

# Authority and Power of the Law Relating to Cyber Deed Notary in Indonesia Era Industrial Revolution 4.0

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**Abstract:** *This study aims to determine the authority of the notary in a deed on electronic transactions carried out by the parties domiciled outside the office of a notary and to know the power of a notary deed that created by Cyber Notary in Indonesia. The method used in this research is the approach of legislation (The Statute Approach) and the path of the legal concept analysis (Analytical and Conceptual Approach). The results showed that the authority of the electronic notary deed is not bound by a notary office area so that the legal position same with notary office by deed made by the notary on electronic transactions conducted in the region of the notary office. The strength of the notarial deed made by a cyber notary has not yet ensured legal certainty that the power of a notarial deed made together with the strength of the deed under the hand.*

**Keywords:** *Cyber Notary, the authority, the power of the notarial deed.*

## I. INTRODUCTION

The Industrial Revolution, namely the Industrial Revolution 1.0 which began in the late 18th century characterized by steam power and the weaving loom and continued with the Industrial Revolution 2.0, which occurred in the 20th century marked by mass production and electrical energy, then the Industrial Revolution 3.0 began in early 1970 with their automation, computers and electronics [1]. Early 2018 was the era of the Industrial Revolution 4.0 which combines Cyber-Physical Systems, Internet of Things, Networks and virtual worlds.

4.0 Industrial Revolution that swept the world millennial provides a challenge to all parties, including the legal profession that requires bring creativity to answer. In the field of legal profession happens also shift as a result of the Industrial Revolution 4.0 is a challenge to respond to the issues that will come. This era also had a significant impact on the legal field.

Human Resources (HR) into a problem that must face in the

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era of the Industrial Revolution 4.0, which requires competent human resources and superior, as well as specialized expertise. In the legal profession like Notary needed to improve service in the community with maximum utilization of existing information technologies. Notaries can add broad insight into innovative thinking, problem-solving, communication, creative and able to collaborate. This profession providing legal services to the community to achieve legal certainty as well with the industrial revolution 4.0 make the process of increasing the Notary services needed at this time[2].

The industrialized world today is known as the Industrial Revolution 4.0, which can not separate from the debate that continues to discuss in Indonesia. 4.0 Industrial Revolution led to changes in the aspects of life that have a significant impact. Also, industry 4.0 referred to as the era of technology disruption due to automation and connectivity in all areas.

According to Emma Nurita expected of a notary is not left behind to face the developments taking place at the moment. Notaries must perform community service entirely to want to make written evidence that is authentic concerning legal actions it does. On this basis they are appointed as a notary must have a passion for serving the community [3].

In connection with ICT developments that utilize the internet, of course, affect the performance of duties and authority to the notary. Notary initially using conventional methods (still stunned by how should meet directly before a notary and data facing given directly to the notary deed made and passed in the paper) in the manufacture of an authentic act and enforceable perfect by those who need it in the function of proof, heading toward the electronic notary services or take advantage of the virtual space/cyberspace to exercise their functions are known as cyber notary[4].

In electronic transactions made possible the intervention of a notary as the role of notaries in conventional transactions. Very appropriate if a notary still uses traditional methods in service activities in the field of electronic transactions, because of the speed, timeliness and efficiency needed by the parties [4], the term Cyber Notary then popularized this development. Notaries must be able to use the concept of cyber Notary services to create a fast, accurate and efficient, to accelerate the pace of economic growth [5].

The authority of the notary in the field of Cyber Notary explicitly mentioned in the explanation of Article 15 paragraph (3) UUJN which states that other jurisdictions in legislation, among others, the authority of Cyber Notary, deed, pledge endowments, and mortgage aeroplanes. The presence of authority notary cyber field can see as an answer to the demands of today's technology[2].



In terms of philosophical electronic transactions is no longer a conventional something which did not rule out cuts across the country as well as in the explanation of Article 2 of the UU ITE ITE Law explained that reach knows no territorial boundaries. But on the other hand has an area office of a notary as provided for in Article 18 UUN which states that a notary has a position in the district/city and have locations throughout the province of domicile [3].

Article 17 letter a UUN arranged that Notaries prohibited from positions outside the territory role that aims to provide legal certainty to the public and avoid unhealthy competition among notaries. Notary only has jurisdiction over legal actions carried out on its territory and the whole province of domicile. In turn raises questions about the competence and authority to carry out cyber Notary Public Notary on electronic transactions performed and is outside the office [3].

Article 1 point 7 UUN require a deed made before a notary so that cyber Notary deed with very small, given the deed notarized by notary cyber implemented because of the presence of the notary and the parties are not in the territory of the notary office. But that does not rule out the possibility will arise new regulations or reforms in line with the times UUN increasingly rapidly. In Article 5 of Law No. 11 of 2008 Section 4 on Information Electronic Transactions letter mentions invalidity made in writing following the Act, the letter must be in the form of a notarial deed or Deed Official [3].

When examined article above, especially in article 5, paragraph (4) is at the present time the concept of cyber notary can not implement but it does not mean forever is not possible, because if the terms of article 5, paragraph (2) and (3) can be ascertained second paragraph it provided the opportunity for the concept of cyber notary, only need uniformity legal basis of the regulation office notary so that the authority of notary can be added not only to serve the community as a conventional but can also serve the city in the form of services electronically, especially indeed electronics worth an authentic[4]. Notary cyber concept not only brings about changes in UUN but especially Civil Code Article 1867 to Article 1870 of the Civil Code, so that shows that Indonesia is still able to stand alone work together to make a change in the legal order in Indonesia [4].

Based on the description above, it should be noted authority on the implementation of cyber Notary notary as a form of public servants who have been following the development of technology and information to ensure legal certainty on the law made events. These problems require assessment as comprehensible through research, encouraging researchers raised the theme of the study titled "The authority and power of the notarial deed laws relating to cyber Notary in Indonesia during the industrial revolution 4.0."

## II. OBJECTIVES

### A. General purpose

In general, research on some of the issues outlined above aimed at the development of legal science, especially in fields related to notary authority in the area of Cyber Notary newly regulated since the enactment UUN.

### B. Special purpose

In connection with the common goal then as for the specific purpose to be achieved more in this research are:

1. To find a notary authority in a deed on electronic transactions carried out by the parties domiciled outside the office of a notary.
2. To determine the strength of a notarial deed that created by Cyber Notary.

## III. LITERATURE REVIEW

### 1. as a Notary Public Officials

Public officials outlined in Article 1868 of the Civil Code have not spelt out clearly and thoroughly. However, under the provisions of Article 1 (1) of Act No. 2 of 2014 (PUUN) stated that the notary is the only public official who has the authority to make authentic act relating to all actions, agreements and determination required by a rule general, guaranteeing the creation date of the deed, keep minutes of the law, giving Grosse deed, copy, and official copies, all along providing an act is not assigned or excluded to the officer or others by laws-invitation[6].

Article 1 (1) PUUN mention that the notary is a public official appointed by the state to carry out some exclusive authority of state power make written evidence and authentic in the field of civil law as stated in Article (PUUN) and Ministerial Regulation No. 25 of 2014 [6].

### 2. Authority Notary

Notary appropriate authority in Article 15 of Law 2/2014 states Notary authorized to make the authentic act on all deeds, agreements, and determination required by legislation and or desired by the stakeholders to state in an authentic deed.

In connection with the notary authority in the field of a cyber notary, these things cause problems if faced with a letter of Article 17 and Article 18 UUN where notaries have what is called a notary office area. Notary only has the power to the authentic act in the office. Outside his jurisdiction or region, then the deed made no binding effect as a notary deed[7].

### 3. Understanding Cyber Notary

The term cyber introduced in 1991, which means: of, relating to or involving computers or computer networks (as the Internet). Cyber Notary, notaries, says that in his work using a computer network/internet.

The American Bar Association's Information Security Committee cyber Imenyatakan that a Notary is at once a computer expert and legal experts. Cyber Notary perform verification financial responsibility, authority, and the position law of the parties to the conclusion that the electronic notary should attorneys, as the American Bar Association's Information Security Committee [8].

Theodore Sedwick, manager of Cyber-US Project Notary Council for International Business which explains that cyber Notary term used to describe a combination of conventional notary public function and its application in electronic transactions. Cyber Notary, in this case, described as a traffic safety in electronic transactions over the Internet. It can occur through the form of conventional notary public function, namely authentic automatically or electronically by utilizing the existing public infrastructure and electronic signature [9]. To that end, a Notary cyber said should have high qualifications apart from its legal ability as a foundation [8].

The primary function of the cyber notary is doing certification and authentication traffic in electronic transactions.

Certification function in this case means the authority to act as a Certification Authority (trusted third-party) who can issue a digital certificate and public key to the parties who require [2]. While the authentication function relating to the legal aspects necessary for the electronic transaction [10].

Elements of this law in practice is usually a firm date and time of the operations authorized by cyber notary with the stamp of the notary electronics (electronic Notary seal) and stored in the protocol for the purposes of filing, without addressing the status of an authentic deed as he known in the practice of notary civil law. The legal aspect is what distinguishes cyber notary with a certification authority that is only able to guarantee the security of transactions just from a technical point of [6].

Each electronic transaction utilizing cyber Notary services are expected to have the force of law globally, the electronic transaction itself is going beyond state territorial boundaries (bardless). When viewed from this perspective, it is, of course, alludes to the concept of a notary in the countries that embrace civil law, especially Indonesia. From this, it can conclude that in essence, a cyber notary is a concept that combines the functions of a conventional notary in application electronically via the Internet (cyber world).

#### 4. Cyber existence Notary in Indonesia

The idea to implement cyber Notary in Indonesia has emerged since 1995, but with the variety of regulatory constraints and the lack of legal basis to facilitate this cyber support notary then only becomes a concept [11].

Along with the times, the legal field and the field of technology has developed so rapidly. Many of these developments have affected many aspects of life. Advances in technology and law in Indonesia, making the concept of cyber notary re-stated.

Notary public officials involved in the manufacture of a civil agreement needed in the era of free trade. Various international contracts and require a lot happening in the notary to put it in an authentic act to provide legal certainty for the parties [5].

#### 5. Preparation of Deed on Electronic Transactions in Indonesia

Observing the development of cyber notary did not immediately make a notary in Indonesia can apply the concept of a cyber notary for all electronic transactions. If traced, several provisions limit the application of electronic transactions, including the provisions of article 5, paragraph (4) of the Act ITE. Pursuant to Article 5 paragraph (4) a and b UUJN mentioned that strength as valid evidence excluded on letter that the legislation should be made in writing and letters and documents which according to the bill should be made in the form of Deed or Deed made by the Land Deed official [10]. From the article sound fragment was impressed that the entire deed made by the notary is made in the form of electronic documents and/or the printout is not a valid legal evidence. It is undoubtedly considered unfair, given the advances in technology is happening today is, of course also requires the development of a notary authority to address community needs will transform and notary services.

Meaning of the provisions of that article must do flexibly to obtain a more flexible definition. The wording of Article 5, paragraph (4) of the Act ITE can at least understood that the

deed made by the notary done in the form of electronic documents and/or printouts constitute legal evidence that is lawful but is limited in nature are only for a legal action according to the law is not required , For example Article 77 paragraph 1 of Law No. 40 of 2007 on Limited Liability Company (hereinafter called Company Law) states that in addition to the implementation of the RUPS as referred to Article 76 RUPS can also do the RUPS through the media teleconference, video conference or means of other electronic media and not close possibility if the notary deed made treatise RUPS in electronic form as well (Wijanarko, 2014). This is an opportunity to the notary in Indonesia to provide implementation services electronically indeed the minutes of the general meeting of shareholders. However, not all of the agenda of the RUPS can be contained in the electronic certificate as there are types of news events by the provisions of law shall be stated in the form of a notarial deed, the RUPS regarding changes to the articles of association. RUPS pouring restrictions in the form of notarial deed only for RUPS about changes in the constitution, so that if it interpreted that the RUPS with the agenda beyond the amendment made by media teleconference can pour in the form of an electronic certificate.

There are no unique settings on the mechanism by notarial deed on an electronic transaction, so we need a conceptual approach regarding electronic transactions in connection with authority in the field of cyber Notary notary. The process of making authentic deeds are done online or simply through cyberspace without having to meet directly between the parties, but of course must support by facilities using sophisticated technology as a means of video conferencing that allows deed was read out by a notary public through the media to be heard and seen by the parties by online [12].

## IV. METHODOLOGY

According to HL Manheim, research is the business carefully and thoroughly investigate based on the knowledge of a subject into the scientific way of thinking The type of research is normative [7].

The approach used is to use the method of legislation (The Statute Approach) and the path of the legal concept analysis (Analytical and Conceptual Approach). This study relied on the use of primary legal materials, secondary law, and tertiary legal materials.

Legal materials collection techniques used in this paper done through literature covering primary legal materials, secondary law and tertiary legal materials. This study used a qualitative approach to secondary data.

This study used a qualitative approach because of the nature of this research, using descriptive-analytical research methods.

## V. RESULTS AND DISCUSSION

Updates rules of evidence mainly linked to the concept of cyber Notary is a novelty in the legality of the inspection procedure remotely where absolutely necessary because some legislation actually has a lot of support such as inserting an electronic document as evidence, for example, that the Law on Information and Electronic Transactions Law on Protection of witnesses, the Law on Money



Laundering, Anti-Corruption Act, the Terrorism Act. The results and findings of the study revealed that:

### 1. The authority Notary Deed In Making Up the Electronic Transactions Outside the Territory Notary

Conflict norm occurs when the pattern of a rule contrary to the standard in other regulations that conflict of criteria regarding the area office of a notary in relation to the authority of the notary in the field of cyber notary (deed of an electronic transaction), conflict norms can be found in Article 2 of Law ITE which states that electronic transactions can be cross-territorial, not limited by space (borderless) so that it can do anywhere. In connection with the notary authority in the field of a cyber notary, these things cause problems if faced with a letter of Article 17 and Article 18 UUJN where notaries have what is called a notary office area. UUJN Article 18 states that:

- (1) Notary has a domicile in the district or city
- (2) Notary has office area covers the entire province of residence [7].

Furthermore, in Article 17 letter, a UUJN arranged that Notaries prohibited from running positions outside the office. In the explanation of Article 17 letter a state that the ban was intended to provide legal certainty to the public and at the same time prevent unhealthy competition between notaries in the running position. It means that the notary only has jurisdiction over legal actions carried out in its territory, which covers all provinces in the seat of the notary. From the description of these provisions can be seen any conflict of norms, on the one hand, the ITE Law does not limit the area to make electronic transactions, and on the other hand, UUJN set restrictions notary office area.

Looking at the kind of legislation that is in conflict norm, we can conclude there has been a conflict of horizontal rules. Based on the types of conflict of law that occurred then as for principles that can be used to determine which legislation applicable is the principle of *lex specialis*, namely the similar regulations, regulations that more specifically crippling general rules. With the enactment of this principle that the relevant provisions of the ongoing conflict are the norm of the legislation that has a more specialized position UU ITE so that it can make a notary deed on electronic transactions performed outside the office of a notary.

### 2. Severability Deed Made with the Cyber Notary

Proofing tool commonly used in cyber notary is electronic information, and electronic documents are transmitted electronically between the parties. According to Article 284, RBg/164 HIR recognized the existence of some evidence, including Letters, Witness, suspicions, Recognition, Vow. Authentic act, according to Article 1867 of the Civil Code, is perfect evidence. The notarial deed can be genuine act if it meets the requirements of the law, particularly Article 1868 KUHPperdata. Based on the understanding of the authentic act Article 1868 KUHPperdata then there is three genuine conditions act, namely:

1. Made in the form prescribed by law means that the manufacturer must comply with the law;
2. Must preparation public officials, purpose manufacture before the show that the certificate was created at the request of a person, while the making by public officials because of an incident, investigation, decision and so forth.
3. Officials should have the authority in place of the

certificate is made[13].

With the requirements that must meet in the manufacture of the authentic act would cause the application of the concept of cyber Notary in Indonesia becomes more difficult. It should also understand that Article 1869 states that an act that is because it is not in power or an incompetent employee or because of a defect in form, can not be treated as authentic deeds, he only has the strength of evidence as writing under the hand if the parties signed the deed. In 1872 KUHPperdata article also stated that an authentic act in the form of anything, which presupposed is false, then the power execution can be suspended according to the provisions of the Civil Procedure Reglement. Article 1877 KUH [3].

Arisen in the manufacture of authentic act electronically is linked to the obligations which must be done by a notary of the deed he made, as provided for in Article 16 (1) UUJN, particularly Article 16 paragraph (1) c and m UUJN, which reads :

1. Put letters and documents and fingerprints facing on Minuta Deed
2. Read deed before meeting in the presence of at least two (2) witnesses or 4 (four) particular witness to a deed testament under the hand, and signed on the spot by facing, witnesses and a notary [6].

Liabilities are embedding fingerprints in the minutes of the deed as supporting evidence of the presence of a facing. So we can say that embed fingerprints under Article 16 paragraph (1) c is the same as evidence of the presence of a lining [8]. Different context to article 44 paragraph (1) and (2), here according to my understanding there are exceptions within minutes of a deed if facing unsigned then allowed to wear a fingerprint. Because the context of the fingerprints in the minutes of the act is as a form of approval to what described in the deed. So it can be seen there are differences regarding the fingerprint in Article 16 paragraph (1) c is a form of evidence of the presence of a facing, while Article 44 paragraph (1) and (2) is a form of proof of consent[10].

In addition to evidence of attendance, made changes to this rule in particular Article 16 (1) c of the obligation to fingerprint adhesion facing the deed minute Yani to prevent their figures instead of actual yan indeed before a notary, especially in the case of the signing of the minutes of the act. But in terms of sticking fingerprint facing be one reason to be used as evidence in the event of denial on the signature facing still a bottleneck as evidence.

Sticking with their obligations fingerprint verification can be made a strength of an authentic act to be stronger because no humans have the same fingerprints. This fingerprint can be the ultimate weapon for validating and can avoid the denial of the signing of the deed seta prevent facing not actually in the proof of the deed. It would also help to create a common thread to the person whose signature facing change frequently. If linked to the provisions of Article 41 UUJN which reads:

"Violation of the regulations as referred to in Article 38, 39 and 40 resulted indeed only has the strength of evidence as a deed under the hand."

So the deed made by the notary does not have power as an authentic deed notarized but only have an evidentiary certificate under the hand.

Under the provisions of Article 16 paragraph (1) c and m UUJN, an official notary in a

deed should perform fingerprint and signed on the spot by facing, witnesses and a notary. The provisions of Article 16 paragraph (1) c and m, in the manufacture of an authentic electronic deed, is challenging to implement [8].

Technically compliance with the provisions of Article 16 paragraph (1) letter m UUJN, in the manufacture of the authentic electronic act is complicated to fulfil. Although in UUIITE known for their electronic signature that can embody in an electronic document, the mechanism of affixing electronic signatures in practice requires a process to eventually electronic signature can be attached in an authentic deed read out by a notary. So that the provisions stipulated in Article 16 paragraph (1) letter m, where the signing of the act done when it can not realize.

The legal consequences of noncompliance with the provisions of Article 16 paragraph (1) letter m, then the deed made by the notary only has the strength of evidence as to the act under the hand. It as is stipulated in Article 16 paragraph (9), which reads:

"If one of the conditions referred to in paragraph (1) letter m and (7) unmet, the deed in question only has the strength of evidence as to the act under the hand. "

In the understanding of the strength of evidence of the weakest, electronic information is valuable legally because the functional existence is worth, equivalent to information written on paper, as has been mandated by the UNCITRAL on the fair value of electronic records because of the elements of writing, sign, and original. Follow up on it with the enforceability UUIITE, a piece of electronic information in Indonesia has also been accepted as evidence as it was adopted in Article 5 UUIITE so that its presence can not be denied simply because of the electronic form.

Article 6 UUIITE have determined that such terms or elements of functional information can synchronize with the information written on paper. In other words, its existence should be equal or comparable to written evidence, either as a letter, deed under the hand and an authentic deed. Article 6 UUIITE states that:

"In case there is no other rule than that stipulated in Article 5 (4) which requires that the information must be in writing or original, electronic information and/or electronic documents are considered valid throughout the information contained therein can be accessed, displayed, guaranteed integrity, and can accounted for so explain a situation." [4]

Subject equality or equivalence is known as functional equivalence (similar useful approach), which equates functionally that electronic information is the same as the written evidence if it meets at least three grounds, namely:

1. Information considered writing if it can be stored and retrieved;
2. Information thought authentic if saved and found and read back does not change the substance, or in other words, guarantee the authenticity and integrity; and
3. Information is considered signed if there is information that explains the existence of a legal subject in charge of it or there is a reliable system that describes the identity authentication and authorization or verification of certain parties.

Three basic equations of electronic information is the same as the written evidence if it is connected with the provisions of Article 5 (4) UUIITE which states that the rules on electronic information and/or electronic documents referred to in

subsection (1) does not apply to the letter that the legislation should make in writing and the letter along with the materials which according to the bill should make in the form of a notarial deed or deed made by deed officials, then UUIITE limit that the electronic document shall not apply to documents or notarial deed or deed made by PPAT.

Based on the discussion above, we can conclude that the power of the notarial deed made by cyber Notary deed equal to the force under his hand.

## VI. CONCLUSION

Based on the description that has stated earlier discussion, the conclusion that can draw to the two issues discussed were:

1. That the notary deed on electronic transactions performed with the help of video conferencing media. Article 17 letter a jo. Article 18 UUJN, while *lex specialis* is Article 2 of Law ITE and its description so that a notary can do the deed to the electronic transactions of the company domiciled outside the territory of the notary office.
2. The strength of the notarial deed made by a cyber notary has not gained a robust legal foundation so as not ensuring legal certainty. Legal certainty can achieve if there are no conflicting provisions between laws with each other. Notary deed made by cyber notary yet has legal certainty because of the lack of synchronization between KUHPperdata, UUJN, Company Law and UUIITE. Where Article 77 of the Company Law and Article 15 paragraph (3) UUJN has provided opportunities for the holding of cyber Notary deed but in terms, the power of the act if the terms of Article 1868 KUHPperdata and Article 5 (4) UUIITE. Article 1868 KUHPperdata precondition that an authentic deed is a deed in the form prescribed by law, made by or before public officials in power to it in a place where the act made. And Article 5 (4) UUIITE explained that the provisions of paragraph (1) do not apply to the letter that the legislation should render in writing and the message along with the documents which according to the bill should ade in the form of a notarial deed or deed made by deed officials. Because there is a conflict between the laws of the other rules that force notary deed made by cyber Notary deed equal to the force under his hand. And Article 5 (4) UUIITE explained that the provisions of paragraph (1) do not apply to the letter that the legislation should make in writing and the message along with the documents which according to the bill should make in the form of a notarial deed or deed made by deed officials. Because there is a conflict between the laws of the other rules that force notary deed made by cyber Notary deed equal to the force under his hand. And Article 5 (4) UUIITE explained that the provisions of paragraph (1) do not apply to the letter that the legislation should make in writing and the message along with the documents which according to the bill should make in the form of a notarial deed or deed made by deed officials. Because there is a conflict between the laws of the other rules that force notary deed made by cyber Notary deed equal to the force under his hand.



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