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## Jurisdiction of Legality of Cyber Notary Conceptual for Electronic Business Transaction

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### Abstract

The purpose of this paper is to analyze the form of application according to the cyber notary concept in claiming the authenticity of electronic transactions & studying the notary settings in claiming the authenticity of electronic transactions. This paper uses a normative rule research method because the emphasis of the study moves according to the ambiguity of habit. The form of application according to the cyber notary concept in claiming the authenticity of electronic transactions is that the parties permanently arrive & deal with the notaries. However, the parties personally read the draft deed on each computer, after agreeing, the parties immediately signed the deed electronically at the Notary's workplace. Notary arrangements for claiming the authenticity of electronic transactions play a role in the issuance of electronic certificates through the Electronic Certification Provider forum. The role of a notary for the Certification Authority is also in the issuance of Electronic Certificates through Electronic Certification Providers.

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## INTRODUCTION

Advances in technology and information are a reality of the development of world civilization that provides access to changes in people's life patterns in various fields. Communication technology is developing very rapidly and is globalized throughout the world, including in Indonesia. The world without borders, the “borderless world”, is so often put forward to describe how fast and rapidly technology is developing and plays a very important role, especially in communication technology such as: being a liaison between individuals, community groups as well as corporations in a very fast and spectacular time without must bring the communicating parties to be present face to face<sup>1</sup>. A notary as a trusted third party in the digital era of information technology can be called a cyber notary, which is stated in the United Nations Commission on International Trade Law (UNCITRAL). The development of

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<sup>1</sup> Leslie G Smith, *Peran Notaris dalam Perdagangan Elektronik yang Aman*, (Brisbane: Queensland University of Technology , 2006).

notaries in UNCITRAL has rolled out the Model Law on E-Commerce in 1996, the Model Law on E-Signatures in 2001, the United Convention on the Use of Ecommunication in International Contracts in 2005, and studies on Promoting Confidence in E-Commerce: Legal Issues on International Use of Electronic Authentication and Signature Methods in 2009.<sup>2</sup>

Therefore, UNCITRAL in its study is in the form of Promoting Confidence in ECommerce: Legal Issues on International Use of Electronic Authentication and Signature Methods as the first step in guaranteeing electronic transactions. In guaranteeing electronic transactions, a notary must have high credibility and have freedom without being bound in making an agreement or deed that he made has legal legitimacy. The making of a deed in a historical approach is interpreted in three ways as a philosophical meaning, namely:

1. Writing; Writing means that a deed can be written and read about what elements are contained in the deed.
2. Signs; Sign is interpreted as a deed as the meaning of identity in making the deed and as a symbol of agreement regarding the making of the deed.
3. Original; Original means that a deed can be brought and viewed again. Original can be categorized as a deed as evidence that states that the parties have an engagement which is interpreted by the principle of *pacta sunt servanda*.

Based on the objectives of the UINL, it is necessary to develop a statement that will strengthen the role and function of the Notary in ensuring the sustainability of the economy which cannot be separated from the function of the Notary. The role and function of the Notary in UINL are as follows:

#### 1. Notary to Government

Notary to Government can be interpreted as a notary public official whose function is to provide services to the community in building good governance towards clean government by prioritizing professional, fast, precise, efficient, cheap and free services. Then it will increase the effectiveness and efficiency of Notaries in providing certainty of the completion time of services to the community, thereby having an impact on the development of trade and the national economy in order to improve the welfare of the community. For example, a Notary in online fiduciary registration through the Legal Entity Administration System (SABH).

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<sup>2</sup> Agus Pandoman, *Teori & Praktek Akta Perikatan Publisitas & Non Publisitas*, (Jakarta: PT Raga Utama Kreasi, 2017).

## 2. Notary to Business

Notary to Business can be interpreted as a Notary as an official authorized to make an agreement or deed with the aim of providing services to the community to carry out a form of commerce in making an agreement between the parties to ensure security in business. For example, a Notary makes an electronic-based Procurement Contract of Goods and Services.

## 3. Notary to Society

Notary to Society can be interpreted as a Notary as a trusted official whose function is to guarantee the community in terms of providing legal consultation or counseling and making wills and pre-marital agreements electronically.

Regarding serving the public in the field of electronic business, Notaries adhere to the law. The basis for the regulation of Notaries electronically can be seen with the meaning of cyber notary, which is contained in Article 15 paragraph (3) of the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as the PUUJN Law), namely “In addition to the authority as referred to in paragraph (1) and paragraph (2), a Notary has other powers as regulated in the laws and regulations”. The definition of a Notary having other authorities as regulated in the laws and regulations referred to in this Law is contained in the explanation, namely “What is meant by other authorities regulated in laws and regulations”, among others, is the authority to certify transactions conducted electronically (cyber). notary), making a deed of waqf pledge, and aircraft mortgages. Sociologically, notaries in Indonesia are not ready to assume the position of trusted third parties proposed by UINL in Paris, France. This is still constrained by regulations and adequate equipment. Whereas empirically, electronic transactions experience many problems due to the absence of a trusted institution in witnessing those functions as evidence of an engagement<sup>3</sup>. One of the legal problems regarding cyber notary barriers is the existence of Article 1 number 2 of the Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law) stating “Electronic transactions are legal acts carried out using computers, computer networks, and/or other electronic media”. Regarding the evidence implied in Article

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<sup>3</sup> D. F Chastra, “Kepastian Hukum Cyber Notary Dalam Kaidah Pembuatan Akta Autentik Oleh Notaris Berdasarkan Undang-Undang Jabatan Notaris”, *Indonesian Notary* 3, (2021): 249.

5 paragraph (4), namely the provisions regarding electronic information and/or electronic documents as referred to in paragraph (1) do not apply to:

1. A letter which according to the law must be in written form.
2. Securities and 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.

Based on this, 2 (two) problems can be formulated, namely what is the form of application of the cyber notary concept in guaranteeing the authenticity of electronic transactions and how is the notary arrangement in guaranteeing the authenticity of electronic transactions. From the explanation above, the purpose of this paper is to analyze the form of application of the concept of cyber notary in guaranteeing the authenticity of electronic transactions and to examine notary arrangements in ensuring the authenticity of electronic transactions. This departs from the ambiguity of norms in Article 15 paragraph (3) PUUJN, regarding the authority to certify transactions conducted electronically.

Qualitative research methods are research approaches that emphasize in-depth understanding of human and social phenomena. Qualitative research methods are used to deepen the understanding of the jurisdiction and conceptual legality of cyber notaries in the context of electronic business transactions. The descriptive and interpretive approach of this method allows researchers to detail the phenomenon in depth, exploring its nuances and complexities. The use of in-depth interviews with legal experts, analysis of legal documents, and case studies enriches research results with direct perspectives from experts and the implementation context.

Normative research methods are approaches that assess a phenomenon based on recognized norms, values or standards. normative research methods also contribute by providing a basis for assessing the jurisdiction and conceptual legality of cyber notaries. By referring to applicable legal norms, this method allows researchers to evaluate the extent to which the concept complies with recognized standards or principles. The results of normative research can help illustrate the level of compliance and relevance of the online notary concept to the existing legal framework, providing a basis for further thought and discussion regarding its implementation in electronic business transaction practices. By combining these two methods, research can provide a comprehensive and contextual picture of the juridical and conceptual issues related to cyber notaries.

## **THE ROLE OF CYBER NOTARIES: NAVIGATING ELECTRONIC DEEDS IN THE DIGITAL ERA**

The role of the Notary in the agreement is actually carried out in line with the authority given. What is meant by the authority of a notary is the power granted by law to a notary to make an authentic deed or other powers. The elements contained in the concept of notary authority include the existence of power, determined by law and the existence of objects. The authority of a Notary in the Indonesian legal system is quite broad, not only making authentic deeds, but also other authorities.<sup>4</sup>

Therefore, in general, the authority of a Notary is divided into two types in accordance with Article 15 of the UUNJP. First, the authority is for example to make a deed, save the deed, give grosse other authorities regulated in the legislation. Based on the provisions of Article 1 paragraph (1) of Law Number 2 of 2014 (UUNJ-P) it is stated that a notary is the only public official who has the authority to make authentic deeds related to all actions, agreements and stipulations required by a general regulation or by interested parties. it is desired to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the minutes of the deed, providing grosse deed, copies and quotations of the deed, all as long as providing the making of the deed is not assigned.

Second, other authorities are powers that have been determined in laws and regulations, in addition to the notary position law, such as the making of cooperative deeds, as regulated in the cooperative law. Apart from that, another authority of the notary profession is as a public power of attorney for the formation of a Limited Liability Company (PT), fiduciary management, and others that require a signature or role from a notary in order for a document to be valid. In the case of the establishment of a PT, the Decree of the Minister of Law and Human Rights.<sup>5</sup>

The development of the cyber notary discourse makes a notary able to carry out his role through the authority he has based on technology, such as making electronic deeds. The concept of an electronic deed is intended to simplify and speed up the duties and authorities of a notary in making an authentic deed, regarding all acts, agreements and provisions required by law or desired by interested parties to be stated in an authentic deed. Cyber notary is a notary concept in general that carries out the function of a notary by applying it to transactions or

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<sup>4</sup> Nurita, *Cyber Notary Pemahaman Awal dalam Konsep Pemikiran*, (Bandung: PT Refika Aditama, 2012).

<sup>5</sup> J Sitompul, *Cyberspace, Cybercrime, Cyberlaw*, (Jakarta: PT Tatanusa, 2012).

relationships electronically via the internet as the main medium for making a notarial deed and leading to the form of a deed that is initially legal if it is contained in paper, leading to an electronic deed or in the form of electronic documents. The implementation of a cyber notary is an important harmonization process related to the requirements for deed authentication because it involves several laws and regulations, but in the existing laws and regulations in Indonesia there are still contradictory rules, for example Article 15 UUJN-P with Article 16 UUJN-P and linked with Articles 11 and 12 of Law Number 11 of 2008 and Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE Law)<sup>6</sup>.

In general, the roles performed in electronic agreements/transactions are no different from manual agreements/transactions. In particular, the role of notaries in electronic agreements/transactions involves two things, namely conducting certification and authentication in electronic transaction traffic.

1. The Role of Notaries Through Certification of Agreements/Electronic Transactions
2. The definition of certification is based on the certification of electronic transactions as regulated in the ITE Law, its amendments to the Act and its implementing regulations Law Number 11 of 2008 Juncto Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Transactions Electronic Article 1 number 10: “Electronic Certification Provider is a legal entity that functions as a trustworthy party, which provides and audits Electronic Certificates. The service process has met certain regulatory standards, based on audits carried out with agreed procedures.
3. In this case, the notary has a role with the Certification Authority (trusted third party) so that the notary can issue digital certificates to interested parties. It is different with the authentication function related to legal aspects that must be fulfilled in the implementation of electronic transactions. In the Indonesian legal system, the authority for a notary to certify electronic transactions is found in the Elucidation of Article 15 paragraph (3) of the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary: other things that are regulated in laws and regulations, among others, the authority to certify transactions conducted electronically (cyber notary), make a deed of waqf pledge, and aircraft mortgages.

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<sup>6</sup> Leslie G. Smith, *Peran Notaris dalam Keamanan Perdagangan Elektronik*, (Brisbane: Queensland University of Technology, 2006).

4. Another basis regarding the role of a notary in the Certification of Agreements/Electronic Transactions Norms regulated in article 15 paragraph (3) of this UUNJP which in the explanation is that one of the authorities of a Notary is to certify transactions conducted electronically (cyber notary). Participation of a notary in the transaction certification process Electronic certification with clearer regulations is contained in the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 11 of 2018 concerning the Implementation of Electronic Certification Article 27 Regarding the application as referred to in Article 25, the Electronic Certification Operator may:
- a. conduct their own inspection;
  - b. appoint a registration authority to carry out inspections; and/or
  - c. appoint a notary as the registration authority. The authority of a notary in this article is to be appointed as a registration authority which is the authority of the delegation from the provider of electronic transaction certification because the notary has responsibility for the completeness of the requirements submitted by the certificate applicant.

## **CHALLENGES IN ELECTRONIC TRANSACTION CERTIFICATION**

The purpose of electronic transaction certification is to guarantee certainty, order, and legal protection for the community in technological progress and the need for authentic evidence regarding acts, agreements, stipulations, and legal events made before or by authorized officials. The existence of changes and the inclusion of provisions regarding electronic transaction certification due to several provisions in Law Number 30 of 2004 concerning Notary Positions are no longer in accordance with legal developments and community needs so that changes need to be made.<sup>7</sup>

After that, the notary makes a deed in accordance with the form determined by law which is then read out in front of the parties where in reading the deed both the notary, witnesses and the parties use a teleconference or video call at the same time, and after completion of the deed The deed is read and understood by the parties concerned, the deed is signed by the parties, witnesses and a notary using a digital signature. The mechanism of the role of the notary through the certification of the agreement/electronic transaction is that the parties are present before the notary by using a teleconference or video call to convey the intent and purpose of meeting the notary and submitting the deed to be made, the parties must clearly show their

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<sup>7</sup> Joshua Sitompul, *Cyberspace, Cybercrime, Cyberlaw*, (Jakarta: Tata Nusa, 2012).

identity to the notary by sending their identity through electronic means such as facsimile and notary to match the identity with the person in the teleconference or video call.<sup>8</sup>

Formation of digital signatures using a kind of fingerprint generated from documents and private keys and digital signature verification 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 created. for the same document that uses the private key. If the two processes have been met, then a digital signature can also fulfill the juridical elements as stated in the conventional signature. A person who puts his digital signature is considered to have acknowledged everything he wrote in the electronic document in question. Thus, digital signatures have the nature of "one signature document" which if there is a slight change in the text sent, the digital signature will also change and will become invalid.<sup>9</sup>

The certification of transactions carried out electronically is made in the form according to Article 38 of the UUJN, so the certification is still possible to create a deed that has perfect evidentiary power. However, Article 16 paragraph (1) letter m UUJN implies that a Notary is obliged to 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 an underhand deed, and signed at that time. also by the appearers, witnesses, and notaries. Article 16 paragraph (1) letter m requires the Notary to read the Deed in front of the appearers unless the appearers agree not to read it and give initials on every page and if this is not implemented then according to article 16 paragraph UUJN then the deed is a deed under hand. This shows that the certification of transactions carried out electronically cannot produce an authentic deed because the appearers cannot witness the reading of the deed or give initials to every page in the deed at the same time considering the nature of transactions carried out electronically, these are paperless and borderless.<sup>10</sup>

In other cases, the notary must also examine the elements made by the (door) or before (tenoverstaan) the electronic agreement/transaction itself. In this case, the researcher will

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<sup>8</sup> Kadek Setiadewi dan I Made Hendra Wijaya, "Legalitas Akta Notaris Berbasis Cyber Notary Sebagai Akta Otentik". *Jurnal Komunikasi Hukum (JKH)* 6, no. 1 (2020): 126. <https://doi.org/10.23887/jkh.v6i1.23446>.

<sup>9</sup> Michael Chissick & Alistair Kellman, *E-Commerce: Hukum & Praktek*, Edisi ke-2, (London: Sweet & Maxwell, 2004).

<sup>10</sup> Muhammad Farid Alwajdi "Urgensi Pengaturan Cyber Notary Dalam Mendukung Kemudahan Berusaha Di Indonesia". *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (2020): 257. <https://doi.org/10.33331/rechtsvinding.v9i2.422>



examine the validity of the agreement certification based on Law no. 11 of 2008 concerning Information and Electronic Transactions (UU ITE) which is described as follows<sup>11</sup>:

a) Deed made by (door)

A deed made by a public official is a deed that authentically describes an action taken or a situation that is seen or witnessed by the public official (notary) himself, in carrying out his position, the deed made that way is called a deed made by a notary. Considering the characteristics of Paperless and Borderless electronic transactions, if the certification of transactions carried out electronically cannot be made in the form of a door because the legal subjects cannot appear directly to the Notary, so it is difficult for the Notary to witness the condition of the two legal acts. Moreover, the main task of a Notary is to make evidence and the evidence will be valid from the time the evidence is finished, even after the Notary dies, so that a Notary must be careful when making evidence, especially those that are Paperless and Borderless.

b) Deed made before (tenoverstaan)

While what is meant by Deed made before (ten overstaan) a notary is a deed containing information from other interested parties so that the information is conveyed to the notary who carries out his position which is then stated / set forth in an authentic deed . Considering the characteristics of electronic transactions that are carried out without meeting face to face, the certification of transactions carried out electronically cannot be made in the form of tenovers because not all legal subjects involved in the electronic transaction are also present before the Notary.

c) The authorized public official at the place where the deed was made. This element explains that an authentic deed must be made by an authorized official at the place where the deed was made

d) Jurisdiction of Electronic Transactions

If it is related to the jurisdiction of electronic transactions which according to article 2 of the ITE Law where the ITE Law applies to everyone who carries out legal actions as regulated in this Law, both within the jurisdiction of Indonesia and outside the jurisdiction of Indonesia, which has legal consequences within the jurisdiction of Indonesia and/or outside Indonesian law and is detrimental to the interests of Indonesia. Principles of Electronic

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<sup>11</sup> L. Dewi, "Aspek Hukum Cyber Notaris di Indonesia", *Jurnal Hukum dan Kebijakan Digital* 1, no. 1 (2021).

Transactions Article 3 of the ITE Law contains that the use of Information Technology and Electronic Transactions is carried out based on the principles of legal certainty, benefit, prudence, good faith, and freedom to choose technology or neutral technology. a) The principle of legal certainty means the legal basis for the use of Information Technology and Electronic Transactions as well as everything that supports its implementation which obtains legal recognition inside and outside the court. b) Benefit Principle means that the principle for the use of Information Technology and Electronic Transactions is sought to support the information process so as to improve the welfare of the community. c) The precautionary principle means the basis for the party concerned to pay attention to all aspects that have the potential to cause harm, both for himself and for other parties in the use of Information Technology and Electronic Transactions. d) Good Faith Principle means the principle used by the parties in conducting Electronic Transactions is not intended to intentionally and without rights or against the law to cause harm to other parties without the knowledge of the other party. e) The principle of Freedom to Choose Technology or Neutral Technology means the principle of using Information Technology and Electronic Transactions is not focused on the use of certain technologies so that they can follow developments in the future.

e) Electronic Evidence

Regarding electronic evidence in the ITE Law, it is stated in articles 5 and 6 of the ITE Law as follows: Article 5 (1) Electronic Information and or Electronic Documents and/or their printed results are legal evidence. (2) Electronic Information and/or Electronic Documents and or their printed results as referred to in paragraph (1) is an extension of valid evidence in accordance with the applicable procedural law in Indonesia. (3) Electronic Information and/or Electronic Documents are declared valid if they use Electronic Systems in accordance with the provisions stipulated in this Law. (4) Provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) do not apply to: a. a letter which according to the law must be made in written form; and b. the letter and its documents which according to the law must be made in the form of a notarial deed.

Article 6 In the event that there are provisions other than those regulated in Article 5 paragraph (4) which requires that an information must be in written or original form, Electronic Information and/or Electronic Documents are considered valid as long as the information contained therein can be accessed, displayed, its integrity is guaranteed. , and can be accounted

for so as to explain a situation. Based on article 6 of the ITE Law which contains: In the event that there are provisions other than those stipulated in Article 5 paragraph (4) which requires that an information must be in written or original form, Electronic Information and/or Electronic Documents are considered valid as long as the information contained therein is accessible, displayed, guaranteed its integrity, and can be accounted for so as to explain a situation. From the explanation of Article 6 above, it is known that this electronic document has an equal position with paper documents in general.<sup>12</sup>

### **CHALLENGES IN ELECTRONIC TRANSACTION CERTIFICATION: NOTARY'S DILEMMA AND LEGAL IMPLICATIONS**

The electronic document in this electronic transaction is an electronic certificate which, according to Article 41 paragraph (3) of PP Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, must be certified to this which will be brought to a Notary by one of the parties, for later certification of the transaction. that is done electronically in order to have the power as evidence. This electronic certificate according to article 1 number 18 of PP Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions defines the certificate as an electronic certificate containing an Electronic Signature and identity indicating the status of the legal subjects of the parties in Electronic Transactions issued by the electronic certification operator. The Electronic Certificate above before certification can be concluded is not an Authentic Deed because it was not made by an authorized official and the form does not meet Article 38 of the UUJN.

Meanwhile, according to article 1 number 18, electronic certificates only contain Electronic Signatures and identities that indicate the status of the legal subjects of the parties in the Electronic Transaction, so that the electronic certificate is a private deed. After the parties have obtained the electronic certificates mentioned above, in accordance with Article 41 paragraph (1) Electronic Transactions in the public or private scope that use Electronic Systems for the benefit of public services are required to use Reliability Certificates and/or Electronic Certificates. Meanwhile, for the implementation of Electronic Transactions in the private

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<sup>12</sup> Hikmahanto Juwana, *Disampaikan Pada Acara Seminar 'Cyber Notary, Tantangan Bagi Notaris Indonesia*, 2011.

sphere, it is not required to certify the electronic certificates resulting from transactions conducted electronically.<sup>13</sup>

If the agreement does not meet the points above, the Transaction Certification carried out electronically will only produce a private deed legalized by a Notary. On the other hand, if the points above can be fulfilled, it will produce an authentic deed. In this case, the legal protection has been carried out by a notary.

In practice, in relation to the notary's authority in making the deed, there are obstacles, one of which is the necessity of the parties to sign the deed, the signatures of the parties are important in a deed, because the party's signature is a sign that the parties agree with the entire contents of the deed. 64 Other problems related to the role of a notary through the certification of electronic agreements/transactions include. The authority of a notary to certify transactions conducted electronically is contrary to article 1868 regarding the definition of an authentic deed which requires the parties involved in a legal act to appear before Notary at the time of making the authentic deed. The certification of transactions carried out electronically is also vulnerable for the Notary who certifies this transaction to be subject to criminal sanctions because every deed made by a Notary is valid since the Deed was made even until the Notary has died The deed is still valid, so for now Notaries are still afraid to certify transactions conducted electronically and need to be extra careful in carrying out such certifications.<sup>14</sup>

#### 1. The Role of Notaries Through Authentication of Agreements/Electronic Transactions

The signing of a document has four main purposes, namely as evidence, a sign of approval, fulfillment of formalities, and efficiency. In order to achieve this goal, there are two attributes of an electronic signature that must be met: 66 a. Signature owner authentication. This means that the electronic signature is not easy to imitate and is able to show the identity of the owner. b. Document authentication. This gives meaning, under an electronic signature must be able to characterize the authenticity of the signed document. Thus, the document is not easily falsified or changed without being noticed by the author. Thus, authentication of signings and documents must be able to prevent someone from cyber crime cases, such as forgery. Therefore, electronic signatures must adhere to the concept of

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<sup>13</sup> Habib Habib, *Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik*, (Bandung: PT Refika Aditama, 2008).

<sup>14</sup> Syamsul Annalisa Yahanan Bahri dan Agus Trisaka, "Kewenangan Notaris Dalam Mensertifikasi Transaksi Elektronik Dalam Rangka Cyber Notary". *Repertorium* 8, no. 2 (2019): 142–57. <https://doi.org/10.28946/rpt.v>.

non-repudation. This is one form of guaranteeing the authenticity of the file to prevent denial from the owner of the signature.

Thus, authentication of signings and documents must be able to prevent someone from cybercrime cases, such as forgery. Therefore, electronic signatures must adhere to the concept of non-repudation. This is one form of guaranteeing the authenticity of the file to prevent denial from the owner of the signature.

### **NOTARY'S ROLE IN AUTHENTICATING ELECTRONIC TRANSACTIONS: COLLABORATIVE MECHANISMS WITH CERTIFICATE AUTHORITY**

To be able to fulfill the authentic function, Article 11 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions ("UU ITE") states that electronic hands have legal force and legal consequences as long as they meet 6 requirements, namely: data creation the electronic signature relates only to the signer; the electronic signature creation data at the time of the electronic signing process is only in the power of the signer; any changes to the electronic signature that occur after the time of signing can be known; any changes to the electronic information related to the electronic signature after the time of signing can be known; there are certain methods used to identify who the signatories are; and there are certain ways to show that the signer has given consent to the associated electronic information.

The mechanism for the role of a notary through authentication of electronic agreements/transactions is jointly with the Certificate Authority (CA) as a trusted third party in securing and legitimizing electronic transactions. Certificate Authority is the party that issues Electronic Certificates containing the identity of the certificate owner, public key and private key used in electronic transactions to create electronic signatures, authenticate the signer and verify the signed documents. Furthermore, the Notary acts to authenticate the parties, performs electronic transactions or authenticates parties who sign electronic documents/information, verifies electronic documents/information signed by the parties, secures information storage in the form of signatures and signed documents, assists CA in issuing Electronic Certificates in particular identifying parties who request the issuance of Electronic Certificates, and finally become an intermediary for electronic transactions where the electronic document and signature are sent by the Beneficiary to the Notary, then the Notary shall first authenticate and verify against the signer and the signed electronic document/information, then forwarded to the

Beneficiary. A signatory of electronic documents/information must be present in front of the Notary so as to enable the Notary to check the identity of the perpetrator, the wishes of the perpetrator, and the competence/ability of the perpetrator in carrying out electronic transactions. By meeting face to face, the Notary can also find out whether the perpetrator who wants to transact electronically is in a state without coercion or physical threat from other parties, is mentally and physically healthy. This examination of the perpetrators who will transact also assists in the issuance of Electronic Certificates.

Based on Article 1 number 7 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN-P) which states that a notary deed is an authentic deed made by or before a notary according to the form and procedure required stipulated in the Law on Notary Positions, so that there is a conflict when applying the concept of cyber notary as one of the notary services. This is because the cyber notary concept in the process of making the deed is carried out electronically, starting from the presence of the parties, the exchange of information through electronic transactions, and the use of digital signatures, while what is meant in Article 1 number 7 UUJN-P, the use of the word facing, appearing before , face to face, and before in UUJN-P the translation of the word *verschijnen* which means coming to face what is meant in the juridical sense is real presence.

This is what makes the notary's role different in its implementation. One of the differences in question is the translation of "physical presence/real presence". Technically, "physical presence/real presence" is not impossible to do electronically. The development of the internet has changed the physical presence or real presence, where everyone can make video conference calls, and can embed his signature on the phone card chip (SIM card) or on the relevant handset, and real facts can be known where the person concerned is with the facility. satellite via GPS or map utility provided. This then becomes an important point of change that must be understood by the notary in carrying out his role.

Based on data findings regarding the role of notaries through authentication of electronic agreements/transactions, it can be seen that the mechanism used by notaries to perform authentication is together with the Certificate Authority (CA) as a trusted third party in securing and legitimizing electronic transactions. . Furthermore, the Notary acts to authenticate the party conducting the electronic transaction or authenticate the party who signed the electronic document/information, verify the electronic document/information signed by the parties, secure the storage of information in the form of signature and signed document, assist

CA in the issuance of Electronic Certificates specifically identifies the parties requesting the issuance of Electronic Certificates, and finally becomes an intermediary for electronic transactions where the electronic documents and signatures are sent by the Beneficiary to the Notary, then the Notary performs authentication and verification in advance of the signer and the electronically signed documents/information. , then forwarded to the Recipient.<sup>15</sup>

## **CONCLUSION**

The role of the Notary in the agreement is actually carried out in line with the authority given. What is meant by the authority of a Notary is the power granted by law to a Notary to make an authentic deed or other powers in accordance with Article 15 UUJNP. In general, the roles performed in electronic agreements/transactions are no different from manual agreements/transactions. In particular, the role of notaries in electronic agreements/transactions involves two things, namely conducting certification and authentication in electronic transaction traffic. The authority of a notary in electronic agreements/transactions through the certification (Certification Authority) of electronic transactions carried out through three events, namely conducting the inspection themselves appointing a registration authority to carry out the inspection; and/or appoint a notary as the registration authority. Meanwhile, the role of a notary as an authentication (Registration Authority) of electronic agreements is together with the Certification Authority (CA) as a trusted third party in securing and legitimizing electronic transactions.

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<sup>15</sup> Luthvi Febryka Nola “Peluang Penerapan Cyber Notary Dalam Peraturan Perundang-Undangan Di Indonesia”. *Negara Hukum* 2, (2011): 75–102.

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