



## Digital Prenuptial Agreement through Electronic Notary in Indonesian Legal System

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### Abstract

*Implementing digitalization in prenuptial agreements will still face many challenges, such as the readiness of digital infrastructure for notaries, public legal awareness, and guarantees related to personal data protection. Therefore, studying the legality and practice of digital prenuptial agreements through electronic notaries is important to provide legal certainty in the Indonesian legal system, which continues to undergo significant developments over time. This study employs a normative legal method with a legislative, case, and conceptual approach to analyze the urgency of legal recognition for prenuptial agreements through electronic notaries. The findings indicate that implementing the Remote Notary concept in Indonesia is not possible under current law, as the concept utilizes electronic tools as a means of communication, such as teleconferencing or video calls, which would inevitably impact the process of reading and signing the deed. Existing legal provisions do not fully support the legitimacy of electronic notarial deeds, particularly because they still require the physical presence of the parties and witnesses. Article 16(1)(m) of the Notary Public Act contradicts cyber notary practices, while the Electronic Information and Transactions Law explicitly excludes notarial deeds from the category of valid electronic documents. This makes digital prenuptial agreements vulnerable to being classified as private documents with weaker legal standing. Therefore, comprehensive regulatory harmonization efforts are needed to integrate principles of civil law, marriage law, and advancements in information technology.*

**Keywords:** *Premarital Agreement, Cyber Notary, Digitalization, Legality, Indonesian Legal System*

### A. Introduction

The development of the times has so many implications for human life with the development of information technology, which brings so many significant changes, especially in this case, namely in the legal field, including in the practice of notaries in Indonesia with one of the latest innovations in notarial law is an electronic notary service that provides access to deeds such as prenuptial agreements that are digitally prepared and signed by notaries. This agreement protects the rights and obligations of each party because after marriage, the property of both husband and wife will become joint property unless there is an agreement before marriage.<sup>1</sup> This urgency is even more apparent given society's high mobility and the need to guarantee legal certainty for couples who own significant property or assets before marriage. In addition, electronic prenuptial agreements can also support equal access to legal services, especially for people in remote areas who have difficulty accessing notary services in person.

Electronic notary services in prenuptial agreements encompass various services that utilize information technology to facilitate legal processes online. Electronic notaries can

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<sup>1</sup> Andrian Syah; Ilham Tholatif, 'Urgensi Perjanjian Pranikah Sebagai Kesepakatan Awal Perkawinan' (2022) 6 Legal Standing Jurnal Ilmu Hukum 2580.



provide services such as online consultations, drafting prenuptial agreements through digital platforms, and electronically certifying documents using legally valid digital signatures. These services simplify the process for prospective spouses in meeting legal formalities and ensure that the resulting documents have the same legal validity as those created through conventional methods. As such, electronic notary services play a crucial role in supporting digital transformation in the legal sector while addressing the challenges of efficiency and security in delivering legal services.

The bride and groom make a prenuptial agreement before marriage, making them legally married.<sup>2</sup> The commitment outlined in the agreement makes everything clear and calm so that the couple can go about their daily activities without worrying about infidelity or other issues.<sup>3</sup> The prenuptial agreement is a contract in the form of legal regulations agreed upon by both husband and wife candidates before marriage. It has binding force on third parties, primarily based on the provisions of positive law enacted in Indonesia.<sup>4</sup> The development of the times with clear evidence, namely the development of technology, the concept of a digital prenuptial agreement is a matter of relevance to adjustments to the needs of modern society, which demands efficiency and flexibility, especially in the condition of couples who are located at a distance so that they need the power of technological existence to facilitate matters without having to meet in person.<sup>5</sup>

The legal basis for prenuptial agreements is regulated in Article 29 of Law Number 1 of 1974 concerning Marriage, which was later expanded through the Constitutional Court Decision Number 69 / PUU-XIII / 2015, which contains regulations related to the permissibility of marriage-related agreements made after marriage is carried out.<sup>6</sup> In addition, the legislation of electronic notarial practices is strengthened by the issuance of Permenkumham Number 24 of 2023 concerning the Procedure for Certified Electronic Notarial Services and an electronic recording system based on the online AHU platform.<sup>7</sup> However, implementing digitalization in prenuptial agreements will still face many challenges, such as the readiness of notary digital infrastructure, public legal awareness, and guarantees related to personal data protection. One of the main challenges in implementing

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<sup>2</sup> Sugih Ayu Pratitis and Re hulina Re hulina, 'Keabsahan Perjanjian Pra Nikah Dan Akibat Hukumnya Ditinjau Dari Perspektif Hukum' (2023) 2 Jurnal Hukum, Politik Dan Ilmu Sosial 56.

<sup>3</sup> Elin Siswanti, 'Perjanjian Pra Nikah Dalam Perspektif Hukum Islam' (2021) 7 JoL: Journal of Law 1

<sup>4</sup> Maria Farida, *Family Law and Wealth in Marriage* (FH UI Press 2016).

<sup>6</sup> Constitutional Court of the Republic of Indonesia, 'Decision Number 69/PUU-XIII/2015' (2015).

<sup>7</sup> Ministry of Law and Human Rights of the Republic of Indonesia, 'Permenkumham No. 24 of 2023 Concerning Procedures for Electronic Kenotariatan Services' (2023).



electronic prenuptial agreements is the readiness of the digital infrastructure of notaries. As public officials authorized to certify legal documents, notaries require adequate technological support to ensure electronic documents' security, reliability, and legality. However, not all notaries can access information technology systems that meet legal security standards, such as certified digital signatures or secure data storage platforms. Additionally, the costs associated with acquiring adequate digital infrastructure can be a significant barrier for many notaries, particularly in areas with low levels of technological development. Therefore, regulations and government assistance are needed to support digital transformation among notaries to ensure equitable access to electronic legal services.

Public legal awareness is also a significant challenge in implementing electronic prenuptial agreements. Although modern society is increasingly familiar with digital technology, understanding family law concepts, including the importance of prenuptial agreements, is still relatively low in some circles. Many people are unaware of the legal benefits of prenuptial agreements, whether in conventional or electronic form and therefore tend to ignore the importance of this step before marriage. Additionally, the social stigma that views prenuptial agreements as a sign of distrust between partners also influences people's interest in using them. To address this, extensive legal education is needed through various communication channels, including digital media, to help the public better understand the urgency and benefits of electronic prenuptial agreements in protecting their legal rights.

Another equally important challenge is the protection of personal data in the process of creating electronic prenuptial agreements. In electronic format, the personal data of prospective spouses, such as financial information, assets, and personal identity, will be stored in a digital system. This poses risks related to data security, such as information theft by unauthorized parties or misuse of data for illegal purposes. In Indonesia, although there is a Personal Data Protection Law (PDP Law), its implementation in family law still requires strict supervision to ensure that electronic notary service providers comply with data protection standards. In addition, prospective spouses also need to be educated about their privacy rights and how to ensure that applicable laws protect their data. Therefore, developing robust data security mechanisms is a top priority in maintaining the integrity of electronic prenuptial agreements. Therefore, studying the legality and practice of digital prenuptial agreements through electronic notaries is important to provide legal certainty in the Indonesian legal system, which continues to experience significant developments.

## **B. Research Method**



This research uses the normative juridical method, a legal research approach conducted through a literature study of primary and secondary legal materials. This research does not rely on field data but focuses on analyzing applicable positive legal norms and official state documents. Primary legal materials include legislation, such as laws, ministerial regulations, and court decisions (in this case, the Constitutional Court). In contrast, secondary legal materials include doctrine and academic research results from national law journals. The *statute, case, and conceptual approaches* are used complementarily to provide a comprehensive understanding of the legality and implications of digital prenuptial agreements in the Indonesian legal system.

The theory used is the contract theory, which governs the legal relationship between two or more parties based on a valid agreement. According to this theory, a contract is considered valid if it fulfills four main elements, namely the agreement of the parties (consensus), the capacity of the parties to enter into a contract (capacity), a transparent and lawful object of the contract (object), and a lawful cause (causa). In the context of prenuptial agreements, whether in conventional or electronic format, this theory serves as the foundation for ensuring the validity of such documents, as regulated in Article 1320 of the Civil Code and Article 9 of Law No. 11 of 2008 on Information and Electronic Transactions.<sup>8</sup> In addition, one of the fundamental principles of agreement is freedom of contract, which means that everyone is free to enter into an agreement containing any terms and conditions as long as the agreement is made legally and in good faith and does not violate public order and morality.<sup>9</sup>

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<sup>8</sup> Fatimatuzzahra and others, 'Efektivitas Legalitas Kontrak Elektronik Dalam Transaksi Elektronik Berdasarkan Hukum Perikatan' (2023) 7 Jurnal Kewarganegaraan 2176.

<sup>9</sup> Paul Hans Kakisina and Vecky Yani Gosal, 'Keabsahan Kekuatan Pembuktian Kontrak Elektronik Dalam Perjanjian Bisnis Menurut Hukum Positif Di Indonesia' (2023) 11 Lex Administratum.



## C. Results and Discussion

### 1. Legality of Prenuptial Agreements through Electronic Notarization in the Indonesian legal system

Indonesia, in the era of globalization, is marked by the era of information and communication technology (ICT), which introduces the *virtual world* (*cyberspace, virtual world*) through the internet network and communication with paperless electronic media. Through this electronic media, a person will enter a virtual world that is abstract, universal, and independent of the state of place and time.<sup>10</sup> Technological developments that have penetrated various aspects of human life are no exception in the legal aspect, in this case, more specifically related to how the concept of performance of various legal professions, including notaries, which have long been known to each have a notarial office and complete documents and document settlement activities in the office, however, with the development of this era, notaries have also entered the era of modernization which provides legalization related to performance practices by using and utilizing the development of information technology which increasingly shows its existence and provides implications for convenience in various work needs and human life for relationships between individuals or those related to documents needed in case settlement. This also extends to civil law, including prenuptial agreements, which have the noble mission of ensuring that, in the event of a divorce, the agreement contains provisions relating to the division of property, making it easier to distinguish between joint and separate property so that the division of property can be easily settled in the event of a divorce. In addition, one of the fundamental principles of agreement is freedom of contract, which means that everyone is free to enter into an agreement containing any terms and conditions as long as the agreement is made legally and in good faith and does not violate public order and morality.<sup>11</sup> Notaries and prenuptial agreements are also undergoing developments that follow information technology developments entering the legal aspect. Notaries have become crucial as public officials are authorized to draw up authentic deeds, certify signatures, and legalize documents.<sup>12</sup> Positive law prioritizes legal formalities and certainty, such as official registration and certification by a marriage registrar. This is evident in Article 29 of Law No. 1 of 1974, which requires that a prenuptial

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<sup>10</sup> Denny Fernaldi Chastra, 'Legal Certainty of Cyber Notary in the Rules of Making Authentic Deeds by Notaries Based on the Notary Law' (2021) 3 Journal of Indonesian Notary 249.

<sup>11</sup> Inya Nuansa Iliyini, Rihantoro Bayuaji and Khusnul Yaqin, 'Kedudukan Hukum Perjanjian Kawin Pada Masa Perkawinan Yang Dibuat Dihadapan Notaris' (2023) 1 Jurnal Ilmu Hukum Wijaya Putra 79.

<sup>12</sup> Metta Anggraini, 'Analisis Yuridis Kewenangan Notaris Dalam Legalisasi Dokumen Apostille Perkawinan Campuran' (2025) 10 Al-'Adalah: Jurnal Syariah dan Hukum Islam 1.



agreement must be certified in writing to be considered legally valid.<sup>13</sup> In addition, Article 1320 of the Civil Code also serves as a reference for the validity of agreements.

A prenuptial agreement, which is a form of agreement between two parties, namely the prospective husband and prospective wife, which is made before the marriage takes place, has the aim of regulating the rights and obligations of each party in carrying out the role of both husband and wife as well as primarily regulating the assets of each party obtained before the marriage and joint deeds obtained after the marriage takes place. According to Article 29 of Law Number 1 of 1974 concerning Marriage, it is true that a prenuptial agreement must be made in writing and legalized by an authorized official. Based on the Constitutional Court Decision Number 69 / PUU-XIII / 2015 aims to expand this provision to allow prenuptial agreements to be made before or during marriage.

Elaborating on technological advances, the concept of prenuptial agreements has now undergone development so that notaries can also now be said to digitize their work and practice by utilizing the convenience and advancement of technology in this modern era. Of course, several questions then arise if the convenience offered by the development of information technology today collides with it. A cyber notary is a general concept used when notary functions are applied or carried out in electronic transactions or relationships. In other words, the concept of cyber notary is the exercise of notary authority based on the use of information technology. The emergence of cyber notaries is a direct result of the demands of modern times, which indirectly require flexibility in terms of time and location for the creation of authentic documents, particularly the signing of such documents by the parties involved.<sup>14</sup> Implementing the cyber notary/remote notary, particularly in the creation of authentic deeds in Indonesia, will face many legal obstacles. This is because Indonesia follows a civil law system, which views authentic deeds as documents created by and in the presence of a notary and serves as perfect evidence, as stipulated in Article 1867 of the Civil Code. This differs from the application of the cyber notary/remote notary concept in countries with a standard law system, as such a system would not affect the validity of the deed.

Implementing the Remote Notary concept in Indonesia is not possible under current law, given that the concept uses electronic tools as a means of meeting, such as teleconferencing or video calls, which will inevitably impact the process of reading and signing documents.

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<sup>13</sup> M Naufal Rosadi, Rahma Yudi and Jumni Nelli, 'Keabsahan Perjanjian Pranikah Dalam Hukum Islam Dan Hukum Positif' (2024) 09 AL YASINI: Jurnal Keislaman, Sosial, Hukum dan Pendidikan 272.

<sup>14</sup> Krisna Bayumurti; Novan Perdana; Ronan Steven Tjandra, 'Penerapan Konsep Cyber Notary Dalam Praktik Hukum Di Indonesia' (2025) 6 Rewang Rencang : Jurnal Hukum Lex Generalis 1.



This is not without reason. Article 16(1)(m) of Law No. 2 of 2014 states that a deed reading must be conducted in the presence of the parties involved and attended by at least two witnesses. The explanatory notes to the law further specify that the notary must be physically present and sign the deed in the presence of the parties and witnesses. The term “physically present” can be broken down into two words: “present” and “physically.” “Present” means to be there or to come, while ‘physically’ refers to the body or physical form. Therefore, “physically present” means to be physically present, in other words, to be visible or tangible. This explanation of “physically present” is what raises issues in the application of the Remote Notary concept, as this concept is part of technological advancements that bring together two or more parties in their respective locations using devices that produce sound and display images in real-time, thereby enabling the appearance, voice, and actual condition of the parties to be seen.<sup>15</sup>

The cyber notary framework must ensure that electronic notaries comply with standards of authenticity and integrity. This includes updating existing laws and regulations to recognize electronic signatures, digital certificates, and electronic records as legally binding. It is important to establish clear guidelines regarding the responsibilities and obligations of cyber notaries and procedures for verifying the identities of parties involved in the notary process.

In this regard, public key infrastructure (PKI) is often used to manage digital certificates and encryption keys, thereby providing high trust and security. In addition, a secure and reliable platform is needed to facilitate the notary process, including secure document storage, identity verification systems, and audit trails to maintain transparency and accountability. This platform must be designed to prevent unauthorized access, disruption, and fraud while ensuring that the notary process runs smoothly and efficiently for users.<sup>16</sup>

With the development of the notarial world in the 4.0 era, electronic services began to emerge, and the development of information technology affected its operation. Notaries can now make deeds via videoconference or virtual applications (electronic media). Based on Law No. 11 of 2008 on Electronic Information and Transactions (hereinafter referred to as

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<sup>15</sup> Dini Anggraeni and Siti Mahmudah, ‘Urgensi Peningkatan Peran Notaris Melalui Implementasi Konsep Cyber Notary Dalam Pembuatan Akta Di Era Cyber Society 5.0’ (2023) 5 AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam 2307.

<sup>16</sup> Puteri Chintami Oktavianti, ‘Hambatan Regulasi Dan Teknis Terkait Implementasi Cyber Notary Di Indonesia’ (2024) 6 Jurnal Pembangunan Hukum Indonesia 243.



the Electronic Information and Transactions Law), online technology benefits notaries because making documents becomes faster, easier, and more efficient.<sup>17</sup>

The application of digital practices has now spread widely to various professional sectors. Almost all fields of work today rely on computers to manage and store work information in one system, send correspondence and data via the Internet, conduct electronic transactions, and carry out various other activities supported by information technology. The development of internet-based communication technology also significantly impacts the implementation of the duties and authorities of notaries. Nonetheless, most notaries still perform conventionally by conducting direct physical meetings and being fully responsible for the event's details. Notaries still compile documents in physical form, make copies of them for relevant parties, and legalize them as authentic deeds. The notarial deed is an evidence tool with perfect legal force for parties needing authentic proof. As the need for digital services grows, the concept of cyber notary emerged as a notary with special expertise in law and information technology to provide notarial services electronically.<sup>18</sup>

The technical implementation of cyber notaries in Indonesia involves integrating sophisticated digital tools and platforms. Electronic signatures, verified through Public Key Infrastructure (PKI) technology, play an important role in this process. PKI ensures that electronic signatures are unique, verifiable, and tamper-proof. Cyber notaries also use secure digital storage systems to archive electronic documents, providing an audit trail that can be used as a reference in the event of a dispute.

Additionally, blockchain technology is being explored to further enhance the transparency and permanence of notarized documents. By leveraging this advanced technology, Indonesia aims to create a robust and trustworthy Cyber Notary system to support the growing demand for digital transactions and promote a secure digital economy.

Related to notaries who practice the notarial profession through the *cyber notary* system, the process of making authentic deeds must still be carried out by directly presenting witnesses as stated in Article 16 paragraph (1) letter m of Law Number 2 of 2014, which states that related to notaries who want to read out the Deed must read out the Deed in front or in front of the confrontation which is attended by at least two witnesses, or four special

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<sup>17</sup> Junita Faulina, Abdul Halim Barkatullah and Djoni S Gozali, 'The Legal Position of Notarial Deeds Implementing the Cyber Notary Concept during the Covid-19 Pandemic in Indonesia' (2022) Edition No. 3 Vol. 1 Notary Law Journal 249.

<sup>18</sup> Friko Rumadanu, Esther Masri and Oti Handayani, 'The Use of Cyber Notary in Authentic Deeds and Its Evidentiary Power in the Perspective of the Notary Law' (2022) Edition No. 1 Vol. 16 KRTHA BHAYANGKARA Journal 90.



witnesses to make a deed of will under the hand, and signed at that time by the confrontation, witnesses, and notaries. Next, related to what is stated in Article 5, paragraph (4) of the Law on Electronic Information and Transactions, it also stipulates the exclusion of Notary Deeds in the context of electronic documents as evidence that is considered valid so that it has the potential to cause legal problems for notaries, both civilly, administratively and even in the realm of criminalization.

This is then a question related to how legality clashes in the form of a prenuptial agreement carried out with the concept of electronic notaries, whose entire stage is facilitated by utilizing technology. The legality of prenuptial agreements through electronic notaries in the Indonesian legal system is still a discourse because there is no harmony between the principles of civil law, the principles of marriage law, and the applicable statutory provisions, especially regarding the form of authentic deeds.<sup>19</sup> Although Indonesian law recognizes regulations on Cyber Notaries, their implementation is still hampered by the lack of clear regulations and overlapping legislation. The Indonesian government has recognized the importance of transitioning to a digital notary system and has established relevant regulations, but technical implementation involves using advanced technology and secure digital storage systems.

These regulations aim to ensure the integrity and security of digital transactions. Several key obstacles include document authority and authenticity, the need for offline authenticity checks, the importance of original signatures and fingerprints, and changes to core elements in the creation of notarial deeds. Notaries' authority to use cyber notaries is linked to the security system of the Legal Entity Administration System (SABH).

Regarding document authenticity verification, notaries still require physical meetings to ensure the authenticity of the fingerprints and signatures of the parties, which cannot be entirely done electronically. Laws governing the signing of deeds by the parties, witnesses, and notaries in person still hinder the implementation of a fully electronic Cyber Notary. Additionally, there are concerns that the use of Cyber Notary could alter core elements in the creation of notarial deeds, and notaries may struggle to verify the identities of the parties without a physical meeting. Implementing a Cyber Notary in Indonesia still faces various obstacles that require further resolution. In civil law, the validity of an agreement depends on the fulfilment of four conditions as contained in Article 1320 of the Civil Code, namely the

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<sup>19</sup> Ikhsan Lubis, Duma Indah Sari Lubis and Andi Hakim Lubis, 'Legal Reconstruction of Cyber Notary Law to Maintain Trust, Integrity and Justice in the Legal System' (2025) 8 *Jurnal Notaire* 65.



agreement of the parties, legal capacity, particular objects, and halal causes. If all of these elements are met, the prenuptial agreement is materially considered valid. However, prenuptial agreements made in the form of notarial deeds require compliance with formal procedures as stipulated in Article 1868 of the Civil Code, which must be made in the form and procedure prescribed by law by or before an authorized public official, a notary. In line with this, Law Number 1 of 1974 concerning Marriage in Article 29 regulates that prenuptial agreements must be made in writing and legalized by authorized officials, namely notaries and marriage registrars, to obtain legal force against third parties.

Problems arise when making prenuptial agreements is carried out digitally or through the concept of *cyber notaries*. These, namely notaries, use electronic media to carry out their duties. The development of information technology does provide efficiency in document creation. However, the formal provisions in Law Number 2 of 2014 concerning the Office of Notary, especially Article 16 paragraph (1) letter m, still require the physical presence of the parties and witnesses in the reading process. Signing the deed, so online deed-making can potentially violate this provision. On the other hand, Article 5 paragraph (4) of the Electronic Information and Transaction Law (ITE Law) excludes notarial deeds as part of legal electronic documents, leading to a contradiction between the spirit of digitization and existing legal restrictions. This mismatch raises doubts about the formal validity of electronic prenuptial agreements, as they are potentially only recognized as underhand deeds with weaker evidentiary power.

From the perspective of the principles of civil law, digitization without legal certainty can ignore the principles of legality and legal certainty because the formal form of a deed determines its validity and evidentiary power. Meanwhile, in the context of marriage law, the principles of justice and equality between husband and wife guaranteed in the Marriage Law require a legal instrument to protect each party's rights, especially regarding property management.<sup>20</sup> If a prenuptial agreement is made through a mechanism not fully recognized by positive law, then this can lead to uncertainty and legal disputes in the future. Therefore, although the practice of *cyber notary* promises convenience, the legality of prenuptial agreements made through this mechanism cannot be fully recognized as valid without explicit legal arrangements, both in the form of government regulations and technical regulations

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<sup>20</sup> Tanti Kirana Utami and others, 'Juridical Analysis of the Application of the Principle of Legality in Indonesian Legislation' (2025) 2 Customary Law Journal 1.



that explicitly legalize the procedure for making electronic notarial deeds.<sup>21</sup> Harmonizing regulations is an absolute requirement to create a legal system that is adaptive to the times without sacrificing legal principles that have long been the foundation of justice and legal certainty in Indonesia.

## **2. Implications of Cyber Notary Transformation on Electronic Prenuptial Agreements**

The origins of the notarial profession, which stem from the Roman tradition of *latijnse notariaat*, developed differently when adopted by countries with a standard law legal system. In countries with a civil law legal system, the notary profession is generally considered prestigious and highly respected by the public. In contrast, in *common law* countries, the position of *notary* - known as *notary public* - does not occupy a central role in legal practice. As a result, the historical study and development of the notary profession in the standard law system has received less attention, as reflected in the lack of literature discussing it, even though this profession has long existed. Cyber notary in Indonesia, which adheres to the legal system inherited from Continental Europe, is considered inappropriate. Historical literature shows that cyber and electronic notaries are derived from two different concepts: e-notaries are better known among academics from the *civil law* tradition. In contrast, cyber notaries are more widely used by jurists from the *common law* tradition.<sup>22</sup>

Therefore, the term e-notary is considered more appropriate for use in Indonesia, considering that this country adheres to a civil law legal system derived from the Continental European legal tradition. This is in line with the discussion in the Trade Electronics Data Interchange System (TEDIS) forum at the TEDIS conference held by the European Union in 1989 in Brussels, which emphasized the importance of the existence of an independent party in providing an electronic track record (independent record) of digital transactions carried out by the parties. In this context, e-notary guarantees the integrity and validity of electronic transactions through digital-based legal procedures.

Meanwhile, the term cyber notary was first coined by Stephen Mason, which refers to a concept developed by the Information Security Committee of the American Bar Association in 1994. This concept was born from the standard legal system, which places the role of notaries not as strong as in the civil law system but began to adopt technology to fill the gap

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<sup>21</sup> *Ibid.*

<sup>22</sup> Edmon Makarim, *Notaries and Electronic Transactions, Legal Studies on Cybernotary or Electronic Notary* (Rajawali Pers 2013).



of legal proof in digital transactions. In Indonesia, efforts to accommodate the concept of cyber notary were planned through regulation in the Notary Office Law (UUJN). However, until now, no explicit provision has directly regulated electronic notarial services in the body of the law.

Nonetheless, Article 15, paragraph (3) of the UUJN provides a legal basis for notaries to exercise other authorities determined through statutory regulations. The elucidation of the article confirms that this additional authority also includes certifying electronic transactions, which is known as a form of cyber notary. However, using the term “certification” in this context can confuse people because it is not just certifying but also providing legal reinforcement for the electronic transaction to be considered valid and legally binding. One concrete form of this reinforcement is the provision of a valid timestamp or time marker for a transaction event, indicating when the transaction was carried out.

Furthermore, information technology such as Public Key Infrastructure (PKI) systems, certified digital signatures, and cloud-based storage are increasingly important for digitizing legal services in modern notarial practice. Notaries must understand not only the legal aspects but also technical competence to ensure the security and authenticity of electronic transactions. This transformation also opens up more progressive legal reform opportunities, where digital notarization can be integrated into the *e-court* system and other digital-based public services. Therefore, regulatory harmonization and preparing a comprehensive legal framework are crucial so that *e-notary* and *cyber notary* can run according to the principles of legality, legal certainty, and legal protection for the parties.

Within Indonesia’s constitutional and notarial law framework, Article 15(3) of the Notary Public Act (UUJN) No. 30 of 2004 provides the normative basis enabling notaries to exercise additional powers beyond their primary duties as stipulated in applicable laws and regulations. These additional powers are not limited to drafting conventional authentic deeds but also include the authentication of electronic transactions, commonly called “cyber notary.” The granting of such powers is a legal response to the development of information technology, which requires legal mechanisms to provide legal certainty for documents and transactions conducted digitally.

The term “certification” in this context is often confused because it can be interpreted as issuing a certificate or formally recognizing something. However, in digital notary services, what is meant is not merely the issuance of a certificate but rather the legal reinforcement of electronic transactions to have substantial evidentiary value and are legally binding. Notaries



act as neutral parties who provide legitimacy to the validity and integrity of an electronic transaction, including proving that the transaction took place at a particular time and has not been altered after its execution.

One concrete form of legal reinforcement is the provision of a valid *timestamp* or time stamp on an electronic transaction. This timestamp must meet internationally recognized technical and legal standards to be used as evidence in legal disputes. Thus, the function of a notary in the context of a cyber notary is not only administrative but also juridical, namely ensuring the validity of time, the identity of the parties, and the integrity of transaction data. This indicates that certification is more appropriately understood as legal strengthening integral to modern notarial practice principles.

Users of certification in the context of cyber notary, as referred to in Article 15 paragraph (3) of the UUJN, are parties who require legal certainty regarding electronic transactions, such as business actors, financial institutions, electronic system operators, or individuals involved in digital agreements. The certification provided by a notary is not merely a formal document. However, it constitutes legal validation of the transaction's validity, timing, and integrity, thereby serving as a valid legal instrument. As such, this certification is intended for parties requiring legal protection and assurance that their electronic transactions possess the same binding force and probative value as conventional authentic instruments.

#### **D. Conclusion**

Digitalization in the field of a notary public, especially related to prenuptial agreements, is an adaptive step that answers the demands of efficiency and modernization of society. However, its implementation in Indonesia still faces serious legal and technical challenges. The existing statutory provisions do not fully support the legitimization of notarial deeds made electronically, mainly because they still require the physical presence of the parties and witnesses. Article 16 paragraph (1) letter m of the Notary Office Law contradicts the practice of *cyber notary*, while the ITE Law explicitly excludes notarial deeds from the category of valid electronic documents. This makes digital prenuptial agreements vulnerable to being considered as underhand deeds, which have weaker legal force. Therefore, a comprehensive regulatory harmonization effort is needed to integrate the principles of civil law, marriage law, and the development of information technology. The government must issue technical regulations that explicitly legalize the procedure for doing digital notarial deeds to ensure legal certainty, protection of personal data, and justice for the parties. Without clear regulations, digital transformation will only be hampered by legal uncertainty.



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