

## Research Article

## Urgency of Law Amendment as Foundation of The Implementation of Cyber Notary

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## ABSTRACT

The concept of Cyber Notary in Indonesia is influenced by the advance of technology, the need of the society, and the way people think. Cyber notary is mentioned in the amended Law on Notary (Amended UUJN) in the form of other authorities, which is to certify transaction made electronically (cyber notary). However, in the level of legal practice, cyber notary's authority is not performed effectively by notaries in real practice. This study aimed to examine the aspect of legal certainty of cyber notary and how far the chance of UUJN's Amendment is able to provide certainty for the implementation of cyber notary. This study was conducted using normative legal research method, a descriptive method, through statute approach and history approach. The result of this research shows that: first, notary's authority in cyber notary is merely to legalize an electronic document and privately made deed. The second, the certification of a transaction which is done electronically (cyber notary) by Notary has validity or legally valid and is not against the principle of *Tabellionis Officium Fidelliter Exercebo* because during the process notaries is present directly. Based on the result of this study, the suggestion that can be given is that it is necessary to amend UUJN and to formulate implementing regulation of the mechanism of notary's authority to certify electronic transaction.

Key words: Validity; Cyber Notary; Notaries.

## A. INTRODUCTION

Nowadays, people are faced with the advanced and rapid development of communication and information technology. This development has affected legal aspect, including in the practice of notary legal aspect. The use of internet media can realize economic development of a country, which in turn will also impact on legal aspect of notary (Sihombing, 2020).

Since the emergence of the concept of cyber notary in the Elucidation of Article 15 section (3) UUJN (The Law on Notary), Notaries need to adjust to technological development. On this Article, it is stated that Notaries have other authorities, which is to certify electronic transaction. This study focuses on

the authorities of Notaries regarding the concept of cyber notary. This concept still becomes a debate because there has been no further law regulating the authority of cyber notary explicitly and specifically. Consequently, this results in what we call Vague Norm (Bahri, Yahannan & Trisaka, 2019).

Vague norm will cause Notaries to be in doubt in performing their authority as mandated by UUJN. Therefore, it is necessary to know and comprehend the definition of certification, electronic transaction, and cyber notary as stated in UUJN. Cyber Notary, according to Emma Nurita, is Notaries as public officers use the existing technological development and manage information as well as they can while

performing their notaries activities, particularly in the making of authentic deed (Nurita, 2012).

Based on a theory concerning Notaries as public officers, Notaries' authority comes to make authentic deed in regard to an event, occurrence, or any legal action comes from The State by referring strictly to UUJN (Adjie, 2008). If seen from historical value, the implementation of Cyber Notary in a Country which holds Civil Law system, like Indonesia, will affect the force of a deed, which essentially is required to be made by and in front of the direct presence of a Notary (Nurita, 2012).

To examine the aspect of legal certainty, the researcher used Theory of Legal Validity. Theory of validity is related to the enforceability of a law in society so that legal certainty may be achieved (Raz, 2012). The theory of legal validity is necessary in order to assess the validity of a certification of a transaction conducted electronically by referring to the existing legality, which is Article 1320 and 1338 Civil Code. The transaction shall be performed with good intention and shall not violate legislations.

When discussing the aspect of legal certainty of the concept of cyber notary, part from using Theory of Legal Validity, it is also necessary to base the issue on the principle of *Tabellionis Officium Fideliter Exercebo* which binds notaries. This principle means that Notaries shall work traditionally (conventionally). In regard to the making of deed, the appearers shall be directly present, or in this case it means to be present physically or in real (*verschijnen*). This is as mandated in Article 16 section (1) letter m UUJN (Law on Notary), stating that a Notary shall read the deed made before the

appearers and is witnessed by witnesses (at least 2 or 4 for the making of privately made will).

The mandate of the authority to certify electronic transaction by UUJN arises some questions which will be the focus of this study. One of the questions is regarding the validity of cyber notary in regulations in Indonesia and towards the Principle of *Tabellionis Officium Fideliter Exercebo*, considering the fact that, in making authentic deed, Notaries still apply traditional or conventional way.

Furthermore, the mandate of the authority to certify electronic transaction (cyber notary) by UUJN has in fact raised some issues in regard to the aspect of legal certainty. Therefore, this study reviewed the validity of cyber notary in regulations in Indonesia and towards the Principle of *Tabellionis Officium Fideliter Exercebo*, and whether it is necessary to amend UUJN in order to strengthen the aspect of legal certainty of cyber notary concept. In practice level, the making of authentic deed is still performed traditionally or conventionally by Notaries. In addition, Notaries are still in doubt in the implementation of electronic transaction certification. There has been no clarity concerning the mechanism of the certification and cyber notary mandated by UUJN or Law on Notary, and also there has been no implementing regulation on the mechanism of attribution authority in Article 15 section (3) Law in Notary (UUJN) and in its elucidation. The emergence of cyber notary concept has also caused its own concerns in regard to the existence of the Principle of *tabellionis officium fideliter exercebo*.

One previous study on this issue was conducted by Luthvi Febryka Nola in 2011. The focus

of this study was on the possibility of the implementation of cyber notary in Indonesia which was written in Indonesia's legislations (Nola, 2011). This research mentioned that Indonesia needed to adopt the concept of Cyber Notary because it could improve the role of Notaries in the building of the State economy.

Another similar study was conducted by Carisma Gagah Arisatya. This study focused on the urgency and relevance of Notaries' authority to certify transaction performed electronically by conducting research in Malang City. This study concerned with the issue of the people's need and its implementation in The City of Malang (Arisatya, 2015).

Another previous study was conducted by Benny. This study focused on the implementation of cyber notary concept in Indonesia reviewed from the Law on Notary (UUJN). This study shows that the implementation of cyber notary was by printing letter and/or certificate through an online system which belonged to Ditjen AHU (Benny, 2015).

In 2018, a study conducted by Sari et.al focused on the making of a deed by notaries of an electronic transaction which was performed by the parties which were outside the area of notary profession. The issue of the position of the area is referred to Law on Electronic Transaction and Information or known with acronym UU ITE because it regulates more specifically according to the principle of *Lex Specialis Derogat Legi Generalis* (Sari, Murni, & Udiana, 2018).

The next study regarding the issue of Notary authority to certify electronic transaction in cyber notary focused on the role of Notaries as registration

authority. This study stated that an independent system was necessary to implement the certification of electronic transaction (Bahri, Yahannan, & Trisaka, 2019).

An international study regarding cyber notary raised similar issue. One study regarding this issue focused on the implementation of electronic transaction in a case related to digital signature in Michigan. From Seal to Cyber-Notary: Uncertainty in Electronic Commerce and the Case for a Digital Signature Law in Michigan (Tupper, 1999).

A series of studies focused of possibility, urgency, and the area position of a Notary in cyber notary. So far, there has been no study focusing on the aspect of legal certainty of the implementation of cyber notary reviewed from the Principle of *Tabellionis Officium Fidelliter Exercebo*. This discussion leads to the urgency of the amendment of UUJN to guarantee the aspect of legal certainty of the implementation of Cyber Notary.

This discussion is important and is necessary because Indonesia adopts a legal system of Civil Law, thus, notaries activities in Indonesia applies the culture and legal system in Civil Law. There is a difference between notaries activities among countries which adopt legal system of Common Law and Civil Law, particularly in the implementation of Cyber Notary. This is directly related to a principle applied in notary activities which has been existed and applied for a long time. This principle is called *Tabellionis Officium Fidelliter Exercebo*. This principle states that Notaries works traditionally or conventionally. This study reviews whether the implementation of cyber notary has validity, and is

applied according to the principle of *Tabellionis Officium Fidelliter Exercebo* which has been existed in the field of Notary profession and binds notaries in performing their professional duties. Therefore, the result of this study will answer the question of whether it is necessary to amend UUJN or Law on Notary.

## B. RESEARCH METHOD

Research method used in this study was normative legal research method, which is descriptive. The data used in this study were secondary data, which were data obtained from literature study, and to add value to this study, interview with various sources was held. Those sources of interview were Ferry Gunawan, (Section Head of Drafting and Adjusting of Bills, General Directorate of Laws and Regulations of Ministry of Law and Human Rights), Randy Yuliawan (Section Head of Notary Appointment and Mutation General Directorate of Legal Administrative Affairs Ministry of Law and Human Rights), and Benny Djaja (Lecturer of Faculty of Law Tarumanegara University and Notary of West Jakarta Area). This study applied qualitative analysis technique with two approaches, laws and regulations approaches (statute approach) and historical approach (history approach).

## C. RESULT AND DISCUSSION

### 1. The Validity of Electronic Transaction Certification (Cyber Notary).

Cyber notary has become a necessity nowadays. It has a good chance to be applied well in Indonesia. This chance or possibility is highly related

to the development in technology and information field. The possibility of cyber notary in Indonesia is also supported by Indonesia's positive law, meaning that there are some laws and regulations written about it. Some of the laws and regulations are Article 5 section (2) and section (3) UU ITE (Law on Electronic Transaction and Information), Article 77 section (1) UUPU (Law on Limited Liabilities Company), and Article 15 section (3) UJN (Law on Notary) and its Elucidation.

The elucidation of Article 15 section (3) was written only in Law Number 2 Year 2014 concerning Amendment of Law Number 30 Year 2004 concerning Notaries Profession, while Article 15 section (3) Law Number 30 Year 2004 concerning Notary Profession has no elucidation. Notaries as public officers have three types of authorities, which has been determined in UJN (Law on Notary), consisting of main/general authority (Article 15 section (1) UJN), certain authority (Article 15 section (2) UJN), and other authorities (Article 15 section (3) UJN) (Adjie, 2008). If seen from the authority to certify electronic transaction (cyber notary), there are three important elements needed to be understood comprehensively. Those three elements are:

#### a. Certification

Certification in Indonesian language is *sertifikasi*, which is derived from Indonesia word "sertifikat" with the addition of ending "-i". According to KBBI (Indonesia Dictionary), certification is "a process, way, making a certificate, to certify with certificate as the final result. Emma Nurita stated that certification is "a procedure of granting written

assurance that a product or a process or service has met a certain standard by a third party, which is based on auditing activity performed according to a procedure that has been mutually agreed (Rossalina, Bakri, & Andriajani, 2016). The authority to certify an electronic transaction (cyber notary) emerges due to the demand of the society leading to Notary taking their role in cyber world (Krisna, & Purwadi, 2018). This adjustment is necessary in order to improve public service through the utilization of information technology optimally, and also it is supported by the fact that Indonesia has entered 4.0 industrial world (Chamidah dkk, 2019).

The ambiguity of information in the Elucidation of Article 15 section (3) has not made notaries come to a common understanding about the concept of cyber notary and electronic certification as mentioned in Elucidation of Article 15 section (3) UUJN. The Elucidation of Article 15 section (3) UUJN has also raised question. This Elucidation can be interpreted as two different things; either it is the transaction certification that is electronically made or the transaction itself that is electronic (Directorate General of Finance (DJKN), 2020). The elucidation of Article 15 section (3) UUJN has attempted to convey that it is not the authority to certify that is performed electronically, it is the transaction that is performed electronically.

Ferry Gunawan considered that the authority to certify meant in the Elucidation of Article 15 section (3) is that the authority which has been performed or limited in Article 15 UUJN. Thus, it is not the activity of the certification itself which is done electronically, instead, the transaction which is performed via

electronic media (Gunawan, 2020). If the phrase "to certify transaction which is performed electronically" is correlated to Article 15 section (1) and (2), then it is clear which Notary's authority performed electronically (through digital media) so that certification can be done (Gunawan, 2020). This statement is in line with the statement of Putri and Budiono, reviewed from grammatical interpretation, saying that in the Elucidation of Article 15 section (3) UUJN, there is conjunction "which", which is part of the phrase "transaction performed electronically" (Putri, & Budiono, 2019).

This certification is used to declare that legal action in the form of electronic transaction has been on the right track, and this means that it is valid. The implementation of certification is performed on a legal action (in this case electronic transaction) as if those criteria which has been established and right is fulfilled, supported by evidence or attached documents (Djaja, 2020). Literary, it can be interpreted that certification is an activity performed by a Notary to grant a written assurance stating that a transaction has met a certain applied standard. In regard to the new Notary's authority stated in Article 15 section (3) UUJN in the form of certifying electronic transaction (cyber notary), the evidence or proof of the certification itself is needed. This proof is the same as when Notaries perform legalization on a document.

If certification is interpreted as legalization of an electronic document or considered the same as electronic document, the parties performing transaction electronically bring documents as a result of the transaction (such as sale-purchase) to the

Notaries to be then legalized or validated particularly for the authenticity of the identity, agreement, and signature. Nevertheless, the agreement shall be read aloud and also signed before Notaries and appearers (private deed which is legalized).

The authority "to certify" is considered less appropriate considering that the aim of Notary to certify is to strengthen an electronic document resulted from an electronic transaction (Benny, 2015). This strengthening is used so that in the future the electronic document of an electronic transaction can have validation. Another aim is to make the electronic document irrefutable particularly from the other party which refutes the validity or existence of the electronic document (Krisyanto, Daulay, & Beatrix, 2019). In term of verification, electronic document can have authentic characteristic with a safe and accountable electronic system (Setiadewi, & Wijaya, 2020).

Ideally, certification made by Notary can be proof in the Court (Yuliawan, 2020). Although certification of electronic document can use sketch or seal sticker number as authentication, this procedure does not grant the power as strong as authentic deed made by Notaries. This associates with the authenticity, integrity, and non-refutability (Matos et.al. , 2018). In terms of the strength of the proof or verification in Court, not like authentic deed, which has absolute power, the strength or power of an electronic certification is considered the same as private deed which is legalized.

#### b. Electronic Transaction

The transaction meant here refers to electronic transaction described in Law on Electronic

Technology and Information (UU ITE) and its implementing regulation, which is Government Regulation No. 71 Year 2019 concerning The Implementation of Electronic System and Transaction (hereandafter referred to as PP PSTE). Electronic transaction according to Article 1 number 2 UU ITE is "any legal action which is performed via computer, computer network, and/or other electronic media". Electronic transaction is one of impacts of technology development particularly in commerce world (e-commerce) (Sundani, 2017). In the implementation of electronic transaction, the parties involved perform electronic transaction through internet media which is borderless. This is philosophically in line, meaning that electronic transaction can be performed anywhere, even in oversea commerce traffic (Sari, Murni, & Udiana, 2018). The proof or verification of the electronic transaction is then categorized as electronic document which is contained the agreement made by the parties involved in the transaction.

Electronic document is a proof of an electronic transaction activity which is equal to any paper document in general (Arisatya, 2015). The final outcome of transaction certification which is performed electronically (cyber notary) can be in the form of a print out. This print out can be qualified as an electronic document which can be means of proof in the Court (Gunawan, 2020).

The parties can bring private agreement (electronic document) to a Notary to be then certified in the form of legalization over the electronic document in order to assure the authenticity of anything related to identity, agreement, signature,

and so forth. The validity of an electronic transaction can be reviewed by referring to Article 1320 Civil Code regarding the requirements of validity of an agreement. The first requirement is that the parties involved are competent. The second is that there is agreement. The third is that the transaction is about a certain object, and the last is that it contains halal clause. Moreover, the validity of electronic certification can be seen in Article 1338 Civil Code concerning the principle of contract freedom, in that an agreement is applied as legislations and is binding for the parties involved. The agreement is not limited by any media, so it can be performed conventionally or electronically.

### c. Cyber Notary

Theodore Sedwick, a manager of Cyber-US Project Notary Council for International Business, stated that cyber notary is a term used to describe a combination between conventional function of Notary and its application through electronic transaction (Chen dkk, 2017). Cyber Notary acts as traffic of safety in an electronic transaction, either through conventional function of Notary (authentic deed) or through electronic function of Notary by utilizing public infrastructure and electronic signature (Chen dkk, 2017). Electronic signature must be well associated with an electronic information so that later on this signature can have equal function as paper signature (Apriansyah, 2018).

The concept of cyber Notary or notary by digital can thrive and can be applied (not merely an idea) in Indonesia. Therefore, Both Government and Notaries must also be prepared to be part of it. Furthermore, cyber notary has become a necessity

for the development in the field of notaries which later will support the growth of other sectors (Riviyusnita, Jauhariah, & Busroh, 2019). This convenience is expected to create a fast, accurate, and efficient service of Notary so that Notaries can contribute more in accelerating the growth and development of economy in Indonesia (Nurita, 2012). The implementation of cyber notary in Indonesia is expected to be able to make Indonesia include in the top 40 rank in Ease of Doing Bussiness (EODB) (Alwajdi, 2020). Notaries need to have a spirit to serve people according to the demand of the era (Maharani, Parman, & Haq, 2019).

According to Saiful Hidayat, cyber notary is a notary who performs his/her service regarding a document electronically (Hidayat, 2020) The rapid development in the field of technology and information has made some countries apply the concept of cyber notary or electronic notary, particularly in regard to society's need for an assurance on the authenticity of electronic information. (more specifically e-signature) (Makarim, 2011).

From historical side, there is the impression that the concept of "e-notary" and "cyber notary" is different (Makarim, 2015). The term "e-notary" was introduced and popular among the Countries which hold Civil Law with Continental European Tradition while the term cyber notary was introduced and popular among the Countries which hold Common Law (Makarim, 2011).

Leslie Smith in her study stated that the term "electronic notary" seemed to be firstly suggested by one of France delegation in law workshop on Trade

Electronics Data Interchanges Systems (TEDIS) in Electronic Data Interchanges Conference (EDI) European Union 1989 in Brussels (Smith, 2006). EDI Conference was held with the aim to suggest that various industry associations and related bodies can act as "electronic notary" to provide an independent record on electronic transaction for the parties involved, which is when company A electronically sends trade document to company B, and vice versa (Smith, 2006).

C. Stephen Manson stated that the term "cyber notary" was suggested and introduced the first time by American Bar Association Information Security Committee (ABA) in 1994 with four elements consisting of trust when performing transaction among the parties through internet, transmission safety, the integrity of communication content, and the assurance that the transaction will earn legal recognition so that the contract is binding (Makarim, 2011). Indonesia has been occupied by Netherland for 350 years, since 1596 to 1942. The term Notary entered Indonesia in the beginning of the 17<sup>th</sup> century by the presence of Vereenigde Oost Ind. Compagnie (later will be called VOC) in Indonesia. At that time, Notary was known with the term Notarium Publicium (Adjie, 2008). On 27 August 1620, Melchior Kerchem who was still served as the secretary of College Van Schepenen was appointed as the first Notary in by Jan Pieterszoon Coen (General Governor of Jacatra) (Adjie, 2008).

History has proven that Indonesia is Netherland's colonial country so that Indonesia adopts Netherland's Law (including Law concerning Notaries) which is part of civil law. Although

Indonesia includes in Countries which embrace Civil Law, Indonesia uses the term "cyber notary" as mentioned in the Elucidation of Article 15 section (3) UUJN.

According to Edmon Makarim, Cyber Notary is interpreted as notary activities in making a deed, starting from meeting, reading, making, signing, execution, deed form, to the storing which is performed electronically (Yuliawan, 2020). The definition of Notary deed according to Article 7 UUJN is "authentic deed made by or before Notaries according to forms and procedures stipulated by this law". Notary deed is also called authentic deed if it can fulfill the following requirements stipulated in Article 1868 Civil Code, "(1)a deed which is made by (door) or a deed which is made before (ten overstaan) by a general official; (2) the deed is made in the form or format determined by the laws; and (3) the deed shall be made by officials who have the authority in doing so" (Adjie, 2008).

In Indonesia, although the elucidation of Article 15 section (3) UUJN mentions the term "cyber notary", in practice, electronic deed has not been implemented. This is because Article 1 number 7 UUJN stated that Notaries deed is "authentic deed which is made by or before Notaries according to form and procedure stipulated in this law." In addition, electronic authentic deed has not specifically regulated in any regulations and laws.

Article 16 section (1) letter m UUJN jo. Article 39 section (2) UUJN stated that Notaries have obligation to "read a deed before the appearers with the presence of at least two (2) witnesses, four (4) particular witnesses for the making of private deed of



will, and the deed is signed at that same time by appearers, witness, and Notaries," and "the appearers shall be known by the Notaries or is introduced by two witnesses." If the requirements stating that the deed shall be read aloud directly is not fulfilled, the Notary will not legalize its authenticity value and it will only be considered a private deed (Chalid, 2020).

Up to now, there has not been any legislations which allow the parties or appearers involved in the making of authentic deed to be performed by teleconference, considering that physical meeting between Notaries and the appearers is considered highly important. This concerns with the authenticity of the identity of the appearers, and in order to assure the safety of the appearers from pressure, anxiety, and thread from another party which cannot be visually seen on the screen if the deed is made through teleconference media (Yuliawan, 2020). The use of teleconference media is only possible in the making of relaas deed in General Meeting of shareholders through teleconference, and as long as Notaries obligation to sign the deed is fulfilled, the validity and the power proof can be fully gained (Dharmawan, 2015).

Article 44 section (1) UUJN stated that signature signed on authentic deed shall be the signatures of the appearers and the Notary themselves, real and direct (wet ink signature), not using electronic signature (digital signature). Moreover, there are no laws and regulations which allow electronic signing of an authentic deed, and also there has been no safety system in regard to Notary digital signature. The lack of integrity between

electronic signature and identity of the signee (electronic information) in safety system has made electronic signature considered weak to be used in an agreement or other official documents (Husni, 2016).

Notaries and the product of Notary, in this case is deed, can be interpreted as the State's effort to create legal certainty and legal protection for its people (Fendri, & Mannas, 2019). The power of notary deed which is made electronically or cyber by a notary has not had strong legal foundation so that it does not guarantee the realization of legal certainty. Legal certainty (legality) assures that law can be applied as a regulation in people's life (Fendri, & Mannas, 2019). Legal certainty can be realized if there are no legal provisions that refute each other (Chamidah dkk, 2019). Eddy O.S. Hiariej, A Professor of Criminal Law Gadjah Mada University said that a deed which is made through cyber notary or electronically does not have perfect power of proof as authentic deed, instead, it is considered as a private deed (Wijanarko, Mulyoto, & Supanto, 2015).

Based on Regulation of Minister of Communication and Informatics of The Republic of Indonesia Number 11 Year 2018 concerning The Implementation of Electronic Certification, the activity of cyber notary has two important functions consisting if the implementation of certification and authentication of a process of an electronic transaction performed in society.

In the first function, which is certification, the role of Notary to certify transaction performed electronically is considered the same as an activity to legalize a document as mandated by Article 15

section (2) letter a UUJN, "legalize signature and determine the date of the private letter by registering it in certain book.' This is in accordance to Benny stating that the term certification in UUJN is not appropriate considering that the aim of Notary's authority is to strengthen an electronic document as a result of an electronic transaction so that the document has validity or is legally valid (Benny, 2015).

Thus, if it is considered the same as legalized deeds, the parties who perform the electronic transaction bring this electronic document to a Notary in order to be legalized by the Notary. A Notary has an obligation to read aloud, to assure all information written in the electronic document, and to validate the given signature. The aim is that the electronic document has validity and can not be refuted by the related parties if there is a problem in the future. If the authority is associated with responsibility of a Notary in certifying an electronic transaction, the Notary is responsible for the data such as identity, signature, and so forth so that the authenticity of the parties involved in the transaction can be assured (not the people who do not have rights and responsibility)(Lombogia, 2019).

The emergence of the authority to certify is due to what society needs. The service of certifying digital document is part of supporting program for e-government. Certification service uses digital signature which needs to be supported by public key infrastructure for digital signature file or document, or serve as e-notary (Matos et.al., 2018). According to the mandate of UUJN, Notary is the party who performs certification. However, in real practice

nowadays, Notaries still serve as the authority of registration (Yuliawan, 2020). Here we can see there is discrepancy between the present development of law and its practice in Indonesia. The adjustment between what is regulated by the law and what is practiced in real world needs to be done as stated in a theory by Roscoe Pound stating that "law as a tool of social engineering" (law as a tool of renewal or change in society) (Harapan, 2016).

The outcome of an electronic transaction activity (cyber notary) may be in the form of electronic certification. Further arrangement regarding the permission of parties who make electronic certification of an electronic transaction is regulated in Article 59 section (3) UU PSTE (Law on The Implementation of Electronic System and Transaction) mentioning that there is minister ordinance which regulates in detail the procedure of the ownership of an electronic certification. This Minister Ordinance is The Regulation of Minister of Communication and Informatics of The Republic Of Indonesia Number 11 year 2018 concerning The Implementation of Electronic Certification (hereinafter referred to as PERMENKOMINFO 11/2018).

In the second function, which is authentication, according to Article 26 PERMENKOMINFO, electronic certification has two main functions, which are as the means of authentication and verification of identity data of the owner of electronic certificate as well as a sign of the integrity over the authenticity of electronic information. Authentication is one of aspects which is necessary in electronic transaction (Rositawati, Utama, & Kasih 2017). The

implementation of the authentication must take into account the authentication of identity of the parties involved, the authority involved, the validity of the process, the device used, and the assurance of the integrity of a document (Makarim, 2015).

Electronic certification as mentioned in Article 1 number 3 PERMENKOMINFO No. 11/2028 is " an electronic certificate which uses electronic signature and identity which shows the status of legal subjects of the parties involved in an electronic transaction which is issued by the parties performing electronic certification," The role of Notary in the implementation of electronic certification is explained in Article 27 PERMENKOMINFO No. 11/2018 stating that "upon the application as meant in Article 25, The Parties performing Electronic Certification may : a) perform the verification by themselves; b) appoint a registration authority to perform the verification; and/or c) appoint a Notary as the registration authority." As stated in Article 27 PERMENKOMINFO No. 11/2018, the participant of a Notary in the implementation of electronic transaction is to have a role as a registration authority. In performing the authentication function in implementing electronic certification, Notaries are positioned as Trusted Third Party (TTP) (Makarim, 2011).

According to PERMENKOMINFO No. 11/2018, the duties of a Notary is to take part as a registration authority. Notaries as a registration authority according to Article 28 PERMENKOMINFO No. 11/2018 have the authority to perform any activities related to verification of authentication of the identity of the parties involved as well as checking the

completion of the documents in order to issue an electronic document.

The types of identity which needs to be verified according to Article 24 PERMENKOMINFO No. 11/2018 are "name, single identity number (NIK), passport number, or NPWP or Taxpayer Identification Number of the Business, address of electronic mail, telephone number, security question, and biometric data" by permission of the related parties. The parties performing electronic certification (in this case including Notaries) have to save the data of identity which has been verified.

The storing or filing of data of electronic certification needs an adequate security system which covers computer sub system to analyze simultaneous biometric and information about the target object, and time stamp signing with the third party supplier which is accountable in order to ensure electronic process by Notaries (Khomenko dkk, 2021). The limitation on access to edit and distort the data in the certificate is necessary so that the integrity of an electronic certification can be well assured.

According to Article 30 PERMENKOMINFO No. 11/2018, identity data which has been through checking and verification process by registration authority and/or Notaries will then be proceeded to the parties who perform electronic certification to issue an electronic certificate. Thus, here the role of a Notary is as Trusted Third Party (TTP) serving as a party who performs authentication and verification of data of the related parties before finally issuing an electronic certificate. The role of a Notary in the

implementation of electronic certification is as registration authority.

## 2. The Validity of The Implementation of Cyber Notary based on The Principle of Tabellionis Officium Fideliter Exercebo.

In the industrial era of 4.0, Notaries as public officials are required to have critical, to be idealist, to have skills in order to be able to solve problem, communicate, and create (Isnaini, & Utomo, 2019). The concept of Cyber Notary comes from the evolution of people mindset following every single development in the world of technology and information in international level, including in Indonesia. The development in the field of technology and information has caused lot of changes in people's everyday life.

Globally, the advance in the field of information and communication technology is an opportunity and challenges which should be faced seriously (Adjie, 2017). This challenge aims to answer any issues or problems that may arise in the future as a result of the changes occurring in the field of law during 4.0 revolution era, with the fact that in the future all segments of life will be through the utilization of technology (Isnaini, & Utomo, 2019). In order to follow every single technology and information development, people need to use this opportunity at its best in order to maintain and preserve national unity and integrity (according to law and regulation) (Nurita, 2019).

The concept of cyber notary or notary by digital can thrive and can be applicable ( not merely an idea) in Indonesia. Thus, Government and Notaries must also prepare themselves to embrace these

challenges. This preparation is also useful to improve service in the field of Notaries. This ease is expected to be able to create a notary service which is fast, accurate, and efficient so that notary profession can contribute and help accelerate the rate of economy growth in Indonesia.

The concept of cyber notary is frequently misunderstood as performing notary activities through teleconference or distance service, in that the appearers do not need to come to Notary office and directly meet the Notary. This misconception arises because there is ambiguity in the information and explanation about the definition and the implementation of cyber notary in UUJN. This is not what UUJN meant about cyber notary. What it actually means is that the parties involved in the process still have to appear on the spot and the deed has to be signed directly (Yuliawan, 2020).

The element of "appear" is considered crucial in notary activities in Indonesia. This has become a controversial topic in a notary discussion forum in Indonesia, particularly regarding the implementation of cyber notary in Indonesia. The majority of notaries in Indonesia show positive responses and agree to the implementation of Cyber Notary in Indonesia because most of them think that this can bring big impact on the development of the field of notary in Indonesia, by taking into account "appear" is not eliminated and must still be applied. The aim is to preserve the historical value in the world of notaries in Indonesia (Yuliawan, 2020).

The difference is on the documents that can be in the form of electronic, and is sent electronically. Thus, if seen from its legality, the implementation of

Cyber Notary does not eliminate conventional or traditional element, in that the appearers must appear or be present directly before the Notaries as required in the principle of *tabellionis officium fideliter exercebo*.

The form of Cyber Notary which is meant in UUJN is the authority of Notaries to certify transaction performed electronically. The process of electronic transaction is considered the same as the process of legalizing a document. Thus, Electronic document resulting from electronic transaction will be in the form of a legalized private deed. The implementation of Cyber Notary in the form of transaction certification which is performed electronically by Notaries has validity or is legally valid. The explanation for this is because the authority to certify an electronic transaction (cyber notary) is regulated in Article 15 section (3) UUJN and in its Elucidation.

During the process of the certification, the parties who perform the electronic transaction files the transaction into a private deed, which then will be brought to Notaries in order to be legalized. The Notaries then will read aloud and explain the agreement before the appearers, ultimately the Notaries will set the date for the deed, and the deed will be signed, and legalized (Gerungan, 2012). This authority is based on the provision in Article 15 section (2) letter a UUJH. Therefore, it is in line with the principle of *tabellionis officium fideliter exercebo* stating that Notaries work traditionally or conventionally.

The principle of *Tabellionis Officium Fideliter Exercebo* (also concerns with the issue of verification

which was born and developed in Countries which hold Civil Law as their legal system (Coresy, & Saleh, 2020). The authenticity value of a Notary deed serves as the form of certainty for the parties involved or the appearers in the deed which is assured by Notaries (Yuliawan, 2020). This certainty relates to whether the appearers really are recognized by The Notary and whether the data are accurate and correct. Certainty also relates to the competence of an appearer, the appearer authorizes to act, and also the safety of the appearer when performing electronic transaction (in the state of under any threat, under pressure, or other conditions which causes restriction in making a decision), and also the appearers understand the deed as he/she wishes (Yuliawan, 2020).

The assessment can only be done by Notaries since Notaries as human have the ability to assess feeling and situation (cannot be done by computer system). The element of legal certainty of a legal document cannot depend fully on the development of technology. Human's role is still needed here. This is in line with a statement made by Christian Schall, a speaker from Germany in International Webinar which was held by INI (the Union of Indonesian Notary) and The International Union of Notary (UINL). Schall stated that Notaries when performing their duties can make use of technology optimally. However, it needs to be noticed that the use of technology must be supported by a highly level of security system. If there is no assurance on the safety, it will be very risky to fully depend on the development of technology to perform the authority to certify electronic transaction. Therefore, we cannot

fully eliminate the role of human in this process, in this case Notary, and Notaries must still hold the authority to assure the quality of a deed and the aspect of legal certainty of a legal transaction (UINL, 2020).

#### D. CONCLUSION

Transaction certification which is performed electronically (cyber notary) by Notaries has validity or is valid before law because UUJN regulates this issue. Position of electronic transaction certification is only limited to legalization of a private deed, thus, it can be considered the same as an authentic deed, which has perfect power or is strong before law. The certification of a transaction performed electronically (cyber notary) does not go against the principle of *Tabellionis Officium Fideliter Exercebo*, because the parties who perform the electronic transaction must still appear before Notaries to make a private agreement, which then the Notaries will legalize the agreement. The phrase "appear before" is interpreted as a physical meeting or real physical presence (*verschijnen*).

The Amendment of UUJN needs to be done because of some reasons. One reason is because there is no further explanation in general provision regarding the definition of "certification" and "cyber notary" in UUJN. The amendment aims to make legal certainty and also harmony which can eliminate vague norm, particularly regarding the mechanism of making an authentic deed through cyber notary. The Amendment of UUJN must take into account its historical value so that its special characteristic or the essence of Indonesian field of Notary adopted from

civil law will remain, associated with the element of "appear before" which is considered crucial and highly related to the principle of *Tabellionis Officium Fideliter Exercebo*. The basic legal foundation of cyber notary in Indonesia must be supported by laws and regulations which are derived from UUJN which further regulates the rules of conduct of the authority of a Notary to certify an electronic transaction (cyber notary). This comes with the consideration that any issues regarding technology and information development, particularly computerization, more specifically regarding electronic signature (digital signature) and its safety are such complex and complicated.

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