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Is the Paradigm of *Tabellionis Officium Fideliter Exercebo* Aligned with the Cyber Notary Concept in Indonesia's Public Notary Development?

Made Gde Subha Karma Resen [a] ✉, Ni Putu Kompiang Ratna Dewi [b]

[a] Faculty of Law, Universitas Udayana, Denpasar, Bali, Indonesia
[a] Faculty of Law, Universitas Pendidikan Nasional, Denpasar, Bali, Indonesia

✉ Corresponding email: *karma_resen@unud.ac.id*

Abstract

The concept of the cyber notary emerged to address the need for legal recognition and to resolve issues regarding electronic transactions. The rise of electronic transactions defined by remote exchanges, along with the advancements of the 4.0 Industrial Revolution—characterized by automation and digitalization—has driven the development of various technological adaptations in notarial practices in Indonesia. However, notaries, in performing their duties and authority, are bound by the principle of *Tabellionis Officium Fideliter Exercebo*. This principle requires notaries to work traditionally. The problems discussed in this research are: (1) What is the concept of cyber notary from a comparative perspective? and (2) Is the Paradigm of the Principles of *Tabellionis Officium Fideliter Exercebo* in line with the concept of cyber notary? This scholarly article employs normative legal research, utilizing a statutory approach, a conceptual approach, and a comparative approach. Neither France

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nor the United States uses the term of 'cyber notary' or 'electronic notary' as these concepts were initially conceived to address issues related to electronic transactions. In Indonesia, the term 'cyber notary' has been adopted to study various technological adaptations in notarial work, resulting in misunderstanding of the terminology and its intended meaning. This has confused cyber notary research. The concept of the cyber notary is not directly aligned with the principle of *Tabellionis Officium Fideliter Exercebo*. Instead, technological adaptations in notarial work should be explored under the framework of Modernization of Notarial Practice,' while maintaining adherence to the *Tabellionis Officium Fideliter Exercebo* principle.

KEYWORDS *Paradigm, Principles of Tabellionis Officium Fideliter Exercebo, Cyber Notary, Notaries*

Introduction

The development of technology, information, and communication has led to increased automation and digitalization across various sectors, including industry and production.[1] This phenomenon It is often known as the "Industrial Revolution", which is still evolving as we enter the era of Revolution 4.0. The current phase is characterized by its focus on overcoming challenges related to the limitations of space and time in technological and business aspects.

This digitalization era is gradually influencing the paradigm and lifestyle of society, as well as the orientation of business actors who use tools to simplify and accelerate their activities, especially those involving business processes. Many transactions that were traditionally conducted in person have recently shifted to electronic formats. This situation mandates that various sectors, including the legal sector, adapt to digitalization to remain relevant and aligned with the evolving needs of the social system, including the legal sector.

The response of the Indonesian government has been prompt in addressing the digital transformation in the legal sector by adopting several online digitalization systems for public services. The examples include the registration of lawsuits through the e-Court system, the availability of decisions in the Supreme Court's decision directory, the online ratification of Limited

[1] Heri et al., "Revolusi Industri 5.0 dalam Perspektif Ekologi Administrasi Desa," *Jurnal Ilmiah "Neo Politea"* 2, no. 1 (2021): 35–45, https://doi.org/https://doi.org/10.53675/neopolitea.v2i1.291.

Liability Companies (PT) via the AHU site at the Ministry of Law and Human Rights, and the integrated land information services through the "Sentuh Tanahku" application developed by the "Ministry of Agrarian Affairs and Spatial Planning/National Land Agency" (ATR/BPN). Furthermore, the legal profession, represented by advocates, has embraced digital consultation services through various websites and applications to better reach the community. The swift progress of technology, combined with the successful digitalization of legal services by the government has compelled the notary profession to adapt to the demands of the digital era.

One of the initiatives taken by the government to promote the modernization of notaries' working methods in carrying out their duties is the proposal for a second amendment to "Law Number 30 of 2004 concerning the Position of Notary" (hence referred to as UUJN). The government presented this proposed amendment on December 17, 2019, and it has been included in the national legislation program (Prolegnas).[2]

This initiative is part of the government's efforts to achieve the vision of Golden Indonesia 2045, which aims to place the country among the five largest economic powers in the world.[3] This goal can be achieved by enhancing Indonesia's economic growth and fostering a favourable investment climate. Notaries play a crucial role in improving the "Ease of Doing Business" (EoDB) Index in Indonesia. Consequently, the paradigm shifts toward modernizing notarial practices through the adoption of technology, information, and communication is regarded as a viable alternative to the conventional implementation of notary duties.

The modernization of notarial practices through the adaptation of technology, information, and communication is commonly associated with the framework of the cyber notary concept. This concept was first introduced by a French delegation in 1989, using the term "electronic notary" during The Trade Electronics Data Interchange System Legal Workshop.[4] The term "cyber

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[2] Dewan Perwakilan Rakrat, "Program Legislasi Nasional," Dewan Perwakilan Rakyat, accessed September 1, 2024, https://www.dpr.go.id/uu/detail/id/432,%20accessed%20May%209,%202023.

[3] "Naskah Akademik Rancangan Undang-Undang Tentang Cipta Kerja," accessed September 1, 2024, https://ekon.go.id/source/info_sektoral/Naskah%20Akademis%20RUU%20tentang%20Cipta%20Kerja.pdf.

[4] Cyndiarnis Cahyaning Putri and Abdul Rachmad Budiono, "Konseptualisasi Dan Peluang Cyber Notary Dalam Hukum," *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 4, no. 1 (2019): 29–36, https://doi.org/https://doi.org/10.35335/legal.v12i1.

notary" gained popularity through the American Bar Association (ABA) Information Security Committee in 1994. This idea arose in response to new transaction patterns enabled by the Internet when online transactions lacked legal certainty and explicit protection.[5] Therefore, the concept of an electronic notary, sometimes known as a cyber notary, is intended to address the legal needs associated with electronic transactions.

The study of the concept of the cyber notary, which examines various types of technological adaptation in the implementation of notarial offices, has sparked intense controversy among practitioners and academics. This discourse is strongly related to the long-standing principle of *Tabellionis Officium Fideliter Exercebo*, which remains a fundamental guideline for notarial practice today. This principle mandates that notaries operate within traditional frameworks,[6] raising perceptions that it may impede the implementation of a cyber notary, which is characterized by modern elements.

The term "cyber notary" first emerged as a legal term in Indonesia with the explanation provided in Article 15, paragraph 3 of Law Number 2 of 2014, which amended the UUJN (hereinafter referred to as UUJN-P) to include one of the additional authorities possessed by notaries. In this sense, "cyber notary" refers to the authority of a notary to certify transactions conducted electronically. Aside from the explanation in Article 15, paragraph 3 of UUJN-P, there are currently no other laws or regulations that specifically mention or further regulate the concept of cyber notary.

Since its initial inclusion in the explanation of Article 15, paragraph (3) of the UUJN-P, the term "cyber notary" has emerged as a compelling subject for study among academics and practitioners. The arguments in public discourse and academic forums over the concept of the cyber notary have generated diverse perspectives, which contribute to the continued evolution of this paradigm. This issue cannot be avoided, considering that technological development is unavoidable, but a notary must adhere to traditional principles that reflect the notary's thought. As a result, the concept of the cyber notary is

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[5] Eri Pramudyo, Ranti Fauza Mayana, and Tasya Safiranita Ramli, "Tinjauan Yuridis Penerapan Cyber Notary Berdasarkan Perspektif UU ITE dan UUJN," *Jurnal Indonesia Sosial Sains* 2, no. 8 (August 2021): 1239–57, https://doi.org/https://doi.org/10.59141/jiss.v2i08.382.

[6] Nisrina Anrika Nirmalapurie and Arsin Lukman, "The Use of Electronic Signatures and Seals in Notarial Deeds According to the Principle of Tablelionis Officium Fideliter Exercebo," *Legal Brief* 11, no. 3 (2022): 2722–4643, https://doi.org/https://doi.org/10.35335/legal.v12i1.

currently facing a crisis unable to adequately address[7] the legal needs of electronic transactions. Moreover, the adaptation of technology, information, and communication within the notarial profession to facilitate the exercise of notarial authority is still treated with caution.

The paradigm crisis and prevailing doubts over the concept of cyber notary can be found in various scientific articles. To understand the crises in the concept of cyber notary while emphasizing the originality of this research, it is necessary to refer to earlier studies, including:

First, research entitled "Development of the Concept of Cyber Notary in Common Law and Civil Law Systems"[8] Attempted to build the concept of cyber notary from the perspectives of both civil law and common law systems. However, the article did not explicitly explain the definition and scope of the concept of cyber notary based on the two legal system perspectives. Ultimately, the article discusses the role of the "cyber notary" relating the context of notarial practice, questioning whether it should be considered an additional authority or a modification of existing provisions related to the position of notary, particularly in terms of transitioning toward Electronic Notary (E-Notary) services and products. Notably, if we refer back to the initial idea of e-notary proposed by the French delegation during the TEDIS Legal Workshop or cyber notary presented by ABA, the concept is not a tool or authority, but rather the emergence of a new profession.

Second, an article entitled "Cyber-Notaries from A Contemporary Legal Perspective: A Paradox in Indonesian Laws and The Marginal Compromises to Find Equilibrium"[9] The article mentioned addressed the overlapping and often contradictory laws and regulations in Indonesia, which have created significant challenges to facilitate the implementation of the cyber notary concept. The article explores the function of notaries who perform their duties in a digital environment, such as employing electronic signatures or drafting remote deeds, as well as how the principle of *Tabellionis Officium Fideliter Exercebo* presents a

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[7] A crisis occurs when science modelled on the exemplars fails to answer key puzzles. Accordingly, exemplars are transmitted and inculcated by the training of young scientists Turkan Firinci Orman, "'Paradigm' as a Central Concept in Thomas Kuhn's Thought," International Journal of Humanities and Social Science 6, no. 10 (2016): 47–52, www.ijhssnet.com.

[8] Ikhsan Lubis et al., "Development of the Concept of Cyber Notary in Common Law and Civil Law Systems," *Law and Humanities Quarterly Reviews* 1, no. 4 (December 30, 2022): 30–39, https://doi.org/https://doi.org/10.31014/aior.1996.01.04.32.

[9] David Tan, "Cyber-Notaries from a Contemporary Legal Perspective: A Paradox in Indonesian Laws and the Marginal Compromises to Find Equilibrium," *Indonesia Law Review* 10, no. 2 (2020): 113–35, https://doi.org/10.15742/ilrev.v10n2.635.

challenge to implementing the cyber notary framework. This argument shows that the development of adaptation of technology, information, and communication in the implementation of notary works using a cyber notary framework is still uncertain.

Third, the article entitled "Legal Aspect of Cyber Notary in Indonesia"[10] Explores the potential for an online transformation of various notarial functions. It contends that the cyber notary concept, in the context of notarial transformation, is practicable if accompanied by a robust and well-developed information system. Fourth, another article entitled "Legal Analysis of the Application of Cyber Notary in the Notary Profession in Indonesia"[11] Shares a similar perspective, emphasizing the role of cyber notaries in enhancing efficiency and facilitating business processes. The article highlights the persistent legal uncertainties caused by insufficient regulations, along with concerns regarding data security and privacy. The establishment of adequate technological infrastructure and human resources is identified as a crucial factor for the successful implementation of cyber notaries in Indonesia.

Fifth, the scientific article titled "The Regulatory Concept of Cyber Notary in Indonesia", defines cyber notary in two distinct ways: first, as "the implementation of notarial duties or authority electronically, or through the utilization of information technology,"[12] and second, as "a term frequently used to describe the application of notarial authority in electronic transactions." The article focuses primarily on the first definition, examining the authority and obligations of notaries about the use of information technology (cyber notary). The scope of the study includes issues related to the minutes of deeds, the reading of deeds, and the storage of the notary protocol. This highlights the ongoing confusion among academics and practitioners regarding the precise meaning of the term 'cyber notary,' which necessitates a clear definition to guide regulatory development. The article concludes by arguing that legal certainty

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[10] Luh Anastasia Trisna Dewi, "Legal Aspect of Cyber Notary in Indonesia," *Journal of Digital Law and Policy* 1, no. 1 (2021): 37–44, https://doi.org/https://doi.org/10.58982/jdlp.v1i1.92. *See also* Andyna Susiawati Achmad, and Astrid Athina Indradewi. "The Notary's Responsibility Regarding Deliberate Dishonesty Actions." *Journal of Private and Commercial Law* 6, no. 2 (2022): 132-156; Yuli Prasetyo Adhi, et al. "Document Digitization by Notary bs Part of Cyber Notary Provision." *Pandecta Research Law Journal* 17, no. 2 (2022): 313-322.

[11] Muh Akbar, Fhad Syahril, and Nurhaedah Hasan, "Legal Analysis of the Application of Cyber Notary in the Notary Profession in Indonesia," *JULIA: Jurnal Legislasi Amsir* 11, no. 3 (2024): 352–58, https://journalstih.amsir.ac.id/index.php/julia/article/view/440.

[12] Shinta Pangesti, Grace I Darmawan, and Cynthia P. Limantara, "The Regulatory Concept of Cyber Notary in Indonesia," *Rechtsidee* 7 (February 12, 2021): 1–18, https://doi.org/https://doi.org/10.21070/jihr.2020.7.701.

can only be achieved by a well-defined legal framework that explicitly formulates the definition and scope of the cyber notary.

Several previous studies that have been described show that there has been confusion and doubt that caused a crisis in studies on cyber notaries. According to Thomas Kuhn's Structure of Scientific Revolutions, a crisis is a necessary precursor to paradigm shifts. The occurrence of a crisis will encourage scientists to start questioning the relevance of their basic assumptions and will encourage the emergence of a new paradigm.[13] As a result, based on this theory, this article will address the anomalies and crises associated with the *Tabellionis Officium Fideliter Exercebo* principle and the concept of cyber notary, focusing on two main topics: (1) What is the concept of cyber notary from a comparative perspective? and (2) Is the Paradigm of the Principles of *Tabellionis Officium Fideliter Exercebo* in line with the concept of cyber notary? This study aims to present a new paradigm that will serve as a solid foundation for future research into the evolution of the cyber notary concept and the many forms of technological adaptation in notarial practice.

This study is a normative legal research endeavor that concentrates on principles, rules, laws, norms, and legal doctrines.[14] The study uses a combination of statutory, conceptual, and comparative approaches. Primary legal materials are derived from relevant laws and regulations, while secondary legal materials are literature on the legal issues under investigation. The legal materials are then analyzed using descriptive-argumentative techniques to thoroughly describe and address the identified problems.

Cyber Notary from a Comparative Perspective

A. The Beginning of the Cyber Notary Concept

The concept of the cyber notary is not entirely new. It was considered even before the widespread adoption of the Internet in Indonesia, beginning in 1994 with the establishment of IndoNet, the country's first commercial Internet Service Provider.[15] The rapid expansion of the internet has given rise to a new domain known as cyberspace. Over time, cyberspace evolved into a platform where individuals might engage in various legal actions. However, as an area initially unregulated by law, transactions in cyberspace lacked legal certainty

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[13] Turkan Firinci Orman, "'Paradigm' as a Central Concept in Thomas Kuhn's Thought."

[14] Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

[15] Dhiko Rahnutomo, "Legal Protection of the Parties in Online Electronic Business Transactions," *POSTULAT* 1, no. 1 (March 8, 2023): 16–25, https://doi.org/10.37010/POSTULAT.V1I1.1148.

and protection. This legal vacuum prompted the development of the concept of the electronic notary in France and the cyber notary in the United States.

France addressed the rise of transactions in cyberspace by introducing the concept of the electronic notary. This idea was first presented by the French delegation at the "Trade Electronics Data Interchange System" (TEDIS) Legal Workshop in 1989, where the term "electronic notary" was defined as:

> *"Various industry associations and related peak bodies may act as an "electronic notary" to provide an independent record of electronic transactions between parties, i.e., when company A electronically transmits trade documents to company B, and vice versa."*[16]

According to this concept, those designated to serve as electronic notaries include "Various industry associations and related peak bodies." In relation to the institutions selected to fulfil the role of electronic notaries, Leslie Smith stated the following:

> *"Of particular notes under free trade agreements (related to EDI and electronic notary proposed by the French delegation at the TEDIS Legal workshop 1989), The European study groups had by the late 1980s proposed electronic document notarization service through differing techniques. One proposal was to use relative industry organisations including the chemical, motor vehicle, and aerospace industries"*[17]

In essence, the entity designated as the electronic notary is not the traditional French Notary.

The institution serving as an electronic notary function as a third party, independently recording the electronic transaction history. The rationale behind the electronic notary concept aims to address the need for transaction security and legal protection in electronic transactions. This concept has been expanded in two key areas:

1. The concept of integrity and confidentiality in Electronic Data Interchange (EDI) transactions and the application of digital signatures is rooted in the idea that these elements, along with signatures, have long served as the foundation of trust in paper-based transactions for centuries.
2. "Notary services" transactions are based on the use of "third-party" industry organizations similar to the classic European Notary.[18]

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[16] Jauharoh Arini et al., "Legal Ratio of Institutional Arrangements Cyber Notary In Indonesia," *RJOAS* 5, no. 125 (2022): 66–346, https://doi.org/10.18551/rjoas.2022-05.08.

[17] Leslie G Smith, "The Role Of The Notary In Secure Electronic Commerce" (Doctoral dissertation, Queensland University of Technology, 2006), https://eprints.qut.edu.au/16407/.

[18] Smith.

This understanding emphasizes that the presence of electronic notaries initiated by the French delegation is an effort to guarantee confidentiality and integrity in electronic data exchange.

American Bar Association (ABA) then introduced the idea of a cyber notary in 1994 to answer the need for certainty and legal protection in transactions conducted over the internet. The concept of cyber notary was first proposed by the ABA's Information Security Committee in 1994, based on the premise that there was a need for:

1. Trust in the transaction involves parties over the Internet;
2. The security of the transmission;
3. The integrity of the content of the communication;
4. The confidence that such transactions will receive legal recognition so that a binding contract is enforceable.[19]

The main idea above shows that the concept of cyber notary proposed by ABA aims to answer doubts regarding the security and legal protection of various transactions undertaken in cyberspace. Trust issues in internet-based transactions are typically more complex compared to conventional transactions. This is because Internet transactions include the sharing of sensitive, confidential, or privacy-related information through an electronic system. In this context, the notion of trust pertains both to confidence in the execution of Internet transactions and the operational mechanisms that control these transactions.[20]

The issue of transmission security is another problem that is intended to be addressed through the presence of cyber notaries. Transmission security is a concern because internet transactions must be secured from unauthorized parties. Thus, transmission security seeks to ensure that only authorized persons can access and modify data.[21] While the issue of content integrity refers to the belief or certainty that the information or data received is consistent with the

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[19] Edmon Makarim, *Notaris Elektronik Dan Transaksi Elektronik Kajian Hukum Tentang Cybernotary Atau Electronic Notary*, ed. Yayat Sri Hayati (Depok: PT Raja Grafindo Persada, 2020).

[20] Rasistia Wisandianing Primadineska and Syayyidah Maftuhatul Jannah, "Perceived Security and Trust in Electronic Payment Systems: How They Affect the Decision to Use EPS During the COVID-19 Pandemic," *Jurnal Manajemen Bisnis* 12, no. 2 (September 13, 2021): 236–47, https://doi.org/10.18196/MB.V12I2.11456.

[21] Deepak Kumar and Nivesh Goyal, "Security Issues in M-Commerce for Online Transaction," in *2016 5th International Conference on Reliability, Infocom Technologies and Optimization, ICRITO 2016: Trends and Future Directions* (Institute of Electrical and Electronics Engineers Inc., 2016), 409–14, https://doi.org/10.1109/ICRITO.2016.7784990.

data transmitted. The ever-evolving internet technology has made transmission and content integrity a concern that is still being attempted to be overcome.

Legal legitimacy is required for transactions done over the internet, which at the time still had security vulnerabilities. The existence of legal recognition is intended to allow for the creation of a binding agreement for the transaction that can be enforced. The existence of legal recognition can also open up opportunities for the parties to pursue legal action if necessary. Efforts to achieve this legal recognition were made by introducing the concept of cyber notary. Based on this basis of thought, the concept of cyber notary developed by ABA is:

> *"The committee envisaged that this proposed new legal professional would be similar to that of a notary public but in the case of the Cyber notary, his/her function would involve electronic documents as opposed to physical documents. This would be an office that would be readily identifiable and recognized in every country throughout the world: i.e., as a legal professional who has been placed in a position of the highest level of trust. They would have the responsibility to undertake certain types of legal transactions than that of the public officer generally referred to in the United States as a notary."*[22]

The definition specifies that to respond to the advent of new types of legal acts occurring in cyberspace, the ABA suggests the presence of a new profession that is "similar" to a Notary, which is then referred to as a cyber notary. Based on the concept put forward by ABA, a cyber notary will work in cyberspace with electronic documents whose recognition spans national borders (borderless). Cyber notaries are responsible for carrying out just particular types of legal transactions, which in this context are those conducted in cyberspace.

Lawrence Leff explains that the notion of a cyber notary, initiated by the ABA, refers to an individual possessing expertise in both legal matters and computer technology. Cyber notaries will electronically authenticate documents, and they are also required to evaluate the legal capacity and financial responsibility of the parties. Based on these requirements, it is proposed that a cyber notary be a lawyer (attorney).[23]

This view is reinforced by Theodore Sedwick, manager of the "Cyber-US Project Notary Council for International Business," who claimed that "Cyber notary is a term used to describe a combination between the conventional

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[22] Muhammad Luqmanul Hakiem et al., "Perkembangan Cyber di Era Globalisasi," *Scientica: Jurnal Ilmiah Sains Dan Teknologi* 2, no. 1 (January 11, 2024): 341–44, https://doi.org/10.572349/SCIENTICA.V2I1.828.

[23] Makarim, *Notaris Elektronik Dan Transaksi Elektronik Kajian Hukum Tentang Cybernotary Atau Electronic Notary.*

function of Notary and its application through electronic transactions."[24] According to Theodore Sedwick, a cyber notary serves as security traffic in an electronic transaction. The concept of a cyber notary is an attempt to adopt the principles of conventional Notaries in the implementation of electronic transactions. The combination of conventional Notary functions applied in this electronic transaction is supposed to grant legal legitimacy for transactions that have been conducted through electronic media, as conventional transactions obtain legal legitimacy and protection.

B. Digitalization of Notaries in France

Notaries in civil law countries play an essential role as public officials are empowered to make authentic deeds. An authentic deed in the civil law system has perfect evidentiary force because it is founded based on statutory regulations. With perfect evidentiary power, an authentic deed becomes a sufficient basis for a judge to decide a case, which makes a real contribution to resolving cases cheaply and quickly.[25] Creating a notarial deed that does not adhere to the requirements set forth by statutory regulations may result in the deed being degraded to a private deed and losing its perfect evidentiary power.[26] Therefore, the procedure and method of making a deed hold a "sacred" position in the civil law system. The progress of technology, information, and communication encourages changes in the arrangement of The process and format for creating a deed towards a more modern direction. This adjustment must be made with caution to avoid reducing the authentic value of a deed.

France is a civil law country that has been digitizing (French: *numérique*) all aspects of the implementation of the notary office since 1997. This digitization began with the construction of its secure internet network. Following this, the notaries became the first liberal profession that adopt an electronic signature certification system after the enactment of Law No. 2000-230 dated March 13, 2000, concerning the law of evidence relating to information technology and electronic signatures *("Loi n° 2000-230 du 13 mars*

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[24] Devi Alincia and Tundjung Herning Sitabuana, "Urgency of Law Amendment as Foundation of The Implementation of Cyber Notary," *LAW REFORM* 17, no. 2 (September 30, 2021): 214–31, https://doi.org/10.14710/LR.V17I2.41749.

[25] Yohanis Yabes Tjiaman et al., "The Nature of A Notary Deed As Written Evidence In Civil Cases In Court," *Journal of Namibian Studies: History Politics Culture* 35 (July 15, 2023): 2170–93, https://doi.org/10.59670/JNS.V35I.3959.

[26] Ni Putu et al., "Notary Responsibility for Granting Incorrect Date on Authentic Deed," *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 2, no. 9 (August 26, 2023): 2827–36, https://doi.org/10.54443/SIBATIK.V2I9.1334.

2000 portant adaptation du droit de la preuve aux technologies de l'information et relative à la signature électronique").[27] The use of electronic signature instruments by French notaries was then followed by the regulation of the creation of electronic notarial deeds through Article 4 of Decree no. 2005-973 dated 10 August 2005 *("Décret n°2005-973 du 10 août 2005 - art. 4 () JORF 11 août 2005 en vigueur le 1er février 2006)* which changes Decision No. 71-941 dated 26 November 1971 concerning deeds made by Notaries *(Décret n°71-941 du 26 novembre 1971 relatif aux actes établis par les notaires").* Based on these provisions, Notarial deeds can be made in paper form *(Actes établis sur support papier)* or made in electronic form *(Actes établis sur support électronique).* Notaries who make deeds in electronic form must use an information processing and transmission system recognized by the *Conseil Supérieur du Notariat* (CSN), the High Council of Notaries of France ensures the integrity and confidentiality of the contents of the deed.[28]

The authentic deed in electronic form (AAE) in France was first signed in 2008. Based on Article 17 of Decree No. 71-941 of 26 November 1971 on deeds made by Notaries *("Modifié par Décret n°2020-1422 du 20 ncovembre 2020")*, the Notary must sign the deed with an electronic signature that meets the requirements of "Decree No. 2017-1416 of 28 September 2017 on electronic signatures." According to these provisions, the Notary signs the document using a real key *(clé dite REAL)*, which is connected to a USB device on the computer. Therefore, to sign the deed, the Notary must follow certain computer procedures. The Notary must first enter a Pin code to unlock the key, after which he can then sign the document electronically. The signed deed is then authenticated and automatically sent to the French Notary storage centre, the "*Minutier Central Électronique des Notaires de France*" (MICEN) for archiving.[29] The parties do not sign the deed with a certified electronic signature. Instead, they only reproduce the signature trace using a stylus pen on the touch screen. The signature takes the shape of an image of the parties' signature (handwritten with a digital pen) and is added at the bottom of the

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[27] Corine Namont Dauchez, Jean-Pierre Marguénaud, and Jean-Pierre Marguénaud Le, "Le Droit d'accès Au Cyber-Notaire," in *La Semaine Juridique. Notariale et Immobilière*, vol. Etude 1283, 2021, https://hal.science/hal-03561111.

[28] "Decree No. 71-941 of November 26, 1971 relating to acts established by notaries - Légifrance," Pub. L. No. Article 16 Décret n°71-941 du 26 novembre 1971 relatif aux actes établis par les notaires, Modifié par Décret n°2005-973 du 10 août 2005-preprint 4 () JORF 11 août 2005 en vigueur le 1er février 2006, accessed September 21, 2024, https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000511476/.

[29] Laura Serruya, "Le Notaire Face Au Numerique" (Paris-Saclay University, 2021), https://www.scribd.com/document/748012094/Memoire-Laura-Serruya-0.

document. Although the signing uses an electronic instrument, the deed is nevertheless signed in person before the Notary. This provision attempts to maintain all the traditional qualities of a deed (a specific date, evidentiary force, and enforceable).[30]

The signing of deeds remotely in the making of notarial deeds in France has been regulated since 2005 through Decree no. 2005-973 dated August 10, 2005. However, the practice has only been implemented since 2018. Authentic deeds signed remotely are generally known as *"l'acte authentique électronique à distance"* (AAED). The signing of this deed still requires each party to be present before a Notary, but not necessarily the same Notary. This process is known as "the presence of a Notary at each end of the chain". If a party is unable to be present in front of the Notary where the deed was made, they may appear before another Notary where they are located. The necessary information for the deed is then exchanged with the specified transmission system. Communication between the Notary and the parties occurs via a video conference approved by the CSN. CSN has standardized only one video conferencing system, known as LIFESIZE, to ensure the security of confidential document exchange during remote meeting sessions.[31]

The remote deed-making session begins with the Notary reading the deed to the parties, submitting the attachments, and receiving the signatures of his clients. The Notary who made the deed then sends the form containing the collection of signatures to his colleague (another Notary), who reads the deed and receives the image of his client's signature on the "signature collection form". When reading the document, all parties see the document through a video conference screen designated for this purpose, while the signature collection form is displayed on another separate screen. The colleague affixes his electronic signature using his real key on the "signature collection form" to seal the deed before it is returned to the main Notary. Once received, the Notary will incorporate the "signature collection form" into the deed. Finally, the Notary certifies the deed with his legitimate key before submitting it to MICEN for its preservation.[32] The deed is finalized after the authorized Notary signs it securely electronically.

Signing a deed remotely without being physically present before a Notary can only be applied to establish power of attorney. This provision is relatively

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[30] "L'acte Authentique Du Notaire | Notaires de France," accessed September 21, 2024, https://www.notaires.fr/fr/profession-notaire/role-du-notaire-et-ses-principaux-domaines-dintervention/lacte-authentique-du-notaire.

[31] Serruya, "Le Notaire Face Au Numerique."

[32] See Article 20 Décret n°71-941 du 26 novembre 1971 relatif aux actes établis par les notaires - Légifrance

new, as it is an addition to Article 20-1 in Decree No. 71-941 dated November 26, 1971 concerning deeds made by a Notary through Decree No. 2020-1422 of November 20, 2020, which stipulates that *"Le notaire instrumentaire peut établir une procuration sur support électronique, lorsqu'une ou les parties à cet acte ne sont pas présentes devant lui."* This provision specifies that a Notary may issue a power of attorney in electronic form if one or more parties making the deed are not present before him. There is no obligation for parties who are not present before the Notary who issues the power of attorney to be present before another Notary. Thus, the making of this power of attorney is entirely dependent on the system approved by the CSN. The regulation of making a power of attorney without being physically present before a notary is not without dispute because the physical presence of the parties before a notary is traditionally considered a prerequisite for the validity of a deed. Nonetheless, the established provisions ensure that this manner of establishing a power of attorney is still followed.[33]

Digitalization in the implementation of the Notary's office in France is also carried out in the aspect of making and storing Notary protocols and other electronic documents, but still as an alternative. This means that notary protocols can be made in either paper form (books) or electronic format. Notary protocols prepared in electronic form are signed by the head of the Notary chamber or his deputy through an electronic signature process. Furthermore, Notary Deeds made in electronic form are recorded for storage in the central register (MICEN) immediately after being made by the Notary. The Notary who makes the deed has exclusive access to the deed.[34]

The digitalization process for the implementation of a notary office in France can be established since it was preceded by the development of a reliable electronic system. The reliable and tested electronic system model is then incorporated into the statutory regulations. Even the presence of new electronic deeds was emphasized in the French Civil Code in 2016. Order no. 2016-131 of February 10, 2016 - art. 4, amends the provisions of Article 1369 of the French Civil Code to be as follows:

> *"L'acte authentique est celui qui a été reçu, avec les solennités requises, par un officier public ayant compétence et qualité pour instrumenter. Il peut être dressé sur support électronique s'il est établi et conservé dans des conditions fixées par décret en Conseil d'État. Lorsqu'il est reçu par un notaire, il est dispensé de toute mention manuscrite exigée par la loi."*

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[33] Namont Dauchez, Marguénaud, and Marguénaud Le, "Le Droit d'accès Au Cyber-Notaire."

[34] *See* Article 16, Décret n°71-941 du 26 novembre 1971 relatif aux actes établis par les notaires - Légifrance, supra note 31

> *(An authentic deed is an instrument that has been accepted, with the requisite sincerity, by a public official competent and authorized to act. It may be made in electronic form if it is made and kept by the provisions established by a decision of the Conseil d'État. When accepted by the Notary, it does not have to be accompanied by the handwriting required by law.)*

Based on these provisions, Notarial deeds in electronic form are an alternative form of paper-based Notarial deeds. Digital technology is a complement and not a substitute for face-to-face activities in the implementation of the Notary profession.[35] The parties have the freedom to define the form of the deed they want to choose.

The position between authentic paper-based deeds and those in electronic form is not differentiated, although, in the making of both deeds, there are different procedures and technical provisions. The provisions of Article 1366 of the French Civil Code as amended by "Ordonnance n°2016-131 du 10 fevrier 2016 - art.4" regulate the evidentiary force of an electronic document as follows:

> *"L'écrit électronique a la même force probante que l'écrit sur support papier, sous réserve que puisse être dûment identifiée la personne dont il émane et qu'il soit établi et conservé dans des conditions de nature à en garantir l'intégrité." (Electronic documents have the same evidentiary value as paper documents, provided that the person who created them can be properly identified and the documents are created and stored under conditions that ensure their integrity.)*

Based on these provisions, a notarial deed made electronically as an electronic document holds equivalent evidentiary value to a paper-based notarial deed.

CSN, as the High Council of French Notaries, has a crucial role in supporting the implementation of digitalization. CSN has the authority to set general policies regarding new technologies to be used by Notaries. The CSN has the authority to approve professional software issued by service providers hence notaries in France rely heavily on the policies issued by the CSN. In addition to the central role of CSN, the digitalization of the Notary profession in France is also supported by the "Association for the Development of Notary Services" (ADSN), which was formed in 1983. The ADSN Group is a key actor in the digitalization of the Notary profession, and it has attempted to construct various systems to facilitate the digitalization of the Notary profession.[36]

The regulation on digital transformation in the implementation of the Notary's office carried out in France does not mention cyber notary or electronic notary at all. Since the regulation on digital changes in the execution of notarial duties was issued, France has consistently placed electronic-based

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[35] Namont Dauchez, Marguénaud, and Marguénaud Le.

[36] Serruya, "Le Notaire Face Au Numerique."

Notarial deeds and digital transformation in other forms as alternative methods. Thus, the digitalization of the implementation of notary services in France is not aimed at answering the legal needs in electronic transactions, as in the concept of electronic notary initiated by the French delegation at the TEDIS Legal Workshop in 1989, but rather based on the notary's need for the presence of technology to support their work. Furthermore, the electronic notary is a concept of a new profession that works in electronic transactions. Meanwhile, the digital transformation that occurs in French notaries refers to the use of technology in the implementation of notarial authority. As a result, the discussion on the use of technology, information and communication in French notary practice within the framework of the electronic notary concept is a form of "Dysconnectivity of terminology with the meaning of content".

C. Digitization of Notary in the United States

Anglo-Saxon countries (common law) use court decisions as the basis of their law. In this legal system, court decisions are not only binding on the parties but also apply generally to similar cases. The focus of common law was initially on the resolution of existing disputes, rather than creating legal principles that could be applied universally.[37] Historically, common law developed case by case from the bottom up, in contrast to civil law systems, which are developed top-down by legislative bodies. Common law countries do not place much emphasis on written documents as evidence and thus do not distinguish between private and authentic deeds. Additionally, evidence presented in court tends to emphasize oral testimony or witness accounts, with written evidence serving solely to support witness statements.[38] The evidentiary system in common law countries, which does not prioritize written documents as evidence, results in common law notaries being generally more open than notaries in civil law countries.

The recognition of the validity of electronic signatures under the "Uniform Electronic Transactions Act" (UETA) which was widely ratified and adopted by the "National Conference of Commissioners on Uniform State Laws on July 29, 1999," has significantly encouraged the use of electronic signatures by notaries in the United States. This development was followed by

[37] Fence M Wantu, "Shifting the Paradigm of the Indonesian Judicial System from The Influence of the Anglo-Saxon Judicial System," *Jambura Law Review* 5, no. 1 (January 29, 2023): 118–35, https://doi.org/10.33756/JLR.V5I1.17927.

[38] Dini Anggraeni and Siti Mahmudah, "Urgensi Peningkatan Peran Notaris Melalui Implementasi Konsep Cyber Notary Dalam Pembuatan Akta Di Era Cyber Society 5.0," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (December 14, 2023): 2307–20, https://doi.org/10.37680/ALMANHAJ.V5I2.3870.

the implementation of regulations for technological adaptation in notarial duties, introducing the term "electronic notary." Provisions regarding electronic notaries are specifically regulated in Article III of the US Model Notary Act, 2002. According to this article, an "electronic notary public" is defined as follows:

> *"Electronic notary public" and "electronic notary" refer to a notary public who has registered with the [commissioning official] the capability of performing electronic notarial acts in conformance with this Article."*[39]

According to this definition, an electronic notary is a public notary who has registered with the commissioning official as authorized to perform electronic notarial acts. To become registered as an electronic notary, a public notary must complete specific training and pass the prescribed examination.[40] The authority of an electronic notary is essentially the same as that of a traditional notary; however, the form of the notarial acts differs. An electronic notary can execute deeds in both electronic and conventional (paper-based) formats. The development of an electronic deed incorporates the use of an electronic signature and seal. Additionally, an electronic notary has the option to maintain a notary journal in either electronic or paper form.

The regulation of electronic notaries under the "US Model Notary Act 2002" (US MNA 2002) is based on two fundamental principles. First, the essential principles and procedures for notarial acts performed electronically must align with those of conventional notaries. A key principle in notarial practice is that "the signer must appear in person before a duly commissioned notary public" to affix or acknowledge the signature, thereby ensuring the identity, intent, and awareness of the notary at the time of executing the deed. The requirement for physical presence before the notary is retained because it is recognized that, while technology advances, human nature remains inherently imperfect. The second principle pertains to the neutrality of technology. The US MNA 2002 does not endorse or reject any specific type of electronic signature; rather, it allows market forces to determine which technologies are effective and relevant. This approach facilitates the elimination of less capable or unsuitable technologies in the realm of electronic notarization.[41]

The provisions concerning electronic notaries were subsequently updated through the "US Model Notary Act of 2010." This update introduced the requirement that electronic notarization must be "capable of independent verification" and that any electronic document authorized by the notary must

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[39] *See* Article III Chapter 14-1 US Model Notary Act 2002

[40] *See* Article III Chapter 16-1 US Model Notary Act 2002

[41] *See* Comment Article III, US Model Notary Act 2002

be tamper-evident. Independent verification intends to ensure that any party in need can confirm the authenticity and completeness of the electronically notarized document. Furthermore, notaries are permitted to utilize multiple methods for creating electronic signatures and electronic seals, as parties may request various technological models for conducting electronic signing.

In 2017, the "US Model Electronic Notarization Act 2017" (US MENA 2017) was introduced to specifically regulate "Electronic Notarization." Although the regulations concerning the use of electronic signatures and the creation of electronic deeds remained largely unchanged, the terminology shifted. The term "electronic notary" is no longer utilized; instead, the focus is on "electronic notarization." US MENA 2017 emphasizes electronic notarization, electronic notarial acts, and the requirements and procedures for registered public notaries to create electronic notarial deeds. Notaries authorized to create electronic deeds and perform electronic notarization are no longer referred to as electronic notaries. Rather, they are recognized as public notaries who have been "registered to perform electronic notarial acts," allowing them to execute deeds in electronic form.

US MENA 2017 represents a significant advancement by redefining the concept of "appear in person." Chapter 2-1 of US MENA 2017 specifies that "appear in person" can be interpreted as:

1. Physically present in the same location as another person, with proximity sufficient to see, hear, communicate, and exchange tangible identification credentials with them; or
2. Engaging with another individual through audio-video communication in accordance with Chapter 5A of this [Act].

This definition allows "appear in person" to encompass both physical presence before a notary and interaction through audio-video communication. However, the possibility of remote deed execution facilitating fraud or forgery raises concerns. Consequently, the "National Notary Association" (NNA) of the United States advocates for strict regulation of remote deed-making practices to ensure the trustworthiness of notaries.

A notary may execute a deed remotely if all parties are located within the United States. Remote execution of a deed for parties situated outside the United States is permitted only if the notary is unaware that such execution of the deed is prohibited in the jurisdiction where the parties are physically present at the time of signing, or if the transaction involving the parties located outside the United States has a connection to the United States.[42] The device used in the remote notarization process must comply with specified standards. The

[42] *See* Chapter 5A-4, US Model Electronic Notarization Act 2017

notarization process must occur simultaneously in a single recording session by the provisions of Chapter 5A-6 of US MENA 2017. The notary is tasked with confirming the identity of the parties by administering an oath or affirmation, conducting a dynamic knowledge-based authentication evaluation, verifying a valid public key certificate, and ensuring identity verification through a trusted third party.[43]

Electronic system providers play a crucial role in facilitating the implementation of electronic notarization systems. The engagement of these providers in the notarization process introduces potential errors that the notary cannot control. For instance, a software or hardware "bug" within the notarization system may cause the electronic notarization process not to comply with applicable legal requirements. Such issues represent electronic system problems that fall outside the notary's purview. In response to this challenge, Chapter 4-2 of the US MENA 2017 stipulates that notaries who adhere to the principle of reasonable caution are exempt from liability for failures of the electronic system. This provision is mandatory and cannot be waived; any licensing agreement for the implementation of the electronic system that deviates from this provision will be rendered null and void. This stipulation underscores that the responsibility for executing deeds is not solely that of the notary but also extends to the providers of the electronic notarization system.

In 2022, regulations concerning the Model Notary Act were updated to address the perceived imbalance between paper-based notaries and electronic notaries, which had been delineated in separate sections of the US Model Notary Acts of 2002 and 2010. This arrangement inadvertently suggested that paper-based notaries held greater significance than their electronic counterparts. The US MENA 2017, which specifically regulates electronic notarization, further contributed to this confusion within the community.[44] To mitigate this misunderstanding, the "US Model Notary Act 2022" (US MNA 2022) no longer distinguishes between conventional notarization and electronic notarization. Instead, it integrates the concept previously known as electronic notarization with public notaries.

The Terms and Conditions in the US MNA 2022 represent a combination of the US MNA 2010 and the improved US MENA 2017. The goal of this integration is to emphasize that notarial deeds executed electronically, including those involving audio-video communication, are merely an "alternative method," ensuring that the principles and legal status of such deeds are equivalent to those created through conventional (paper-based) methods.

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[43] *See* Chapter 5A-5, US Model Electronic Notarization Act 2017

[44] Foreword US Model Notary Act 2022

Therefore, the US MNA 2022 is generally applicable to all notarial deeds, regardless of the tools or methods used in their execution. The provisions of the US Model Notary Act 2022 are based on a blend of the US MNA 2010 and the enhanced MENA 2017, with notable enhancements in technical aspects. To avoid misunderstandings, a unified terminology has been adopted: "Notary Public" refers to notaries authorized to execute deeds, whether in electronic or conventional form; "Notarial act" refers to the creation of notarial deeds, whether electronic or paper-based; and "Notarization" describes the process of notarization, whether conducted conventionally or electronically.

The long journey of electronic notary regulation in the United States, which began in 2002 and culminated in the discontinuation of the term in the US MNA 2022, serves as clear evidence that the use of terms like "electronic notary" or "cyber notary" to describe the adaptation of technology, information, and communication in notarial practices has caused significant confusion. This confusion stems from a disconnect between the terminology and its intended meaning. The regulation of electronic notaries in the US MNA 2002 should not be conflated with the concept of the "cyber notary" introduced by the American Bar Association (ABA) in 1994. The ABA's concept of the cyber notary was intended to provide legal certainty and protection for transactions conducted over the internet. In contrast, the electronic notary provisions in the US MNA 2002 were not designed to establish the legal recognition of electronic signatures. Rather, electronic notaries were introduced because the validity of electronic signatures had already been established in law, allowing notaries to utilize electronic signatures in their practice.

US MNA 2022 underlines that there is no fundamental difference between paper-based notarization and electronic notarization. Since its inception in 2002, electronic notary practices and electronic notarization have not been presented as novel or distinct from traditional public notary services. Rather, they have consistently been presented as an alternative to the paper-based notarial process. Ultimately, up to 2022, the US Model Notary Act has never established electronic notaries or cyber notaries as a separate profession providing legal certainty and protection for electronic transactions. Instead, it merely regulates the use of technology, information, and communication tools to support the traditional role of the notary.

D. Cyber Notary in Indonesia

1. Cyber Notary According to Statutory Regulations

The term "cyber notary" has never received formal recognition in the United States, where it originated. However, this term has received legal

standing in Indonesia through the explanation of Article 15 paragraph 3 of "Law Number 2 of 2014, which amended Law Number 30 of 2004 concerning the Position of Notary" (hereinafter referred to as UUJN-P). Article 15 paragraph 3 of the UUJN-P provides that:

> *"In addition to the authority as referred to in paragraph (1) and paragraph (2), a Notary has other authorities as regulated in statutory regulations."*

The wording of this provision remains identical to the original Article 15 paragraph 3 of the UUJN. The most significant lies in the explanation of this provision. While the UUJN does not elaborate on the "other authorities" granted to a notary, the UUJN-P provides examples to clarify this term. Specifically, the explanation of Article 15 paragraph 3, which states:

> *"What is meant by 'other authorities regulated in statutory regulations' includes, among others, the authority to certify transactions conducted electronically (cyber notary), the drafting of waqf pledge deeds, and aircraft mortgages."*

This explanation offers specific examples of the additional authorities vested in a notary. These authorities must have been established in the statutory regulations in force at the time of the enactment of the UUJN-P. To understand the concept of cyber notary as one of the "other authorities" referenced in the "Explanation of Article 15 paragraph 3 of the UUJN-P", it is required to undertake a systematic interpretation of the relevant provisions and regulations governing electronic transactions at that time.

According to the "explanation in Article 15 paragraph 3 of the UUJN-P," the term cyber notary refers to a notary's authority to certify transactions conducted electronically. Before its mention in the explanation of "Article 15 paragraph 3 of the UUJN-P," no other laws or regulations in Indonesia had referenced or governed cyber notaries. The involvement of notaries in electronic transactions was first addressed in the "Government Regulation of the Republic of Indonesia Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions" (PP 82/2012), which serves as the Implementing Regulation for "Law Number 11 of 2008 concerning Information and Electronic Transactions."

Based on the provisions of Article 41 paragraph 1 of PP 82/2012, electronic transactions in the context of public services must utilize a Certificate of Reliability and/or an Electronic Certificate. However, the use of an Electronic Certificate or a Certificate of Reliability for electronic transactions in the private sector is not necessary, just optional.[45] Consequently, there are two

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[45] *See* Article 42 Paragraph 1, Government Regulation of the Republic of Indonesia Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions

types of certificates recognized to support the execution of electronic transactions: the Certificate of Reliability and the Electronic Certificate. According to Article 1, number 9 of Law 11/2008 in conjunction with Article 1, number 18 of PP 82/2012, an Electronic Certificate is defined as "an electronic certificate containing an Electronic Signature and an identity that indicates the legal status of the parties involved in an Electronic Transaction, issued by an electronic certification authority." In addition to verifying the relationship between an electronic signature and its owner, electronic system providers must also have an Electronic Certificate.[46]

Electronic certificates are issued following the electronic certification process conducted by an Electronic Certification Organizer. According to Article 1, number 10 of Law 11/2008, an Electronic Certification Organizer is defined as "a legal entity that acts as a trusted third party, providing and auditing Electronic Certification." These organizers can be classified into two categories: "Indonesian Electronic Certification Organizers" and "foreign Electronic Certification Organizers." Indonesian Electronic Certification Organizers are legal entities that are both established and domiciled in Indonesia.[47] Those operating within Indonesia must also obtain formal recognition from the Minister of Communication and Information of the Republic of Indonesia (Minister of Communication and Information).[48] Therefore, the legal entity that has the authority to conduct Electronic Certification is a Legal Entity that has received recognition from the Minister of Communication and Information.

A notary is not classified as a "Legal Entity" but rather as a "Public Official" who performs their duties independently as an extension of the state within the realm of private law.[49] As a result, a notary does not meet the criteria required for acting as an "Electronic Certification Organizer." Furthermore, no provisions in Law 11/2008 or PP 82/2012 designate a notary as an Electronic Certification Organizer. Therefore, it would be inaccurate to interpret the

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[46] *See* Article 59, Government Regulation of the Republic of Indonesia Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions

[47] *See* Article 13 Paragraph 4, Government Regulation of the Republic of Indonesia Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions

[48] *See* Article 61 Paragraph 1, Government Regulation of the Republic of Indonesia Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions

[49] Agus Supriyanto and Adi Sulistyono, "Analysis of the Principle of Notary Independence in Notarial Deed Making in Review of the Notary Position Law and the Notary Professional Code of Ethics," *International Journal of Educational Research & Social Sciences* 5, no. 3 (June 30, 2024): 536–40, https://doi.org/10.51601/IJERSC.V5I3.836.

"authority to certify transactions carried out electronically (cyber notary)" referenced in the "Explanation of Article 15 paragraph 3 of the UUJN-P" as granting a notary the authority to issue an "Electronic Certificate."

In addition to using Electronic Certificates, electronic transactions can also be supported by Reliability Certificates. Article 1, number 25 of PP 82/2012 defines a "Reliability Certificate" as "a document stating that Business Actors who organize Electronic Transactions have passed an audit or suitability test from a Reliability Certification Institution." Reliability Certificates are issued following a Reliability Certification process conducted by a Reliability Certification Institution. This certification verifies that business actors involved in electronic commerce meet the required standards after being assessed and audited by such institutions. Based on the Explanation of Article 10 paragraph 1 Law 11/2008, evidence of Reliability Certification is typically displayed as a trust mark or certification logo on the business actor's homepage. Article 68 paragraph 1 of PP 82/2012 further states that Reliability Certificates issued by these institutions cover various aspects, including:

a. Security of identity;
b. Security of data exchange;
c. Safeguards against vulnerabilities;
d. Consumer ratings; and
e. Safeguarding the confidentiality of personal data.
f. These certifications are intended to protect consumers in electronic transactions

The Reliability Certificate is issued by the Reliability Certification Institute. Reliability Certification Institutions are defined in Article 1, number 11 of Law 11/2008 in conjunction with Article 1, number 24 of PP 82/2012 as "independent institutions established by professionals who are recognized, authorized, and supervised by the Government with the authority to audit and issue Reliability Certificates in Electronic Transactions." Regarding on Article 69, paragraph 2 of PP 82/2012, the Reliability Certification Institute was formed by professionals. Professionals who can participate include at least:

a. Information Technology consultants;
b. Information Technology auditors; and
c. Legal consultants specializing in Information Technology.

Additionally, Article 69 paragraph 3 of PP 82/2012 allows for the involvement of other professionals in the establishment of a Reliability Certification Institution, including:

a. Accountants;
b. Information Technology management consultants;
c. Assessors;

d. Notaries; and
e. Other professions within the scope of Information Technology as stipulated by Ministerial Decree.

Based on these provisions, notaries are regarded as professionals who "can participate" in establishing a Reliability Certification Institution. However, their involvement is not mandatory for the formation of such institutions, which can still be established without their participation.

Regarding the issuance of Reliability Certificates, Article 66, paragraph 1 of PP 82/2012 stipulates that "Reliability Certification Institutions may issue Reliability Certificates through the Reliability Certification process." Thus, the law attributes the authority to issue Reliability Certificates to "Reliability Certification Institutions," rather than to the "profession" in charge of establishing these institutions. Consequently, it is also incorrect to interpret the "authority to certify transactions carried out electronically (cyber notary)" as referenced in the "Explanation of Article 15, paragraph 3 of the UUJN-P" as granting notaries the power to issue "Reliability Certificates." A notary, as a public official with assigned authority, exerts inherent authority and can be performed at their discretion as needed, with responsibility lying with the authority holder. A notary cannot independently issue a Reliability Certificate and thus cannot be held accountable for such certificates issued by Reliability Certification Institutions. Moreover, while notaries may help to establish a Reliability Certification Institution, the authority and responsibility for issuing Reliability Certificates rests with the institution itself.

The "Explanation of Article 15, paragraph 3 of the UUJN-P" provides examples of "other authorities regulated by statutory regulations." Authorities such as drafting waqf pledge deeds and aircraft mortgages were indeed regulated by the laws in effect at the time and were vested in notaries as independent public officials. However, the "authority to authorize transactions carried out electronically (cyber notary)" is not regulated by any laws in effect when the UUJN-P was enacted. The authority for Electronic Certification is held by Electronic Certification Organizers, while Reliability Certification falls under the jurisdiction of Reliability Certification Institutions.

With the repeal of PP 82/2012 and replaced by "Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions" (PP 71/2019), there are no longer provisions addressing the professions that can participate in forming a Reliability Certification Institution or designating notaries as having authority over electronic transaction certification. Consequently, the "Explanation of Article 15, paragraph 3 of the UUJN-P," which includes "the authority to certify transactions carried out electronically (cyber notary)" as

another authority of notaries, has resulted in ambiguity regarding the scope of notaries' authority to certify electronic transactions. Additionally, linking "the authority to certify transactions carried out electronically" with "cyber notary," a concept not previously regulated, further complicates the interpretation of Article 15, paragraph 3 of the UUJN-P (vague).

In principle, the explanation in a law has function as an official interpretation provided by the lawmaker regarding specific norms contained in the main body of the statute. Therefore, explanations should clarify terms, phrases, sentences, or foreign terms within the norm and may include examples. It is also crucial that explanations, as tools for clarifying norms, do not introduce further ambiguity.[50] As an official interpretation, "the Explanation of Article 15, paragraph 3 of the UUJN-P" has created confusion by suggesting that notaries have the authority to certify electronic transactions, despite the absence of legal provisions granting such authority. Thus, the "Explanation of Article 15, paragraph 3 of the UUJN-P" has failed to fulfilled its purpose of clarifying the norms in the main body of the law.

2. The Cyber Notary Paradigm in Indonesia

The paradigm of cyber notary in Indonesia has evolved through various scholarly discussions and literature. A seminal work on this topic is Emma Nurita's 2012 book, "Cyber Notary: Initial Understanding in the Concept of Thought". This text is frequently cited for its definition and conceptualization of the cyber notary. According to Emma Nurita:

> *"The concept of a cyber notary can be temporarily understood as a notary who performs their duties and authorities based on information technology related to the functions of a notary, particularly in the creation of deeds."*[51]

Emma Nurita's definition emphasizes that a cyber notary uses technology in carrying out their duties, specifically in the creation of authentic deeds.

Emma outlines three primary services associated with the cyber notary:

a. Certification Services

   Certification services are designed to verify the identity of electronic documents, including the sender, the content, and the timing of the transmission.

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[50] Marcella Julita and Ade Adhari, "Legalitas Skb Tentang Pedoman Implementasi Pasal Tertentu Dalam UU ITE Ditinjau Dari UU Pembentukan Peraturan Perundang-Undangan," *UNES Law Review* 6, no. 2 (December 21, 2023): 5842–53, https://doi.org/10.31933/UNESREV.V6I2.1425.

[51] Ema Nurita, *Cyber Notary Pemahaman Awal Dalam Konsep Pemikiran* (Bandung: PT Refika Aditama, 2012).

b. Repository Service
   Repository services involve the secure storage of electronic documents on a database server.
c. Share Service
   Share services facilitate the sharing of electronic documents with authorized parties and enable electronic exchange.[52]

This service is focused on guaranteeing the security and integrity of electronic transactions or data exchange. However, this service is not directly related to the duties and authorities of a traditional notary, nor the creation of authentic deeds or their evidentiary power. Thus, there is no relevance between the three main types of services provided by a cyber notary and the "authentic deeds" specifically mentioned as objects in the definition of a cyber notary put forward by Emma.

The ambiguity surrounding the concept of a "cyber notary" is also evident in the way the idea is realized with the involvement of a Certification Authority (CA), as described by Emma in her book. The realization of a cyber notary, according to Emma, involves "the creation of electronic deeds in the form of electronic certificates and electronic documents issued by a CA, which are then legitimized by a notary." The CA referred to by Emma is a legal entity functioning as a Trusted Third Party (TTP) that provides security services and facilitates electronic transactions. The security requirements for this role include privacy, confidentiality, authentication, and integrity.[53] In Emma's framework, two institutions are involved: the CA and the notary. She positions the CA as the TTP responsible for securing electronic transactions, while the notary plays the role of legitimizing those transactions. However, Emma does not clearly state whether the "cyber notary" refers to the notary or the CA. Moreover, there is no clear explanation of the notary's role in legitimizing an electronic certificate, nor is there a detailed account of how an electronic deed can be transformed into an electronic certificate. Therefore, in this respect, the concept of a "cyber notary" as described by Emma remains ambiguous.

Although the core service of a cyber notary is not directly in line with the traditional authority of a Notary to make "authentic deeds" and it is still unclear whether the term "cyber notary" refers to a Notary or a Certification Authority (CA), the discussion in Emma Nurita's book is more inclined towards the adaptation of technology in the notary profession. This is evident in the basic idea behind the concept of a cyber notary, which according to Emma, aims to facilitate notarial services through electronic media. Accelerate the

[52] Nurita.
[53] Nurita.

implementation of notarial services and simplify the service implementation system in the notary sector. Emma's conceptualization of a cyber notary arises primarily from the challenges and problems faced by Notaries, not from the increasing need for legal certainty and security in electronic transactions.

The adaptation of technology in notary offices as discussed in this book focuses on several aspects, namely the use of electronic signatures, the creation and storage of authentic deeds in electronic form, and the possibility of implementing deeds remotely via video conference. Emma believes that the concept of cyber notary should provide a legal framework that allows parties involved in the creation of authentic deeds to appear before a notary without the need for physical presence at a particular location. The notary and the parties can be in different places, even outside the notary's practice area. However, the implementation of the cyber notary concept, especially in the creation of authentic deeds, faces quite significant challenges in current Indonesian law. The provisions in the Notary Law (UUJN) require the physical presence and signing of notarial deeds, as stipulated in Article 44 paragraph (2) of the UUJN. Although Emma acknowledges that the basic principles of the notary profession must be upheld, she believes that in order to implement the concept of cyber notary, a revision of the UUJN needs to be carried out. This revision will accommodate the authority of notaries to create electronic deeds, especially regarding the requirement for personal presence before a notary.

The mention of the term cyber notary in the UUJN-P, which lacks a clear legal foundation and conceptual framework, has further ignited debate about its meaning and application. Discussions around the concept of the cyber notary largely focus on the integration of technology into the notarial profession and the possibility of creating authentic deeds remotely. In his scholarly article titled *"Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global"*, Habib Adjie explores the potential for technological implementation in the notarial process, particularly concerning the physical presence of individuals before the Notary, the reading of the deed, and the electronic signing and use of stamps. He concludes:

> *"The concept of cyber notary requires Notaries to carry out their duties or authorities based on information technology, especially in making deeds. In this concept, no physical contact or direct face-to-face is required. Instead, audio-visual media can be used, without city, provincial, or even country boundaries. Notaries do not need to come directly to the Notary's office."*[54]

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[54] Habib Adjie, "Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global," *Jurnal Hukum Respublica* 16, no. 2 (June 13, 2017): 201–18, https://doi.org/10.31849/RESPUBLICA.V16I2.1436.

In the same article, Adjie further notes:

> *"Notaries must be prepared to offer services in line with advances in information and communication technology. Therefore, a new framework for Notaries to fulfill their duties should be developed in parallel with technological progress in a global context."*[55]

Adjie's understanding of the cyber notary relates to the making of deeds, which, according to him, can now be conducted through audio-visual media (such as video conferencing), supported by electronic identity verification and other systematized electronic documents. Under this concept, Notaries would no longer need to meet physically with parties involved.[56] He argues that technological advancements enabling communication without physical meetings render the traditional requirement for parties to appear before a Notary obsolete.

The cyber notary concept has also been examined by Edmon Makarim in his book "Notaris dan Transaksi Elektronik, Kajian Hukum Tentang Cyber Notary atau Electronic Notary." Makarim emphasizes the growing importance of Notaries in electronic transactions, driven by the shift from paper-based transactions to those conducted through electronic systems. "The United Nations Commission on International Trade Law" (UNCITRAL) recommended the recognition of the legal value of electronic information and/or documents, leading to the issuance of the Model Law on E-Commerce (1996) and the Model Law on E-Signatures (2001). In 2005, the convention on e-commerce within the business community, the "United Nations Convention on the Use of Electronic Communications in International Contracts" (2005), was introduced, which also included provisions for the use of electronic communications in the formation of international contracts..[57] Although these conventions do not specifically address Notaries or the cyber notary concept, Makarim views them as catalysts for the evolving role of Notaries in the digital age.

The definition of cyber notary put forward by Edmon Makarim in his book is based on the definition of the American Bar Association (ABA) Information Security Committee (1994). Likewise, the concept of electronic notary is quoted from the proposal of the French delegation at the TEDIS Law Workshop at the Electronic Data Interchange Conference in 1989. Both concepts emphasize the role of Notaries in ensuring security and legal certainty in electronic transactions. Although the United States and France are pioneers

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[55] Adjie.

[56] Adjie.

[57] Makarim, *Notaris Elektronik Dan Transaksi Elektronik Kajian Hukum Tentang Cybernotary Atau Electronic Notary.*

of this concept, no country has yet regulated cyber notary (in the United States) or electronic notary (in France). On the contrary, both countries have modernized or digitized the notary profession without creating a special legal framework for cyber notary. Edmon did not provide a definite explanation of the term cyber notary, but argued that the concept is still being debated in Indonesia. Technological advances show that notary functions can be carried out online or remotely, but the legal framework underlying the UUJN was built by considering traditional mechanisms, thus creating legal barriers to this innovation.[58]

Edmon further explains the comparison between technical accuracy and legal accuracy in the context of notaries and electronic transactions. Secure communication is vital in electronic transactions, facilitated by "electronic authentication" or "electronic signatures". Edmon notes that electronic contracts are not only subject to the provisions of the valid conditions for an agreement (1320 of the Civil Code) but also hanging on technically the existence of a method or authentication system for electronic information.[59] He highlights that the authenticity of electronic information depends on the reliability of the electronic system itself. Legally, however, authenticity is found in deeds made by or before an authorized official, in compliance with legal formalities.[60]

According to Edmon, electronic authenticity may be more precise than the legal authenticity associated with traditional paper deeds. He argues that Notaries should be equipped with reliable electronic systems, ensuring their trustworthiness through technical means rather than solely legal presumptions. Edmon suggests that materially authentic information generated from a reliable electronic system can maintain formal authenticity because it is secure and responsibly operated. Therefore, he contends that electronic information should be considered trustworthy.

However, the assertion that material authenticity is superior to legal authenticity in the context of notarial deeds is debatable. If material authenticity refers to the actual time, place, and identity of the parties involved in creating a

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[58] Makarim.

[59] Electronic Information refers to one or a collection of electronic data, including but not limited to writings, sounds, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegrams, telexes, telecopies or similar forms, letters, symbols, numbers, Access Codes, symbols, or perforations that have been processed and hold meaning or can be understood by individuals capable of comprehending it.", See Article 1 Paragraph 1, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

[60] Makarim.

deed—ensuring the integrity of the document—it could be accepted as a safeguard against backdated deeds or false declarations. On the other hand, if material authenticity is understood as the truth of the deed's substance, it would impose additional responsibilities on the Notary, which traditionally fall outside their purview. Notaries are responsible only for ensuring that the deed reflects the will of the parties, not for verifying the truth of its contents.[61] Thus, imposing material authenticity as part of the Notary's responsibilities could extend beyond their legal duties.

The difference in meaning between technical authenticity and legal authenticity cannot be separated from the understanding that electronic transactions and conventional legal acts have different security requirements and require different authentication methods. If Notaries are involved in the authentication of electronic transactions, it is very important to define their role carefully to prevent the burden of responsibility exceeding their qualifications and expertise.

In addition to the issue of authenticity, the discussion on cyber notaries put forward by Edmon in principle also focuses on the problems experienced by conventional notaries which are attempted to be overcome through the adaptation of technology, information, and communication. The problems highlighted include limited storage space for notarial deeds and journals, forgery of notarial deeds, violation of confidentiality, and tax obligations. In addition, the concept of cyber notaries in question is also related to the creation of deeds carried out electronically, the provisions for their proof, and the issue of presence through electronic media which is equated with physical presence. To realize this concept, it is deemed necessary to encourage the revision of the Notary Law in a direction that allows for an increase in its role in accordance with the development of the times.[62]

Although there is no agreed definition of cyber notary in Indonesia, discussions center on technology adaptation in notarial functions, electronic deeds, and the certification of electronic transactions by Notaries. Article 5, paragraph 4(b) of Law No. 11 of 2008 is often viewed as a barrier to the implementation of cyber notary, as it excludes notarial and PPAT deeds from the category of electronic information or documents considered valid evidence. This provision was amended by Law No. 1 of 2024, which no longer explicitly

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[61] Nur Risca Tri Indarwati Toko Semar, "Responsibility of Notaries and Legal Protection for Defective Legal Document," *Authentica* 6, no. 1 (August 30, 2023): 37–47, https://doi.org/10.20884/1.ATC.2023.6.1.380.

[62] Makarim, *Notaris Elektronik Dan Transaksi Elektronik Kajian Hukum Tentang Cybernotary Atau Electronic Notary.*

excludes notarial deeds from the category of valid electronic evidence.[63] The elimination of this exclusion is seen as a progressive step toward the recognition of electronic authentic deeds. This change in legal provisions is seen as an effort to facilitate the implementation of the cyber notary concept and to recognize notarial and other authentic deeds executed electronically as legally valid evidence. This perspective fosters the perception that the barriers to creating electronic deeds and modernizing the notarial profession have been effectively eliminated.[64] Nevertheless, the new provision in Article 5, paragraph 4 of Law No. 1 of 2024 remains neutral, leaving the regulation of authentic electronic deeds to the Notary Law. If the Notary Law does not provide for the creation of electronic deeds, they still cannot be considered valid electronic evidence with perfect proof force. This shift offers an opportunity for further reflection on how the core principles of notarial work can be incorporated into legal norms for electronic deeds.

Moreover, numerous scholarly articles suggest the need for additional regulations concerning the concept of the cyber notary, as the term 'cyber notary' mentioned in the Explanatory Note of Article 15, Paragraph 3 of the UUJN-P remains ambiguous. Such regulations are deemed essential to ensure legal certainty and address the uncertainties faced by notaries in relation to technology and electronic transactions.[65] The suggestion to develop additional regulations based on an explanation is problematic. In principle, explanations in legal texts cannot serve as the basis for new regulations.[66] The government is also prohibited from issuing implementing regulations that are neither

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[63] "The provisions concerning Electronic Information and/or Electronic Documents, as referred to in paragraph (1), do not apply in cases otherwise regulated by law." See Article 5 Paragraph 4, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions

[64] Ahmad M Ramli, "UU ITE Baru dan Akta Notariil Halaman all - Kompas.com," Kompas.com, December 22, 2023, https://www.kompas.com/konsultasihukum/read/2023/12/22/080000380/uu-ite-baru-dan-akta-notariil?page=all.

[65] Pangesti, Darmawan, and Limantara, "The Regulatory Concept of Cyber Notary in Indonesia."

[66] Bagus Hermanto, Nyoman Mas Aryani, and Ni Luh Gede Astariyani, "Penegasan Kedudukan Penjelasan Suatu Undang-Undang: Tafsir Putusan Mahkamah Konstitusi," *Jurnal Legislasi Indonesia* 17, no. 3 (2020): 251–68, https://scholar.archive.org/work/blmmsc7b2na6fdnjz736gb7ja4/access/wayback/https://e-jurnal.peraturan.go.id/index.php/jli/article/download/612/pdf.

grounded in nor consistent with existing laws.[67] Therefore, the recommendation to form new regulations based on the Explanation of Article 15, paragraph 3 is inconsistent with the principles of statutory lawmaking.

The mention of the cyber notary as an example of other powers of Notaries in the Explanation of Article 15, Paragraph 3 of the UUJN-P has led to a misconception that a Notary's authority concerning cyber notaries originates from this provision.[68] In fact, Article 15, Paragraph 3 of the UUJN-P merely opens the possibility for Notaries to hold additional powers based on prevailing laws and regulations. This means that unless explicitly regulated, Notaries do not have such authority. Currently, no legal provisions grant Notaries the authority to certify transactions conducted electronically or to act as cyber notaries. Consequently, the reference to cyber notaries in the Explanation of Article 15, Paragraph 3 of the UUJN-P creates the erroneous perception that Notaries possess such authority. However, explanatory notes should not introduce concealed changes to the legal provisions themselves.[69] This indicates that the formulation of the Explanation of Article 15, Paragraph 3 of the UUJN-P does not adhere to the principles and requirements for drafting explanations of legal provisions and has resulted in legal uncertainty.

The analysis above highlights that the paradigm of the cyber notary concept currently evolving in Indonesia remains ambiguous and lacks a clear framework. The issues of electronic transactions and the modernization of Notaries are often conflated under the same concept. However, these are distinct challenges, each requiring separate solutions. Moreover, the problematic formulation of the Explanation of Article 15, Paragraph 3 of the UUJN-P, which fails to adhere to the principles and provisions of legislative drafting, significantly contributes to the confusion surrounding the concept of cyber notaries. Therefore, a more rigorous examination is necessary to distinguish between the concepts of cyber notaries and the digitalization of notarial practices, ensuring a clear and precise understanding.

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[67] H Rhithi, "Kepastian Hukum Dari Perspektif Fenomenologi Dan Postmodernisme Dalam Prosding Konferensi Filsafat Hukum Indonesia," in *Melampaui Perdebatan Positivisme Hukum Dan Teori Hukum Kodrat,* (Jakarta: Epistema Institute, 2014).

[68] Adrian Raka Wiranata, "Analisis Pembuatan Akta Notaris Secara Elektronik," *Al Qodiri : Jurnal Pendidikan, Sosial Dan Keagamaan* 19, no. 1 (June 21, 2021): 408–21, https://ejournal.kopertais4.or.id/tapalkuda/index.php/qodiri/article/view/4307.

[69] Hermanto, Aryani, and Astariyani, "Penegasan Kedudukan Penjelasan Suatu Undang-Undang: Tafsir Putusan Mahkamah Konstitusi."

Is the Paradigm of the Principles of *Tabellionis Officium Fideliter Exercebo* in Line with the Concept of Cyber Notary?

A. Paradigm Shift and Scientific Revolution of the Cyber Notary Concept

The term "concept" can be interpreted, as Fred N. Kerlinger suggests, as a generalized abstraction of particular phenomena.[70] Concept formation is crucial not only for daily human understanding but is especially significant for scientific theorization, including within the legal field. Satjipto Rahardjo illustrates how legal rules utilize definitions or concepts to convey their intent. These concepts are abstractions of concrete, individual realities.[71] In essence, a concept can be understood as a symbol used to represent a specific phenomenon, consisting of three critical elements: the symbol itself, the meaning or content (conception), and the phenomenon (facts, events, empirical references, or objects).[72]

The definitions outlined above effectively illustrate the paradigm shift, particularly in relation to the modernization of the notary office through the integration of technology, information, and communication, as conceptualized within the framework of the cyber notary. The term "cyber notary" currently lacks a solid foundation; even from a comparative perspective and in previous studies, the concept remains abstract. As a result, the cyber notary concept is often confronted with the existence of the principle of *Tabellionis Officium Fideliter Exercebo* which continues to serve as the guiding standard for notarial practice today. This creates issues in the formulation of legal norms regarding the realization of the cyber notary concept, as well as in efforts to reform the Law on Notary Office. It is undeniable that a significant portion of the challenges in constructing legal norms for legislative and regulatory products stems from the conceptual framework, which in turn is rooted in the issue of terminology or naming of the object and the definition of that regulated object. The disconnection between the terminology of a regulatory object and its

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[70] Amirudin and H. Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT Raja Grafindo Persada, 2004).

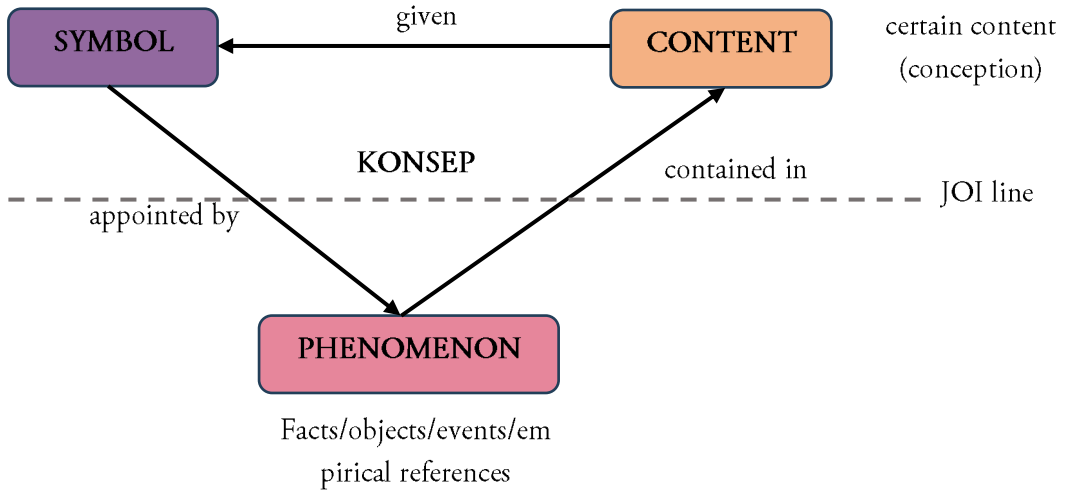
[71] Satjipto Rahardjo, *Ilmu Hukum*, 6th ed. (Bandung: PT Citra Aditya Bakti, 2006).

[72] John J. O.I. Ihalauw, *Konstruksi Teori (Komponen Dan Proses)* (Jakarta: PT. Gramedia Widiasarana Indonesia, 2008).

definition with the real characteristics of the object being named or defined is a key cause of problems in legal norm construction.[73]

From a theoretical construction standpoint, the concept is a key component in the formation of theory.[74] Although this research does not aim to propose a new theory, it is essential to briefly outline the process of concept formation. A concept is developed through the process of conceptualization, which involves three fundamental elements: the symbol, the conceptual content (conception), and the phenomenon. While the symbol and meaning must be clearly and explicitly defined, they are not always directly tied to a specific object or particular event. The process of concept formation can be illustrated as follows:

FIGURE 1. The Three Constitutive Elements of a Concept[75]



Source: *modified from, John J.O.I. Ihalauw, 2008*

Each discipline has its own technical symbols, as in the field of law, where legal categories are recognized. These symbols are then assigned specific conceptions or meanings. A symbol can take the form of a single word or a compound term. In scientific knowledge, the presence of concepts plays as an operational in the ongoing scientific process. A clear concept helps maintain and ensure that a term (terminology) or symbol is not interpreted differently within scientific discourse.

The term "cyber notary," as referenced in the explanation of Article 15(3) of the Indonesian Law on Notary Positions (UUJN-P), lacks a clear conceptual framework or regulatory foundation. This absence has resulted in both

[73] Ida Bagus Wyasa Putra, *Teori Hukum Dengan Orientasi Kebijakan* (Denpasar: Udayana University Press, 2020).

[74] Robert Dubin, *Theory Building* (New York: The Free Press, 1969).

[75] Ihalauw, *Konstruksi Teori (Komponen Dan Proses).*

conceptual and normative ambiguity, as well as confusion regarding the function and purpose of the cyber notary concept itself. Legal study on the cyber notary has similarly faced uncertainty concerning the base and direction for the development of this concept, giving rise to multiple competing paradigms surrounding the term "cyber notary." Furthermore, the emphasis on the remote transaction characteristic of the cyber notary concept, faced with the traditional values embedded in the principle *Tabellionis Officium Fideliter Exercebo*, has precipitated a crisis[76] in cyber notary studies. Addressing this crisis necessitates a thorough analysis of the existence of the cyber notary concept and the *Tabellionis Officium Fideliter Exercebo* principle, through the theoretical framework of Thomas Kuhn's "The Structure of Scientific Revolutions."

According to Kuhn, a scientific revolution represents a paradigm shift from the old to the new, involving a fundamental change in perspectives and orientations. Such revolutions signify a drastic transformation in the stages of scientific development. They arise when anomalies become increasingly apparent in research, leading to a situation where the prevailing research paradigm is unable to address the crisis effectively. Kuhn details the evolution of scientific knowledge in "The Structure of Scientific Revolutions," which can be delineated into the following stages: "Pre-paradigm and Pre-science, Paradigm and Normal Science, Anomaly, Revolutionary Crisis, New Paradigm, and Revolution."[77] The development of the cyber notary concept and the principle of *Tabellionis Officium Fideliter Exercebo*—concerning the execution of notarial duties—can be examined through this schematic framework.

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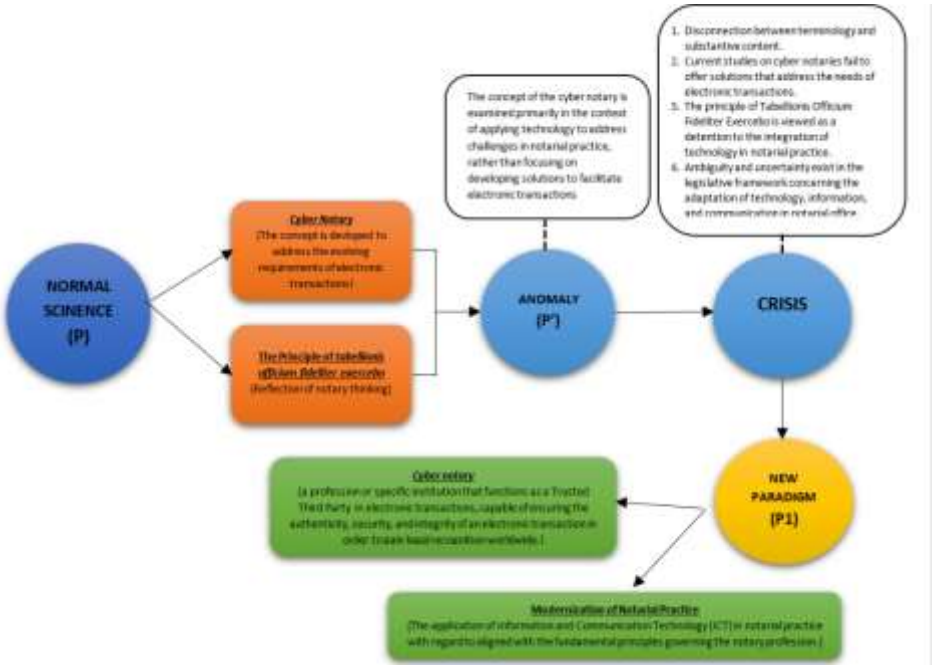
[76] Turkan Firinci Orman, "'Paradigm' as a Central Concept in Thomas Kuhn's Thought."

[77] Mohammad Takdir and Masykur Arif, "The Scientific Revolution of Thomas S. Kuhn and Its Contribution to the Conflict Resolution Paradigm in Indonesia," *Jurnal Sosiologi Dialektika* 17, no. 2 (September 13, 2022): 147–58, https://doi.org/10.20473/jsd.v17i2.2022.147-158.

FIGURE 2. The Structure of scientific revolution of cyber notary



Source: *Compiled and summarized by the authors*

This research will begin by analyzing the existence of the cyber notary and the *Tabellionis Officium Fideliter Exercebo* principle as elements of "Normal Science." Normal science is marked by stability, where scientific disciplines operate under a widely accepted paradigm.[78] In this phase, the paradigm becomes so dominant that it serves as the primary benchmark for scientific progress.[79] Within the framework of normal science, the concepts of the cyber notary and Tabellionis Officium Fideliter Exercebo are treated as distinct and non-overlapping entities.

The principle of *Tabellionis Officium Fideliter Exercebo* serves as a fundamental guideline for notaries in civil law jurisdictions. This principle is generally understood to require that notaries perform their duties in a "traditional" manner.[80] According to the Kamus Besar Bahasa Indonesia

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[78] Rahmat Effendi, "Revolusi Ilmiah Thomas Kuhn: Perubahan Paradigma dan Implikasi dalam Bangunan Ilmu Keislaman," *Majalah Ilmu Pengetahuan dan Pemikiran Keagamaan Tajdid* 23, no. 1 (2020): 47–61, https://doi.org/https://doi.org/10.15548/tajdid.v23i1.1693.

[79] Ulfa Kesuma and Ahmad Wahyu Hidayat, "Pemikiran Thomas S. Kuhn Teori Revolusi Paradigma," *Islamadina* 21, no. 2 (2020): 166–87, https://doi.org/https://doi.org/10.30595/islamadina.v0i0.6043.

[80] Satrio Arung Samudera, Saidin Saidin, and Rudy Haposan Saihaan, "Konsep Cyber Notary Dalam Perspektif Asas Tabellionis Officium Fideliter Exercebo Menurut Peraturan Perundang-Undangan Di Indonesia," *Jurnal Normatif* 1, no. 2 (December 31, 2021): 86–90, https://jurnal.alazhar-university.ac.id/index.php/normatif/article/view/96.

(Indonesian Dictionary), "traditional" refers to "an attitude, way of thinking, and acting that firmly adheres to established norms and customs passed down through generations." [81]In this context, "traditional" extends beyond the mere use of conventional tools in the notarial profession. Rather, it emphasizes the necessity for notaries to maintain a mindset and behavior that strictly adhere to the established norms and customs that have become traditions within the profession. Moreover, this principle is the essence or the very root of the notarial profession itself. It embodies the very foundation of the notarial profession and serves as a reflection of legal values. This principle profoundly influences the thought and conduct of notaries across all levels of legal practice, particularly in the execution of their duties.[82] Consequently, *Tabellionis Officium Fideliter Exercebo* represents the core ethos of the notarial profession and must act as the guiding foundation for the development of laws governing notarial responsibilities.

In the context of "Normal Science," the cyber notary represents the concept of a new profession that is "similar" to a notary, or an electronic notary, wherein the designated entities are "various industry associations and related peak bodies" tasked with meeting the legal and security needs of electronic transactions, which are characterized by remote interactions. Initially, this concept did not refer to traditional notaries acting as cyber or electronic notaries. Instead, the development of the cyber notary concept is oriented towards addressing issues that arise in electronic transactions. The primary challenges the cyber notary concept seeks to address include:

a. Trust when transacting between parties over the internet;
b. The security of the transmission;
c. The integrity of the content of the communication;
d. The confidence that such transactions will receive legal recognition; and
e. An independent record of an electronic transaction.

These challenges in electronic transactions can be mitigated through electronic authentication processes and the use of secure, reliable electronic systems. As such, a cyber notary must possess not only legal expertise but also advanced knowledge in computing—encompassing technology, information, and

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[81] "Arti Kata Tradisional - Kamus Besar Bahasa Indonesia (KBBI) Online," accessed September 21, 2024, https://kbbi.web.id/tradisional.

[82] Oleg Yurievich Latyshev, Andrei Valerievich Skorobogatov, and Alexander Valerievich Krasnov, "Legal Principle Between Concept and Content," *Journal of Indonesian Legal Studies* 5, no. 2 (November 1, 2020): 479–500, https://doi.org/10.15294/JILS.V5I2.37387.

communication. This underscores that the role of a cyber notary is to ensure security, legal certainty, and recognition of electronic transactions.

In its development, an anomaly[83] has emerged in research on the cyber notary. The use of technology, information, and communication in notarial practices in countries such as the United States[84] and France, particularly through the adoption of electronic notarization systems, is often mentioned as a realization of the cyber notary concept. However, these countries did not initiate digitalization to achieve legal recognition of electronic signatures. Rather, the digitalization process began because the legality of electronic signatures had already been established. Moreover, neither U.S. nor French notaries refer to the term "cyber notary" within their notarial regulations. Furthermore, research on the cyber notary concept has not focused on resolving issues inherent to electronic transactions. Instead, it has concentrated on developing technology-based solutions to challenges faced by notaries, specifically from the perspective of "electronic transactions." Cyber notary research has largely cantered around the application of technology to support notarial duties, such as the creation of electronic deeds, remote deed execution, electronic signature use, electronic notarial protocols, and electronic notarization systems. Consequently, the term "cyber notary" is now widely understood as referring to "a notary who performs their duties utilizing technology, particularly in the creation of deeds." In essence, the evolving paradigm of the cyber notary concept aims to shift legal acts—traditionally performed in person before a notary—into the domain of electronic transactions characterized by remote interactions. This anomaly has led to a crisis[85] in the study of cyber notaries. Discussions of the cyber notary concept,

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[83] Research conducted to uncover new findings may bring up events and facts that were not previously predicted, or even in the form of abnormalities. In addition, during research, scientists will also find various phenomena that cannot be explained by their theories. That's what we call an anomaly. Often anomalies are not noticed and are considered unimportant and are considered part of a scientist's mistakes in using research instruments.Takdir and Arif, "The Scientific Revolution of Thomas S. Kuhn and Its Contribution to the Conflict Resolution Paradigm in Indonesia."

[84] The U.S. MNA 2002 and U.S. MNA 2010 used the term 'electronic notary' to refer to a notary authorized to execute deeds in electronic form. However, in the U.S. MENA 2017 and U.S. MNA 2022, this term was discontinued due to confusion within the community regarding the difference in the legal strength of notarial deeds in paper form versus electronic form.

[85] A crisis occurs when the science modeled on the example fails to answer the central puzzle. A crisis is the certainty that behavior in the normal scientific phase will lead to a dangerous situation so that development is necessary. The existence of this crisis will raise questions about the paradigm, because in this position scientists have been declared out of normal

within the context of technology adaptation for notarial duties, reveal a disconnection between the terminology and its intended meaning. As a result, the focus has shifted away from resolving issues specific to electronic transactions and towards the application of technology in support of notarial work. This shift has prompted questions about the continuing relevance of the *Tabellionis Officium Fideliter Exercebo* principle, a core tenet of the notarial profession. Consequently, confusion and uncertainty have arisen in the legislative development of models for the adaptation of technology, information, and communication in notarial practice. As a result, the term "cyber notary" is now widely understood as a term for "a notary who carries out his/her duties using technology, especially in the preparation of deeds." In essence, the evolving paradigm of the cyber notary concept aims to shift legal acts—traditionally carried out in person before a notary—to the realm of electronic transactions characterized by remote interaction. This anomaly has caused a crisis in the study of cyber notaries. Discussions on the concept of cyber notary, in the context of adapting technology to notarial duties, reveal a gap between terminology and intended meaning. As a result, the focus has shifted from solving the specific problems of electronic transactions and towards the application of technology to support the work of notaries. This shift has raised questions about the continued relevance of the *Tabellionis Officium Fideliter Exercebo* principle, a core principle of the notarial profession. As a result, confusion and uncertainty have arisen in the legislative development of a model for the adaptation of technology, information and communication in notarial practice.

In an effort to overcome this crisis, researchers need to revisit traditional scientific methods while expanding and developing alternative paradigms that can resolve the crisis. To address this situation, it is important to refer back to the initial idea of the cyber notary concept as proposed by ABA and the concept of electronic notary presented by the French Delegation at the TEDIS Law Workshop in 1989. Based on these two basic concepts, the following framework for building the cyber notary concept can be developed:

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science. The solution to this situation is usually that scientists will return to the old scientific way while expanding those ways and developing a counter paradigm that can solve problems and can be used for subsequent research. This last way is what will successfully give birth to a scientific revolution.Kesuma and Hidayat, "Pemikiran Thomas S. Kuhn Teori Revolusi Paradigma."

TABLE 1. The Process of Abstraction in the Development of the Cyber Notary Concept

Cyber Notary (ABA)	Electronic Notary (TEDIS Legal Workshop 1989)	Abstracting Process
A new legal professional would be similar to that of a notary public	Various industry associations and related peak bodies could act as an "electronic notary"	A particular profession or institution
Involve electronic documents	provide an independent record of electronic transactions between parties	Functions as a Trusted Third Party in electronic transactions
The responsibility to undertake certain types of legal transactions	Acting as a Trusted Third Party in EDI	Guarantee the authenticity, security and integrity of an electronic transaction to obtain legal recognition
In response to addressing challenges associated with internet transactions, such as trust when transacting between parties over the internet, The security of the transmission, The integrity of the content of the communication, legal recognition	As an effort to ensure confidentiality and integrity in EDI	
would be readily identifiable and recognized in every country throughout the world	Gained worldwide recognition	Gained worldwide recognition

Source: *Compiled and summarized by the authors*

Based on this concept, a cyber notary is defined as "a profession or specific institution that functions as a Trusted Third Party[86] in electronic transactions, capable of ensuring the authenticity, security, and integrity of an electronic transaction in order to gain legal recognition worldwide." From this conceptual definition, a process of concretization can then be undertaken to find the appropriate form of realization to address the identified issues. Research on cyber notary should stem from the needs and challenges faced in electronic transactions. This approach ensures that the problems encountered in electronic

[86] The term 'Trusted Third Party' is the result of an abstraction process from the role 'similar to that of a notary public' in the concept of a cyber notary, and 'acting as an electronic notary' in the concept of an electronic notary. Notaries are generally understood to function as trusted third parties (Trusted Third Party), and the use of this term is intended to convey the same meaning in a more neutral manner.

transactions can be effectively resolved through the practice of the cyber notary concept.

On the other hand, the emergence of the cyber notary concept has accelerated research that encourages the utilization of various forms of technology, information, and communication to support notarial work. The regulation of different models for the application of information and communication technology in notarial practice can be observed through concrete practices implemented by notaries in the United States and France. These practices are encapsulated in the relevant regulations governing notaries, specifically the U.S. Model Notary Act and the "*Décret n°71-941 du 26 novembre 1971*" relating to acts established by notaries, along with its amendments. From these concrete practices, an abstraction process can be initiated to develop a new concept. This abstraction process can be illustrated as shown in the table below:

TABLE 2. The Process of Abstraction in the Development of Modernization Concepts for the Implementation of Notarial Position

America	**France**	**Abstracting Process**
The legal recognition of electronic signatures has facilitated their use in the creation of notarial deeds, further supported by the broader adaptation of technological advancements	Technological advancements drive the digitalization of all aspects of notarial practice	Application of Information and Communication Technology in the implementation of the Notary's position
Forms of information and communication technology adaptation: Deeds and Notary Journal in Electronic Form, Utilization of Audio-Visual Media in the Execution of Deeds, Electronic Signatures and Seals	Forms of information and communication technology adaptation: Deeds and Notary protocol in Electronic Form electronic notarization system, electronic signature	
Scope of the deed: Same as a paper-based deed	Scope of the deed: Same as a paper-based deed	
Notary Principles: Require the parties to appear before a Notary, Parties who cannot appear before a Notary can use audio-video media with strict rules	Notary Principles: Require the parties to appear before a Notary, it is required that the parties appear before the notary who executed the deed or before a notary located at the place	Pay attention to the basic principles of Notary

America	France	Abstracting Process
	where the individuals are present.	

Source: *Compiled and summarized by the authors*

The Table 2 illustrates how technology is adapted across various aspects of notarial work to support notarial functions. The models for adapting technology, information, and communication align with the forms of technology utilization, such as typewriters, computers, printers, telephones, and emails used by notaries. This careful adaptation of technology considers how a notary's thought process can be effectively realized through these tools, thereby preserving the authenticity of notarial deeds, particularly in civil law countries. Given that the primary objective is to "support notarial work," this model of concept development addresses the challenges faced by notaries while remaining anchored in the principle of *Tabellionis Officium Fideliter Exercebo.*[87] This indicates that the technological practices employed by notaries in the United States and France encompass distinct underlying issues, principles, characteristics, and objectives compared to the cyber notary concept. Therefore, to accurately describe the model of technology, information, and communication adaptation in notarial practice, it is essential to use specific terminology. The appropriate term for this phenomenon is "Modernization of Notarial Practice."[88]

[87] Notaries in the United States, as part of a Common Law jurisdiction, are often viewed as more adaptable to change. However, a closer examination of the U.S. Model Notary Act (US MNA) from 2002 to 2022 reveals that core notarial principles remain carefully upheld. For instance, remote notarization was only introduced in 2017 through the US MENA 2017, but its implementation came with strict requirements. Moreover, the US MNA 2022 explicitly states that many individuals still prefer in-person notarization before a notary. Consequently, electronic documents and electronic notarization serve merely as alternatives to traditional methods of document execution. Similarly, in France, technological adaptations within the notarial profession remain aligned with the traditional notary's professional mindset. This is evident in remote notarization, where parties are still required to appear, albeit before different notaries. These developments suggest that the focus is not on the nature of electronic transactions as remote transactions, but rather on the principle of Tabellionis Officium Fideliter Exercebo, which remains the fundamental basis of the notarial profession.

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TABLE 3. The difference between the concept of cyber notary and Modernization of Notarial Practice

Indicator	Cyber Notary	Modernization of Notarial Practice
Background	The existence of new legal acts named Electronic Transactions	Recognition of the validity of electronic signatures and advancements in technology
Characteristics	Remote transaction	Appear in person
Bases of Concept Development	Problems in electronic transactions	Problems in the implementation of notary office
Orientation	Facilitating Electronic Transactions	Equipping notaries with technology, information, and communication tools to enhance the execution of their duties.
Qualification	High level expertise in Technology, Information and Communication	Legal Expert/Notary
Example	The problem of authenticity in electronic transactions is overcome by establishing an Electronic Certification Organizer which is a legal entity	The problem of limited storage space for notary protocols is overcome by creating a Notary Data Center.

Source: *Compiled and summarized by the authors*

The cyber notary concept, defined as "a notary who performs their duties utilizing technology, information, and communication," directs the adaptation of technology in notarial practice towards facilitating electronic transactions characterized by remote interactions. When conducting research, one inevitably examines the historical origins of a concept. However, an exploration of the cyber notary concept will ultimately lead researchers to the challenges surrounding electronic transactions. As a result, studies focused on the cyber notary that aim to address notarial issues will be oriented towards electronic transactions. This reflects a disconnect between the terminology used and the

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associated objects and definitions. In fact, electronic transactions do not always require facilitation by a notary, as there are alternative mechanisms available, such as the establishment of a certification authority to ensure the reliability of the electronic systems used in such transactions.[89] Moreover, the adaptation of technology in the execution of notarial duties should not be solely focused on remote transactions but should instead support and facilitate notaries in carrying out their responsibilities. Assigning a distinct terminology to the phenomenon of technological adaptation in notarial practice presents a viable solution to resolving the crisis in studies on the cyber notary.

This dysconnectivity underlies issues related to concept formation, regulatory concepts, norm construction, and regulatory construction, ultimately resulting in problems regarding the functions and objectives of regulation.[90] Therefore, the formation of legal norms based on the assumption that cyber notary is a concept related to the modernization of notarial practice has the potential to cause normative ambiguity. Normative ambiguity refers to the dual nature that arises from the formulation and application of a theory, concept, or term in the process of discourse and policy.[91] Consequently, during the regulatory formation process, it is essential to distinguish the cyber notary concept from the modernization of notarial practice.

B. The Relation Between the Principle of *Tabellionis Officium Fideliter Exercebo* and The Concept of Cyber Notary

Legal principles are essential components of any legal system. The interaction between legal principles, norms, and law enforcement defines the overall effectiveness of legal regulation and the legitimacy of a country's legal policies.[92] The principle *Tabellionis Officium Fideliter Exercebo* plays a fundamental role in this context and should not be overlooked in the legislative process. Since legal principles serve as the rationale behind the creation of legal rules, every piece of legislation should be traceable back to its underlying legal

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[89] The reliability of electronic systems is a critical factor in ensuring the authenticity of electronic information. Information is considered materially authentic when it originates from a reliable electronic system, thereby preserving its formal authenticity, which is characterized by reliability, security, and responsible operation. Makarim, Notaris Elektronik Dan Transaksi Elektronik Kajian Hukum Tentang Cybernotary Atau Electronic Notary.

[90] Putra, *Teori Hukum Dengan Orientasi Kebijakan.*

[91] Putra.

[92] Latyshev, Skorobogatov, and Krasnov, "Legal Principle Between Concept and Content."

principle.[93] Consequently, the law governing notarial offices stems from the principle of *Tabellionis Officium Fideliter Exercebo*. Therefore, in understanding the law related to notarial offices, it is essential to also grasp the significance of this principle.

The principle of *Tabellionis Officium Fideliter Exercebo* serves as a fundamental guideline for notaries in civil law countries. Literally, this principle can be translated as "I will faithfully perform the duties of a notary." It reflects the moral values or the promise of a notary to execute their responsibilities with fidelity and to the best of their ability. More generally, *Tabellionis Officium Fideliter Exercebo* represents a principle that requires notaries to operate in a traditional manner. In this context, 'traditional' denotes the requirement for a notary to adopt a mindset and course of action firmly rooted in the norms and customs that constitute the notarial tradition. Every action undertaken by a notary must align with this principle, reflecting the long-established ethos of the notarial profession.

For example, the form of a notarial deed is in principle regulated by law. Therefore, in preparing a deed, a notary must comply with certain forms and procedures as stated in the applicable legal provisions. Article 38 of the Notary Law (UUJN-P) regulates the main matters that must be clearly stated in a deed, while Article 42 of the UUJN provides further instructions on the procedure for preparing a deed. Among them, the deed must be written clearly and easily understood by all parties involved to ensure clarity and prevent ambiguity, the use of abbreviations is prohibited.

Furthermore, any blank spaces or gaps in the document must be crossed out to prevent the unauthorized insertion of additional clauses after the deed has been signed. These provisions regarding the structure and drafting procedures of notarial deeds reflect the traditional methodology employed by notaries in the preparation of authentic acts. They serve to guarantee that the true intentions of the parties are accurately and transparently documented. Consequently, as long as the notary complies with these legal requirements, the deed may be drafted by hand writing, using a typewriter, or with a computer.

The requirement for parties to be physically present before a notary during the creation of a deed is a further example of traditional notarial practice.[94] In this context, "presence" refers to actual, physical attendance. The notary is obliged to be present, listen to, and observe each step of the deed-making

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[93] Marapi Yapiter, *Ilmu Hukum Suatu Pengantar* (Tasikmalaya: PT.ZoonaMediaMandiri, 2020), https://online.fliphtml5.com/aludp/tmev/#p=2.

[94] Alincia and Sitabuana, "Urgency of Law Amendment as Foundation of The Implementation of Cyber Notary."

process. Afterward, the notary must read the deed aloud in front of all parties before proceeding to the signing. The signatures affixed to the deed must be original. This direct physical presence ensures that the notary accurately records the events that transpire during the *Verlijden* process.[95]

The principle that "a notary must work traditionally" remains somewhat abstract. Due to this inherent abstraction, legal principles are often not explicitly codified in specific statutes or provisions. A principle does not need to be directly articulated in a particular law or article to be applied concretely; rather, its values may be embedded within various legal regulations. This is also true for the principle *Tabellionis Officium Fideliter Exercebo*. Although no legislation explicitly states that "a notary must work traditionally" or directly references this principle, its values are nonetheless reflected in numerous provisions governing notaries, particularly those concerning the creation of authentic deeds. In Indonesia, the principle *Tabellionis Officium Fideliter Exercebo* is embodied in Article 1868 of the Indonesian Civil Code (*KUHPerdata*), which serves as a cornerstone of the notarial profession. Accordingly, the Law on Notarial Offices is derived from Article 1868 of the Civil Code, reflecting the principle's influence. Both the Civil Code and the Law on Notarial Offices, therefore, represent the concretization of this principle, establishing it as the foundational legal basis for notarial law.

A cyber notary is a profession or institution that functions as a Trusted Third Party in electronic transactions, ensuring the authenticity, security, and integrity of such transactions to achieve legal recognition worldwide. The concept of a cyber notary does not refer to a notary nor does it aim to replace the role of conventional notaries with that of cyber notaries. Instead, the cyber notary is a distinct profession with its own jurisdiction and qualifications. Therefore, as a new profession responsible for safeguarding the security of electronic transactions, the cyber notary is not directly bound by the principle of *Tabellionis Officium Fideliter Exercebo*, which is a fundamental legal principle specific to the field of notarial law.

TABLE 4. Characteristics of Electronic Transactions

Type of authenticity	Authenticity Indicator	Evidentiary power	How to ensure "Authenticity"	Legal Recognition
Technical authenticity	Accountability and/or reliability	From Weakest-Strongest	Ensuring the reliability of the electronic	Legal recognition of electronic

[95] Grace Coresy et al., "Tanggung Gugat Atas Pelanggaran Prinsip Kerahasiaan Dalam Akta Elektronik Jika Dihubungkan Terhadap Undang-Undang Jabatan Notaris Dan Undang-Undang Informasi Dan Transaksi Elektronik," *Syiar Hukum : Jurnal Ilmu Hukum* 18, no. 1 (July 15, 2020): 27–42, https://doi.org/10.29313/SHJIH.V18I1.5815.

Type of authenticity	Authenticity Indicator	Evidentiary power	How to ensure "Authenticity"	Legal Recognition
	of the electronic systems used	(Accuracy spectrum)	systems used (certification)	information and documents produced by certified electronic systems

Source: *Compiled and summarized by the authors*

Referring to the foundational ideas, the establishment of the cyber notary concept aims to achieve a level of "trust" comparable to that associated with conventional notaries. Thus, the cyber notary concept can adapt the values inherent in the principle *Tabellionis Officium Fideliter Exercebo* to establish "truth" in electronic transactions that are both trustworthy and legally recognized. This value adaptation is formed based on the unique characteristics of electronic transactions. For example, the authenticity of electronic information in such transactions operates with different parameters compared to conventional transactions. The truth of electronic information can be technically assessed based on the accountability and reliability of the electronic system used. The reliability of the electronic system ultimately determines the strength of the proof of the electronic information produced, which can range from weak to strong.[96]

This relationship shows that in order to ensure the "authenticity" of electronic information, it is important to verify that the electronic system used is reliable. Therefore, cyber notaries must have the expertise to evaluate the reliability of this electronic system. Such an evaluation can be done through a certification process, which facilitates the determination of the qualification of the reliability and evidentiary power (*accuracy*) of electronic information produced by this system. Furthermore, this certification process will address issues related to the security of transmission and the integrity of the content communicated in electronic transactions. While conventional notaries convey the truth through the creation of authentic deeds, cyber notaries ensure the truth through certification, which confirms that the electronic system used is reliable and that the electronic information produced is accurate and valid.

The various forms of technological adaptation in the execution of notarial duties, as discussed within the framework of the cyber notary concept, should be regarded as a distinct phenomenon. In this context, the term "Modernization

[96] Makarim, *Notaris Elektronik Dan Transaksi Elektronik Kajian Hukum Tentang Cybernotary Atau Electronic Notary*.

of Notarial Practice" will be employed. Associating technological adaptation with the cyber notary concept may lead to uncertainties regarding the modernization of notarial functions, as it could suggest a preference for the remote creation of notarial deeds, thereby diverging from the values embodied in *Tabellionis Officium Fideliter Exercebo*. It is important to recognize that notaries are not inherently opposed to modernization. On the contrary, the notarial profession is continually evolving and adapting to contemporary developments. A clear example of this evolution can be seen in the transition of deed writing, which has progressed from hand-written documents created with quills to the use of pens, typewriters, and ultimately, computers and printers.[97] The adoption of computers and printers represents a form of technological adaptation within notarial practice that is widely accepted without significant debate, as it aligns with the traditional mindset of notaries. Therefore, technological adaptation in the execution of notarial duties is permissible, provided that such adaptations are compatible with and do not contradict the principles of *Tabellionis Officium Fideliter Exercebo*.

The values inherent in the principle of *Tabellionis Officium Fideliter Exercebo* are fundamentally derived from the provisions of Article 1868 of the Indonesian Civil Code (KUHPerdata), which are further elaborated in the Notary Law (UUJN and UUJN-P). Article 1868 of the Civil Code states:

> *"An authentic deed is a deed that is drawn up in the form prescribed by law, created by or in the presence of public officials who are authorized to do so at the location where the deed is executed."*

Based on this provision, the fundamental concrete elements of the principle of *Tabellionis Officium Fideliter Exercebo* in relation to authentic deeds can be outlined as follows:

a. The Form Prescribed by Law
   The form of an authentic deed governed by legal provisions, which means that the law has sufficient flexibility to determine the format of such deeds. The evolution of time allows for changes in the form and methods of deed creation. These changes can be accommodated through legislative adjustments.
b. By or in the Presence of
   In this context, "by" signifies that the deed is created by the notary based on their own observations *(konstatering);* this type of deed is referred to as a *relaas akte*. Conversely, "in the presence of" indicates that a deed is executed in front of the notary through a process known as *relatering*, whereby the notary formulates the intentions of the

[97] Serruya, "Le Notaire Face Au Numerique."

parties and articulates them in the form of a deed, referred to as a *partij akte*.[98] The provision regarding "by or in the presence of" constitutes an essential element in the creation of a deed. The physical presence of the parties before the notary is crucial, as it enables the notary to ensure that the agreement reflected in the deed genuinely represents the free will of the parties, devoid of coercion or deceit. Moreover, through direct physical presence, the notary can verify the identities of the parties and the original documents pertinent to the deed being created, based on their accountable personal assessment. Additionally, by reading the deed aloud in the presence of the parties, the notary is obligated to ensure that the contents of the notarial deed are fully understood and align with the intentions of those involved.

c. Public Officials
   An authentic deed must be drafted by a public official. In this regard, the notary is the designated public official authorized to create such deeds.

d. Jurisdiction
   Notaries, as public officials empowered to create deeds, operate within specific jurisdictional constraints. This limitation is designed to safeguard the interests of the public seeking notarial services, provide legal certainty to the community, and prevent unhealthy competition among notaries.[99] In principle, the obligations of notaries in executing their duties in his office serve as a means to uphold and respect the dignity and integrity of their profession. The requirement for parties to appear before the notary positions the notary in a respected role, minimizing the potential for the parties to "influence" them. This arrangement ensures that the notary can maintain their independence throughout the deed creation process.

The concretization of the principle *Tabellionis Officium Fideliter Exercebo* in Article 1868 of the Civil Code is further reinforced in the UUJN. The extended concretization of this principle in the UUJN and its amendments (UUJN-P) is summarized in the following table:

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[98] Zam Zam et al., "Kekuatan Hukum Akta Pernyataan Keputusan Rapat Diluar Rapat Umum Pemegang Saham Yang Dibatalkan Oleh Pengadilan (Studi Putusan Nomor 46/Pdt.G/2023/PN Cbi)," *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 2, no. 10 (August 23, 2024): 381–403, https://doi.org/10.572349/KULTURA.V2I10.3258.

[99] Anggita Kusuma Prihayuningtyas and Ana Silviana, "Timbulnya Persaingan Tidak Sehat Antar Notaris Sebagai Dampak Dari Pelanggaran Kode Etik Notaris," *Lex Renaissance* 8, no. 1 (December 20, 2023): 39–57, https://doi.org/10.20885/JLR.VOL8.ISS1.ART3.

Table 5. Concrete Implementation of the Principle Tabellionis Officium Fideliter Exercebo in Article 1868 of the Indonesian Civil Code Within the Notary Law

Elements of Article 1868 of the Civil Code	Concretization of the Notary Law
By or in the Presence of	Article 1 number 7 UUJN-P Article 16 paragraph 1 letter m UUJN-P
Public Officials	Article 1 number 1 UUJN-P
Jurisdiction	Article 18 UUJN Article 17 paragraph 1 letter a UUJN-P
The Form Prescribed by Law	Article 38 UUJN-P Article 42 UUJN Article 43 UUJN-P Article 48 UUJN-P Article 49 UUJN-P Article 50 UUJN-P Article 51 UUJN-P

Source: *Compiled and summarized by the authors*

Based on these elements, the principle of *Tabellionis Officium Fideliter Exercebo*, as concretized through the provisions of Article 1868 of the Civil Code, along with the Notary Law (UUJN and UUJN-P), does not preclude the possibility of modernization in the creation of authentic deeds. The law provides a flexible framework for regulating the form of an authentic deed while still considering the traditional mindset of notaries. However, the essential elements pertaining to "by or in the presence of," "public officials," and "jurisdiction" are aspects that cannot be overlooked. Therefore, modernization in the execution of notarial duties—particularly regarding the prosedure, form or medium of creating a deed—does not contradict the values inherent in the principle of *Tabellionis Officium Fideliter Exercebo.* Therefore, the creation of deeds in electronic form, the use of digital signatures, and the implementation of cloud computing for notarial protocol storage are not impossible. However, the next challenge faced by notaries in the digital era is how to accurately translate the "notarial tradition of thought" into various forms of technological adaptation. The precise application of legal principles in deed drafting significantly affects the authenticity of notarial deeds and directly impacts public trust. (MNA)

Examples of how the notarial tradition of thought is translated into the modernization of notarial practice include:

a. **Creation of Authentic Deeds in Electronic Form**

The form of a deed is fundamentally determined by law; therefore, a notary must adhere to the prescribed format and procedures for drafting deeds. Neither the Notary Law (UUJN) nor its amendment (UUJN-P) explicitly stipulates the medium or tool that must be used in the creation of deeds. However, statutory provisions regulate various aspects of deed formulation, including its structure (Article 38 UUJN-P), writing procedures (Article 42 UUJN), language requirements (Article 43 UUJN-P), renvoi procedures (Articles 48, 49, and 50 UUJN-P), and corrections to signed deeds (Article 51 UUJN-P). These provisions reflect the notarial tradition of drafting deeds, such as the prohibition against using abbreviations and the requirement that time and numerical values be written in full words. These regulations are strictly enforced to ensure that the substance of a deed accurately reflect the intentions of the parties and are clearly articulated. Additionally, any empty spaces within the deed must be lined through to prevent unauthorized insertions of additional clauses after signing.

This notarial tradition must be upheld, as it is what grants authenticity to a deed. Consequently, as long as a notary adheres to these legal provisions, a deed may be drafted by hand, typewriter, or computer. The use of computers—an electronic tool—by notaries has been widely accepted and practiced for decades. This indicates that the creation of deeds in electronic form, such as through an electronic system, is fundamentally feasible, provided that the use of such technology allows the notary to maintain the traditional notarial approach in drafting an authentic deed.

b. **Use of Electronic Signatures**

In the notarial tradition, the signing of a deed by the parties signifies their agreement to its contents, while the notary's signature serves to authenticate the deed as an official legal instrument. A signature functions to identify the signatory and verify their distinctive characteristics. Therefore, a signature can be used to confirm the identity of the parties who have bound themselves to an agreement. Similarly, a thumbprint (fingerprint) carries the same purpose and legal significance as a signature and may be used as its substitute in an authentic deed. However, when a thumbprint is affixed to a private document (underhand agreement), additional procedures are required to ensure that it constitutes valid consent to the document's contents.

Based on this notarial tradition, the primary function of a signature in a deed is to identify its owner and to ensure that signing constitutes the

signatory's informed consent to the deed or document. Consequently, in principle, electronic signatures may be used in the creation of authentic deeds as long as they fulfil these two essential functions. Moreover, electronic signatures have begun to be recognized internationally for their validity, as evidenced by the "UNCITRAL Model Law on E-Commerce (1996), the Model Law on E-Signatures (2001), and the United Nations Convention on the Use of Electronic Communications in International Contracts (2005)." Electronic signatures can take various forms, including biometric signatures, signatures with access codes, scanned electronic signatures, digital signatures, and others. The choice of electronic signature type will primarily depend on further technical considerations.

c. Storage of Notarial Protocols in Cloud Computing

The continuous increase in notarial protocols each year presents a significant challenge in terms of storage availability. At the same time, notaries, as public officials, are obligated to uphold the confidentiality of the deeds they draft to safeguard the rights and interests of the parties concerned. Therefore, the issue of limited storage space for deed minutes could potentially be addressed through the implementation of an integrated storage system or cloud computing, provided that this method ensures the security and confidentiality of notarial protocols.

The examples above illustrate that the modernization of notarial practice must be carried out by translating the notarial tradition of thought through the support of existing technology. The use of technology should be implemented while maintaining the contextual relevance of the fundamental principles upheld by notaries. The principles, values, and foundational tenets of notarial practice can always be adapted to the evolving times. Through this process of contextualization, these principles can continue to be applied in accordance with contemporary developments. Legislation must be able to accommodate notarial principles, values, and traditions, while technical aspects related to the reliability of electronic systems designed to support these principles and traditions must be given serious attention. This requires the involvement of experts in the relevant fields to ensure the system's effectiveness and security. France is a country that has made a serious effort to translate notarial traditions of thought, particularly the principle of *Tabellionis Officium Fideliter Exercebo*, through digital transformation. This transformation is led by the Conseil *Supérieur du Notariat* (CSN) and involves IT experts within the Forum Technologie et Notariat (TechNot). Through this digital transformation, notaries are equipped to provide services to the public while upholding the functions and fundamental

principles of the notarial profession. As the birthplace of the civil law system, France's approach to digital transformation serves as an exemplary model for Indonesia in advancing the modernization of its notarial practice.

Conclusion

France and the United States have a long history of developing adaptations of technology, information, and communication to support the work of notaries. However, regulations in these countries do not use the terms 'cyber notary' or 'electronic notary', as these concepts were originally intended to form a new profession focused on addressing issues related to electronic transactions, rather than solving problems specific to notarial practice. In Indonesia, the term 'cyber notary' has been adopted to frame the study of various adaptations of technology, information, and communication to support the work of notaries. This reflects a gap between terminology and intended meaning, which has led to confusion in the study of cyber notaries. Ideally, research on cyber notaries should focus on developing solutions to challenges in electronic transactions that are not directly related to the *Tabellionis Officium Fideliter Exercebo* principle, which governs the notarial profession. Instead, studies on adaptations of technology, information, and communication to notarial work should be explored within a different conceptual framework, namely the Modernization of Notarial Practice, while adhering to the *Tabellionis Officium Fideliter Exercebo* principle.

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AUTHOR BIOGRAPHY

Made Gde Subha Karma Resen is a permanent lecturer and currently serves as the Head of the Undergraduate Program at the Faculty of Law, Udayana University. He earned his Bachelor's degree in Law in 2005 from the Faculty of Law at Atma Jaya University. He then pursued a Master's degree in Notarial Law, completing it in 2007 at the Faculty of Law, Gadjah Mada University. In 2011, he continued his academic journey in the Doctoral Program in Legal Studies at Gadjah Mada University. His academic pursuits also include studies at Maastricht University in the Netherlands and Dalian University in China. In addition to his teaching responsibilities, he actively serves as an expert consultant for various governmental institutions and frequently participates as a speaker in numerous seminars. He also serves as an expert witness in various civil cases.

Ni Putu Kompiang Ratna Dewi was born in Gianyar on June 27, 1995. She earned her Bachelor's degree in Law from the Faculty of Law, Brawijaya University, in 2017, with a focus on agrarian law. During her studies, she actively participated in various debate competitions, including the Constitutional Court Debate in 2015 and 2016. In 2016, she founded and served as the Coordinator of the Faculty of Law Debate Community at Brawijaya University (KDFH UB). Additionally, in 2021, she participated in the Mountain Foot School program organized by The Indonesian Institute for Forest and Environment, Forest Watch Indonesia, the Participatory Mapping Network, and the Sajogyo Institute. Continuing her academic journey, she enrolled in the Master's Program in Notarial Law at the Faculty of Law, Udayana University, in 2022. In 2012, she published her first book, titled Bali Kalang Kabut, through the Madyapadma Journalistic Park, SMA Negeri 3 Denpasar. ORCID ID: 0000-0003-0425-4705

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Generative AI Statement
None

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