in accordance with the principle of harmony in the material content of the legislation, the assumption must be raised that between Article 16 paragraph (1) letter "c" of the UUJN and the Elucidation of Article 15 paragraph (3) UUJN does not conflict, but because the Elucidation does not contain a binding norm, the provisions of Article 16 paragraph (1) letter "c" have more binding power to become the basis of the argument.

In addition, if what is meant by being done electronically is the certification process, then the product is an electronic document which according to the ITE Law is referred to as an electronic certificate. Meanwhile, according to article 1 number 10 of the ITE Law, the provider of electronic certification must be a legal entity. Referring to these provisions, the notary clearly cannot perform electronic certification because the notary is not a legal entity.

3. The Existence and Legislation of Cyber Notary in Common Law Countries

The concept of cyber notary is a concept that adopts the use of computers by notaries in carrying out their duties and authorities. This concept is widely used in common law countries. This is because the notarial legal system in common law countries allows for the wider application of the cyber notary concept. Notaries in common law countries are known as public notaries and are not appointed by authorized officials and there is no requirement that the form of the deed must be regulated by law as in the civil law system (Junyu, 2020). The task of a public notary is more to carry out administrative processes, namely to give a stamp or seal to an agreement. The value of the stamp or seal is the same as the signature of the parties which is not accepted by the common law court as evidence of the facts written in the document, that fact must be proven by the usual way. As a result, everyone can compose a legal writing and the value given to the writing is not related to the qualifications or title of the author.

At the beginning of the notary's presence in Indonesia, around 1620 with limited authority and only to serve certain groups of residents or serve those who transacted with the *Vereenigde Oost Ind. Compagnie* (VOC) and during the reign of the Dutch East Indies, Notaries were once given the authority to make deeds of transfer for plots of land that were subject to the provisions of the BW, for lands registered and for the transfer of rights must be carried out and registered with officials called Officials Of The Name *Reversal (Overschrijving-ambtenaren)* (Habib Adjie, 2009).

Instructie voor de Notarissen Residente in Nederlands Indie was published on 17 March 1822 (Stb. No. 11). The notary is legally obliged to give power and support to the investigator by setting a date, confirming it, retaining the original or minutes, issuing grosse, and providing a true and accurate copy as stated in Article 1 of the investigation (Habib Adjie, 2014).

So basically, anyone can make a deed and the position of the deed as evidence is also not really considered before the court. Therefore, the application of the concept of cyber notary in the common law system will not affect the strength of the deed. Meanwhile, notaries in Indonesia use a civil law system which views that the deed made by and before a notary is an authentic deed (Khairul et al., 2019). A notarial deed can become an authentic deed if it meets the requirements of the legislation, especially Article 1868 of the Civil Code. Various requirements that must be met in making an authentic deed make the application of the concept of cyber notary in Indonesia more difficult than if it is applied in common law countries.

In the notary context, the 1961 Hague Convention gave rise to 2 (two) concepts of the role of a Notary in the embodiment of the effectiveness of electronic transactions, namely Cyber Notary and Electronic Notary. (Wijaya, 2018) Cyber Notary was originally the idea of the American Bar Association Information Security Committee in 1994. This concept is widely implemented in Common Law countries such as the UK, the United States, Canada and Australia, where a Notary is known as a Public Notary who is not appointed by an authorized official. So that it is not bound by the necessity of certain forms/formats of deeds regulated by law.

In the context of Cyber Notary, the task of a public notary is more to carry out administrative processes combined with security technology as part of the implementation of the CIAANA Principle of Secured Transaction 21 by stamping a document/agreement as a form of administration or registration of letters and documents.

4. Cyber Notary Concept: Indonesian Context

Ethics is a collection of principles or values related to the norms that live in society that are generally recognized as a moral method as a guide in behavior, so that ethics in a particular society or certain organization will always be different that will adapt to the conditions and culture of the community or organization. Ethics is etymologically defined as moral in the form of values and norms that are the handle of a human being or group in regulating his behavior (Frans Hendra Winata, 2003).

Cyber notary ethics is also needed as a guideline and standardization to comply with the Notary code of ethics.

The regulations of the Notary code of ethics resulting from the Extraordinary Congress of the Indonesian Notary Association in 2005 are adjusted to the thoughts of Abdulkadir Muhammad, then in the Notary code of ethics in the form of obligations and prohibitions for the Notary profession can be held as follows:

1. Notary personality ethics

1. Have good morals, morals and personality, respect and uphold the dignity and dignity of the notary position;
2. Respect and uphold the dignity and dignity of the notary office;
3. Obey the law based on the Law on the position of Notary, oath of office and AD ART of the Indonesian Notary Association;
4. Have professional behavior
5. Improving the knowledge that has been possessed is not limited to science and notarization.

6. Ethics of performing the duties of the office

1. Act honestly, independently, impartially, and full of a sense of responsibility;
2. Using one office in the place of domicile and the office is the only office of the Notary byang concerned in carrying out his office on a daily basis;
3. Installing a nameplate in front of his office according to the applicable size;
1. Carrying out the position of Notary, especially in deeds, readings and signing of deeds carried out in the office except for valid reasons;
2. Do not promote through print or electronic media;
3. It is forbidden to cooperate with existing service agencies / people / legal entities as intermediaries in finding clients.

1. Ethics of service to clients

1. Prioritizing service to the interests of the community and the State;
2. Treat any client who comes well without discriminating against his economic status and or his social status;
3. Providing deed-making services and other notarial services for people who are unable to collect honorariums;
4. It is forbidden to sign a deed whose minuta manufacturing process has been prepared by others;
5. It is forbidden to send minuta to the client for signature;
6. It is forbidden to attempt for a person to transfer from another Notary to him;
7. It is forbidden to coerce the client withhold the file that has been submitted with the intention that the client will continue to make a deed to him.

Ethics of relationships with notaries: (Abdul kadir Muhammad, 2001)

1. Active in Notary organizations;
2. Mutual help, mutual respect for fellow Notary colleagues in a family atmosphere;
3. Must take care of each other's honor and defend the honor and good name of the Notary corps;
4. Not conducting competition that harms fellow Notaries, both morally and internally;
5. Does not demonize or blame the notary's associates or the deeds made by him. In the event that a Notary confronts and/or finds a deed made by another Notary partner and encounters serious misunderstanding or endangering his client, then the notary must notify in a non-patronizing manner, in order to prevent unwanted things from arising to the client concerned or the colleague;
6. It is forbidden to form groups of fellow colleagues that are exclusive in nature with the aim of serving the interests of an agency, let alone closing the possibility for other Notaries to participate;

Two legal systems, notably the common law and civil law systems, are where the idea of a cyber notary first emerged. Based on this separation, it is understood that "Electronic Notary" (E-Notary) and "Cyber Notary" are two legal words that are frequently used synonymously. At a legal workshop session sponsored by the European Union in 1989 in Brussels, Belgium, the French delegation initially suggested the first term. A notary is essentially defined under the E-Notary concept as a person who offers an independent record of an electronic transaction that the parties have engaged in.

The American Bar Association (ABA) first used the phrase "virtual notary public" in 1994. This notion suggests that a person who engages in cyber notarial activities is a person with expertise in both law and computers.

Additionally, it is implied in this notion that it operates similarly to a Latin notary in enabling a worldwide transaction, may electronically authenticate papers, and is predicted to confirm legal capabilities and financial responsibilities. Based on this justification, it can be said that the ABA's proposal on cybernotary reflects the common law system or Anglo-American perspectives, but the notion of E-Notary put out by France represents the civil law legal system or Continental Europe. Therefore, Indonesia, a nation that in theory upholds a civil law system, is more appropriate to adopt the concept of E-Notary, but in actuality, the term "cyber notary" is explicitly included in the explanation of Article 15 paragraph (3) of the Notary Position Act (*Undang-Undang Jabatan Notaris*, UUJN). (Ramadan et al., 2022)(Paripurno et al., 2022) Based on these facts, there is an opinion which states that Indonesia should not adopt the concept of a cyber notary as it is, and suggest to conceptualize what is meant by a cyber notary in the Indonesian context. Notaries in Indonesia, which are based on the civil law legal system, certainly have principal differences with public notaries who come from the common law legal system.

In Anglo Saxon countries, a notary public (Notary) only becomes a legislator from the signatures of those who make the agreement, while the agreement itself is made by the Lawyer (Chen, 1986). Notaries at that time needed in-depth knowledge of the law because they were not only obliged to ratify the signature but also compose words and provide input if needed before the deed was made. In this regard, notaries can make important contributions to the development of notarial institutions and national law. The position of a notary isn't a profession however a grip of a notary enclosed within the variety of implementation of a noble position as supposed by Kansil and Christine, namely: associate degree implementation of a position that is actually a service to humans or society. Folks that do these noble positions additionally earn a living from their work, but that's not the most motivation. The most motivation is that the disposition of the person involved to serve others.

Notaries in common law countries are independent professionals while in civil law systems notaries are appointed by authorized officials so that they are an extension of the government's authority so that civil law notaries are authorized to carry out property, will and inheritance transactions and store them as archives. The concept of cyber notary is a concept that adapts the use of computers in cyber/online by notaries in carrying out their duties and authorities (Humaira & Latumeten, 2022). The application of this cyber notary concept differs from one country to another. Broadly speaking, the difference in the application of the cyber notary concept appears between countries that adhere to the common law system and the civil law system (Smith, 2006). The concept of Cyber Notary is widely used by common law countries.

The legal rules related to the position of a notary used by Indonesia to date are legal products that are not based entirely on modern national law. This is emphasized in the Elucidation of the General Part I UUJN which states that most of the regulations regulated in the UUJN are still based on laws and regulations from the colonial era of the Dutch East Indies, which during the colonial era did not recognize digital transformation and technological developments that made people literate towards technology. The readiness of supporting facilities is unquestionably related to information technology so that it can be applied in notary services. Regarding the legality of an electronic deed, it can still have legal force even before the court, such as digital signatures, digitally ensured documents, and video conferencing in making a deed between a notary and an appearer.

The essence of legislation regarding Notaries in Indonesia needs to be seen and compared with laws and regulations in other civil law countries, because other countries have gone far more advanced than Indonesia in implementing technology-based Notary transactions. (Felicia et al., 2020) Among them are Belgium and France which have amended their Civil Code to legalize the making of electronic-based authentic deeds. But unfortunately, Indonesia has not followed the development of the revolution in the field of electronic-based notary, and also the government does not heed this.

5. Conclusion

Both the concept of cyber notary and e-notary require comprehensive legal components for their implementation. Based on the theory of the legal system, Lawrence M. Friedman suggests that the success of law enforcement depends on 3 (three) elements of the legal system, namely substance, structure and legal culture. The most important question that needs to be answered regarding the integration of electronic technology with the position

of a notary is whether Indonesia will take a cyber notary approach as stated in Article 15 paragraph (3) of the UUJN which states that a cyber notary is interpreted as another authority of a notary to certify transactions conducted electronically, or will use the Continental European approach through the concept of E-Notary and whether the concept will be placed as an additional/complementary provision of the existing provisions. Such as the provisions of the cyber notary which is positioned as another authority of the Notary or is it a change to the provisions related to the position of a notary in the sense of a shift towards Electronic Notary (E-Notary) in the sense of digitizing notary services and their products. Regarding the integration of electronic technology with the position of a notary in Indonesia. First, Indonesia must decide which approach to take, whether a cyber notary approach as stated in Article 15 paragraph (3) of the UUJN which states that a cyber notary is interpreted as another authority of a Notary to certify transactions conducted electronically. Or will it use the Continental European approach through the next E-Notary concept, whether the concept will be placed as an additional/complementary provision of the existing provisions, such as the cyber notary provision which is positioned as another authority of the Notary. Or is it a change to the provisions related to the position of a notary in the sense of a shift towards Electronic Notary (E-Notary) in the sense of digitizing notary services and their products.

References

- Abdul kadir Muhammad, *Ethics of the Legal Profession*. Pt. Image of Aditya Bakti, Bandung. 2001.
- Azizah, *Limited Liability Company Law*, Intimedia, Malang, 2015.
- Frans Hendra Winata, *Public Perceptions of the Legal Profession in Indonesia*, Gramedia Pustaka Utama, Jakarta 2003.
- H.S. Salim, *Deed Making Technique one Theoretical Concept*, Notary Authority, Form and Minuta Deed, PT Rajagrafindo Persada, Jakarta, 2015.
- Habib Adjie, 2009, *Meneropong Khazanah Notary and PPAT Indonesia (Collection of Notaries and PPAT)*, Bandung: P.T. Citra Aditya Bakti, 2009.
- Habib Adjie, *Indonesian Notary Law (Thematic Interpretation of Law No. 30 of 2004 concerning the Position of Notary)*, PT Refika Aditama, fourth printing, Bandung, 2014.
- Luthfan Hadi Darus, *Notarial Law and Responsibility of notary position*, UII Press, Yogyakarta, 2017.
- Niniek Suparni, *Cyberspace: Problems and Anticipation of Its Arrangement*, Jakarta: Sinar Grafika, 2009.
- R. Subekti, *Miscellaneous Agreements*, PT. Citra Aditya Bakti, Bandung, 2014.
- Suhendro, *Overlapping Understanding of Defaults and Acts Against the Law in Academic Discourse and Judicial Practice*, UII Press, Yogyakarta, 2014.
- Agustin, I. Y., & Anand, G. (2021). Proposing Notaries' Deed Digitalization in Indonesia: A Legal Perspective. *Lentera Hukum*, 8(1), 49. <https://doi.org/10.19184/ejrh.v8i1.21375>
- Alincia, D., & Sitabuana, T. H. (2021). Urgency of Law Amendment as Foundation of The Implementation of Cyber Notary. *LAW REFORM*, 17(2), 214–231.
- Anderson, J. C., & Closen, M. L. (1999). Document Authentication in Electronic Commerce: The Misleading Notary Public Analog for the Digital Signature Certification Authority. *J. Marshall J. Computer & Info. L.*, 17(3), 833–872.
- Chen, T.-P. (1986). The Chinese Notariat: An Overlooked Cornerstone of the Legal System of the People's Republic of China. *The International and Comparative Law Quarterly*, 35(1), 63–86.
- Dewi, L. A. T. (2021). Legal Aspect of Cyber Notary in Indonesia. *Journal of Digital Law and Policy*, 1(1), 37–44.
- Djumardin, M. K. (2021). Implementation of Notary Protocol Storage (Study in West Lombok Regency). *Journal of Law, Policy and Globalization*, 112(13), 59–67. <https://doi.org/10.7176/JLPG/112-08>
- Felicia, Heriyanti, Agustina, Y., & Pakpahan, E. F. (2020). Readiness and Role of Notaries in Making Electronic Deeds towards the Industrial Revolution. *Proceedings of the International Conference on Culture Heritage, Education, Sustainable Tourism, and Innovation Technologies, Cesit 2020*, 105–112. <https://doi.org/10.5220/0010304101050112>
- Humaira, M., & Latumeten, P. E. (2022). Comparison of notary deed in Indonesia, Netherlands, and Belgium during the COVID-19 pandemic. *Linguistics and Culture Review*, 6(March 2020), 233–243. <https://doi.org/10.21744/lingcure.v6nS5.2154>
- Ishman, M., & Maquet, Q. (1999). A Consumer's Analysis Of The Electronic Currency System And The Legal Ramifications For A Transaction Gone Awry. *Murdoch University Electronic Journal of Law*, 6(3).
- Jarrett, H. M., & Bailie, M. W. (2002). Cyber Forensics. In A. Marcella, Jr. & R. S. Greenfield (Eds.), *Cyber Forensics: A Field Manual for Collecting, Examining, and Preserving Evidence of Computer Crimes* (Vol. 741). Auerbach Publications. <https://doi.org/10.1201/9781420000115>
- Junyu, M.-. (2020). Notary According To Civil Law And Common Law That Related Strongly With International

- Civil Transactions. *Jurnal Akta*, 7(3), 285. <https://doi.org/10.30659/akta.v7i3.11279>
- Khairul, A., Danil, E., & Zurnetti, A. (2019). Case Study of False Statement in Notarial Deed in the Perspective of the Law on Notary Position. *International Journal of Multicultural and Multireligious Understanding*, 6(2), 524. <https://doi.org/10.18415/ijmmu.v6i2.740>
- Kumara Putra, F. M. (2021). Characteristics of Notary Deeds for Transactions Through Electronic Media. *NORMA*, 17(3), 1. <https://doi.org/10.30742/nlj.v17i3.1091>
- López Jiménez, D., Dittmar, E. C., & Vargas Portillo, J. P. (2021). The trusted third party or digital notary in Spain: effect on virtual transactions. *International Review of Law, Computers & Technology*, 1–17. <https://doi.org/10.1080/13600869.2021.2004760>
- Lubis, I., & Lubis, D. I. S. (2021). Development of The Notary Cyber Concept in Implementation of the Electronic GMS of Open Companies. *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial*, 9(2), 345–358. <https://doi.org/10.30868/am.v9i02.1733>
- Lubis, I., Murwadi, T., Siregar, M., Sukaja, D., Robert, Harianto, D., & Ketaren, M. M. (2021). COMPARISON OF CIVIL LAW REGARDING THE IMPLEMENTATION OF CYBER NOTARY IN COUNTRIES WITH COMMON LAW AND CIVIL LAW TRADITIONS. *Jurnal IUS Kajian Hukum Dan Keadilan*, 10(1), 96–111. <https://doi.org/http://dx.doi.org/10.29303/ius.v10i1.971>
- Marcellin, S., & Ascoli, P. (2010). THE ARCHIVING OF ELECTRONIC DOCUMENTS UNDER FRENCH LAW. *Digital Evidence and Electronic Signature Law Review*, 7, 108–113.
- Meissonnier, A., & Banat-Berger, F. (2015). French legal framework of digital evidence. *Records Management Journal*, 25(1), 96–106. <https://doi.org/10.1108/RMJ-07-2014-0031>
- Nola, L. F. (2011). Peluang Penerapan Cyber Notary Dalam Peraturan Perundang-Undangan Di Indonesia [Prospects of the implementation of cyber notary in state regulations of Indonesia]. *Negara Hukum*, 2(1), 75–102. <https://doi.org/10.22212/jnh.v2i1.187>
- Pariipurno, R. D., Widhiyanti, H. N., & Kurniaty, R. (2022). Legal Construction of Notarial Deed Bank as the Media of Electronic Notarial Protocol Storage. *International Journal of Multicultural and Multireligious Understanding*, 9(7), 60–72. <https://doi.org/http://dx.doi.org/10.18415/ijmmu.v9i7.3876>
- Rafli, M. A. (2022). Legality of Authentic Deed With Cyber Notary Basis According To Legal Assurance Principles. *Unram Law Review (ULREV)*, 6(1), 127–135. <https://doi.org/https://doi.org/10.29303/ulrev.v6i1.204>
- Ramadan, F., Dewantara, R., & Sudirman, M. (2022). Legal Certainty for The Reading and Signing of The Deed through Teleconferencing Media During The Covid 19. *Jurnal Hukum Prasada*, 9(1), 7–19. <https://doi.org/10.22225/jhp.9.1.2022.7-19>
- Ramadhan, C. (2018). Konvergensi Civil Law dan Common Law di Indonesia dalam Penemuan dan Pembentukan Hukum [Convergence of civil law and common law in Indonesia in the context of findings and formation of law]. *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 30(2), 213. <https://doi.org/10.22146/jmh.31169>
- Smith, L. G. (2006). *The Role of the Notary in Secure Electronic Commerce*. September, 1.
- Toryanto, C. J. K., & Yunanto. (2022). Urgensi Pengaturan Pelaksanaan Cyber Notary Terkait Dengan Pandemi Covid-19 [Urgency of the cyber notary conduct regulation in relation to the Covid-19 pandemic]. *Notarius*, 15(1), 18–33. <https://doi.org/https://doi.org/10.14710/nts.v15i1.46022>
- Verhoef, P. C., Broekhuizen, T., Bart, Y., Bhattacharya, A., Qi Dong, J., Fabian, N., & Haenlein, M. (2021). Digital transformation: A multidisciplinary reflection and research agenda. *Journal of Business Research*, 122, 889–901. <https://doi.org/10.1016/j.jbusres.2019.09.022>
- Wijaya, A. W. (2018). *Konsep Dasar Cyber Notary : Keabsahan Akta dalam Bentuk Elektronik* [Basic concept of cyber notary: Validity of deeds in electronic form].