



Strength of Evidence of Notarial Deed in the Perspective of Cyber Notary in Indonesia

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Abstract

The objective of this study is to determine the opportunities, constraints and strength of evidence of notarial deed in the perspective of Cyber Notary in Indonesia. This study applies a normative juridical method using a conceptual and statute approaches. The results of the study found that a) the opportunity to implement Cyber Notary based on Law on Notary Position Amendment and Law on Information and Electronic Transactions turned out to face obstacles that actually originated from the provisions of the Law itself. This mainly concerns the procedure for the formality of notarial deed making whose form must be in accordance with the provisions of the Law (Law on Notary Position Amendment, Law on Information and Electronic Transactions, and Civil Code). It also concerns the obligation and necessity to hold face-to-face interactions between notary and appearer, to read the deed before the appearers who are at least attended by 2 (two) witnesses, and to sign the deed directly before a notary and appearer and b) the strength of evidence of deed resulting from this Cyber Notary product does not have perfect evidence like an authentic deed. Violations of the provisions of the Law (Law on Notary Position Amendment and Civil Code) resulted in the degradation of the value of evidence of the deed; i.e. it becomes equivalent to private deed. However, the implementation of Cyber Notary is certainly possible by making changes to the relevant legal regulations and the development of supporting infrastructure and adequate electronic systems.

Keywords: Authentic Deed; Cyber Notary; Strength of Evidence

Introduction

The rapid development of Information and Communication Technology now has a significant positive impact on various fields of human life.¹ In Indonesia itself, regarding its various national dynamics, the development of ICT, through the development of its internet usage, has had many impacts on socio-cultural changes and people's lives. Information technology spurs a new way of life so that it allows the implementation of new ways so that the production, distribution and consumption of goods and services are more efficient. We can see it in various fields; for instance, in the fields of education, government, the economy and banking services through the internet known as internet banking.

¹ Unwin, P. T. H., and Tim Unwin, eds. *ICT4D: Information and communication technology for development*. Cambridge University Press, 2009.

Furthermore, in the legal field itself, the use of ICT can be seen in terms of finding evidence in the Court; for example, to prove whether or not the proof of a photo or video is genuine or edited version. In fact, in the process of registering legal entities in Indonesia, it has used a computerized or electronic system, online fiducia, online cooperative registration and others. There are still many other examples of the development of ICT.

The dynamics of change due to developments occur so quickly especially in the field of information and communication. Experts call it the communication revolution. For example, the use of Facebook and Google social networks² allows us to be able to interact and communicate with each other. In fact, by using Google search engine, we can easily find the information we want to find.

Previously, the agreement on sale and purchase was regulated in a sale and purchase contract which was later confirmed by an authentic deed. It is carried out by direct physical or face-to-face interaction between the parties and authorized officials; in this case the Notary. However, by applying the concept of ICT advancement, the current sale and purchase agreement can be carried out without direct physical interaction or directly before a Notary. Thus, it does not rule out the possibility that the use of ICT progress will shift business behavior from conventional business to the modern business era.

The opportunity to apply the concept of Cyber Notary is wide open with the existence of arrangements in several laws and regulations that apply and support including Article 15 paragraph (3) Law No. 2 of 2014 concerning Amendment to Law No. 30 of 2004 concerning Notary Position, which hereinafter we call it Law on Notary Position Amendment. It is stated that in addition to the authority as referred to in paragraph (1) and paragraph (2) Notaries have other authorities stipulated in the legislation. The explanation states that what is meant by other authorities stipulated in the legislation includes the authority to certify transactions conducted electronically (Cyber Notary) such as making waqf deed certificates, and aircraft mortgages.

Furthermore, Article 77 paragraph (1) and paragraph (4) of Law No. 40 of 2007 concerning Limited Liability Companies states that in addition to the implementation of the General Meeting of Shareholders as referred to in Article 76, the General Meeting of Shareholders can also be carried out through teleconferencing, video conferences, or other electronic media facilities that allow all participants to see and listen, and participate directly in meetings. Subsequently, paragraph (4) explains that the deed of meetings which is approved and signed by all participants of the General Meeting of Shareholders must be made for each holding of the General Meeting of Shareholders as referred to in paragraph (1).

Explanation of Article 6 of Law No. 11 of 2008 concerning Information and Electronic Transactions states that the written form so far has been identical to information and/ or documents contained only on paper. In fact, in essence, information and/ or documents can be included in any media including electronic media. The original information with the copy is no longer relevant to differentiate because electronic systems basically operate in a multiplication method which makes the original information indistinguishable from the copy.

Even so, by the existence of regulations and even legislation that opens wide opportunities for the application of Cyber Notary in carrying out the duties and authorities of Notaries such as the above, it must be admitted that shifting roles towards the Cyber Notary era is certainly not as easy as turning the palm. This is due to the existence of several legal obstacles faced by the Notary in its implementation. The problem is about the validity or legality and strength of evidence of electronic documents as a product of Cyber Notary.

The issue of the validity or legality aspect of the application of Cyber Notary is contained in the provisions of Article 1 number 7 of Law No. 30 of 2004 concerning Notary Position and Law on Notary Position Amendment which states that notarial deed is an authentic deed made by or before a notary

² Mohammad Zamroni, *Technological Development and Its Impact on Life*, Da'wah Journal Vol. X No. 2. Yogyakarta, 2009, page 197.

according to the form and procedure stipulated in this Law.³ Then Article 16 paragraph (1) letter m states that, in carrying out their position, the Notary is obliged to read the deed before the appearer in the presence of at least 2 (two) or 4 (four) special witnesses for the making of private deed signed at that time by the appearers, witnesses and Notaries.

The formulation of this provision clearly requires a physical meeting between the parties before the Notary directly face to face. Meanwhile, it is exactly the opposite in the cyber notary concept that this physical meeting is not absolute because its function is replaced by telecommunications equipment. Here conflicts over legal conflicts arise between conventional notarial deed products and notarial deed products electronically or Cyber Notary.

Research Method

This study is carried out by applying normative juridical research; i.e. by reviewing legal materials containing normative legal rules.⁴ The approach is carried out by first examining various relevant laws and regulations along with documents that can help to deal with what is the problem and what is discussed in this study and to what extent the laws in Indonesia regulate the problem.⁵ This study is more emphasized in the use of secondary data or in the form of written legal norms or interviews with resource persons. The research approach used in this writing uses the conceptual and statute approaches.⁶ The data sources in this paper are primary, secondary and tertiary legal materials. They are legal material consisting of related laws, regulations, views and developing doctrines.⁷

Results and Discussion

1. Opportunities and Constraints to the Application of Cyber Notary in the Implementation of Duties and Authorities of Notaries

Explanation of Article 15 paragraph (3) Law on Notary Position provides opportunities for certain authorities for Notaries and is supported by other laws and regulations. What is meant by 'certain other regulated authorities' is the authority to certify transactions that are carried out electronically (cyber notary) and to make waqf deed certificates and aircraft mortgages. The term certification comes from English Language which means description and attestation. The definition of certification itself is a procedure whereby a third party provides a written guarantee that a product or process for services has met certain standards, based on an audit carried out with agreed procedures.⁸

Definition of transaction certification that uses cyber notary as explained in Article 15 paragraph (3) Law on Notary Position No. 2 of 2014 was indeed considered incomplete. This is also an obstacle to the application of cyber notaries in Indonesia. As an attestation of a transaction, product, process and service that is produced through a cyber notary and which produces notarial deed, this deed is certainly not in accordance with the making of notarial deed as an authentic deed as stipulated in the Law on Notary Position itself; for instance, among others the obligation to read the deed before an appearer in the presence of 2 (two) witnesses who of course require the presence of a physical appearance, the obligation to affix a signature in the deed, and a Notary within the scope of his/ her position. In this case the cyber notary, the appearer is not present directly before the Notary but is present through the teleconference

³ Djanggih, Hardianto. "The Phenomenon Of Cyber Crimes Which Impact Children As Victims In Indonesia." *Yuridika* 33.2 (2018): 212-231.

⁴ Bahder Johan Nasution, *Legal Research Methods*, Bandung, Mandar Maju, 2008, page 86.

⁵ Schotel, Bas. "Legislation, Empirical Research and Juridical Law." *The Theory and Practice of Legislation* 1.3 (2013): 501-532.

⁶ Salim dan Nurbaini, *Op. Cit.*, page 17-18.

⁷ McConville, Mike, ed. *Research methods for law*. Edinburgh University Press, 2017.

⁸ Emma Nurita, *Op. Cit.*, page 117.

media or videocall. Providing signatures is carried out electronically and the Notary may not be within the scope of his/ her position. In addition, the process of making a deed through a cyber notary is not in line with what is required by an authentic deed as required by Article 1868 of the Civil Code which the form has been determined by the Law.

Another obstacle in the application of the concept of cyber notary is related to the legal system in Indonesia which adheres to the civil law legal system. In the civil law legal system, notarial deed is an authentic deed. Based on the provisions of Article 1868 of the Civil Code, to be an authentic deed, it must fulfill the requirements in accordance with Article 1868. The requirements stated in the Article have been discussed previously that it cannot be fulfilled if the making of deeds is carried out through a virtual process.

Next is the strength of evidence deed that is produced through a cyber notary process. Since its making process is not in line with the provisions of Law No. 30 of 2004 concerning Notary Position which has been amended by Law No. 2 of 2014 (Law on Notary Position Amendment) as well as the Civil Code, the strength of evidence deed which originally had perfect strength of evidence, was degraded to be the strength of evidence equivalent to private deed. So, this is certainly detrimental to the parties. In accordance with the provisions of Article 84 Law on Notary Position Amendment, if a Notary has resulted in a deed having only the strength of evidence equivalent to private deed or even null and void by law, this could be the reason for the parties suffering losses to claim compensation for the Notary.

Opportunities for the application of cyber notary are increasingly open with the regulation of authority in various other laws and regulations; i.e. Law No. 40 of 2007 concerning Limited Liability Companies in Article 77 paragraph (1).

Based on the above provisions, there is an understanding that in addition to the conventional method as stipulated in the provisions of Article 76 of the Limited Liability Company Law, the choice for the General Meeting of Shareholders can also be carried out by using teleconferencing media, video conferencing and other electronic media facilities allows all participants of the General Meeting of Shareholders to see each other and hear directly and participate in the meeting. Furthermore, the provisions for selecting one of the media for the implementation of the General Meeting of Shareholders as intended in Article 77 of Law No. 40 of 2007 must meet the conditions which are the cumulative requirements as follows:

- a. Participants must see each other and hear directly.
- b. Participants must participate in the meeting.
- c. Meeting is held in designated areas located throughout Indonesia.

In this case, if one of the conditions cannot be fulfilled, the media cannot be used and is not one of the media that fulfills the requirements as an alternative to the implementation of the General Meeting of Shareholders using electronic media facilities. Another thing that must also be considered is the place where the General Meeting of Shareholders is held. As stated in Article 76 of this Limited Liability Company Law, the General Meeting of Shareholders is held at the position of the Company or where the company carries out its main business activities or head office or place of communication, and at the place of exchange where the company's shares are listed throughout the territory of Indonesia. However, there are exceptions as stated in Article 76 paragraph (4) that if at the General Meeting of Shareholders all shareholders and/ or those represented are present and all shareholders agree to the General Meeting of Shareholders with a certain agenda, the General Meeting of Shareholders can be held anywhere by still paying attention to the provisions referred to in paragraph (3).

The latter provision, i.e. Article 76 paragraph (4), opens up opportunities for the application of the cyber notary concept because it allows the General Meeting of Shareholders to be held online as well as the strength of evidence deeds resulting from this process. In this case, the deed of the General Meeting of Shareholders is included in the type of *relaas* deed; i.e. a description containing Notary information requested and desired by the parties in this case the participants of the General Meeting of Shareholders meeting in which the Notary saw and witnessed the course of the meeting through the video conference and then poured into a deed called Official Report General Meeting of Shareholders. As stipulated in Article 77 paragraph (4) of the Limited Liability Company Law, it clearly states that the deed report of meetings must be made and approved and signed by all meeting participants for the General Meeting of Shareholders that utilize teleconferencing media, video conferencing, or other electronic media facilities.

Since the deed report of the General Meeting of Shareholders is a *relaas* deed, the validity of the description containing the statements of a Notary made in the form of a video conference can be guaranteed even though the parties or meeting participants do not sign it. This provision is indeed required in article 90 paragraph (4) of the Limited Liability Company Law. Therefore, we can say that the statement of a Notary in the Minutes of General Meeting of Shareholders, who followed, saw and witnessed the proceedings directly and signed a Notary and included into this deed form, has the strength of evidence equated with authentic deeds.

However, the provisions of Article 77 of the Limited Liability Company Law are contrary to the provisions of Article 16 paragraph (1), Article 39 and 40 Law on Notary Position Amendment. According to the Law on Notary Position, making the deed of the General Meeting of Shareholders of the Public Company must be attended by all meeting participants and it is obligatory to read the deed in front of the appearer, attended by at least 2 (two) witnesses and signed at that time by the parties consisting of appearers, witnesses and notaries themselves. Therefore, the physical presence of Notaries, appearers and witnesses in the same place and time is a must. Moreover, a Notary is required to recognize or be introduced to the audience and witnesses first and then stated expressly in the deed as mandated by Article 40 paragraph (3) and (4) Law on Notary Position.

The substantive thing that needs to be underlined is stated by the authors based on the provisions of the above Articles of Law on Notary Position that making the deed report of the General Meeting of Shareholders of the Public Company is carried out conventionally. In this case, the appearers, witnesses and Notaries must know or be introduced to the Notary beforehand in accordance with a valid identity that is shown to the Notary at the same place and time facing each other directly or face to face. Meanwhile, the process of making deeds through teleconference, video calls/ cyber is carried out without physical presence and not necessarily they know each other or are introduced to the Notary. It certainly cannot be in the same place as the concerned Notary.

The provisions in the explanation of Article 6 are also stated in Article 5 paragraphs (1) and (2) of the Law on Information and Electronic Transactions and re-open opportunities that expressly state that electronic information, electronic documents and printouts are included in the valid evidence and constitute expansion of tools from evidence in accordance with applicable procedural law in Indonesia. We know that the valid evidence as written in the provisions of Article 1866 of the Civil Law consists of written evidence, witnesses, suspicion, confession and oath. This provides clear and firm legality regarding the recognition of electronic deeds as a legitimate evidence and certainly can be accepted in the process of proving in court.

Considering that the provisions of Article 5 paragraph (1) and (2) Law on Information and Electronic Transactions have made it possible for Notaries to make them in electronic form, it is intended that the Notary as a professional is not left behind in addressing current information technology developments; hence, the deed produced can also be in electronic form. Besides the various conveniences offered by the development of telecommunications, it has enabled relations between humans to take place quickly and easily without calculating the aspects of space and time.

The problem here is that although the evidentiary law has recommended that electronic information and electronic documents be included in legal evidence according to Article 5 paragraph (1) and (2) Law on Information and Electronic Transactions), the provisions of Article 5 paragraph (4) actually determine the exception. This provision states that electronic information and/ or electronic documents cannot be applied to letters including securities and documents which according to the Law must be in written form. The point is clear here that this provision does not exclude electronic information and documents as legal evidence.

On the other hand, Article 6 of the Law on Information and Electronic Transactions confirms that the validity of electronic information and documents is recognized as long as the electronic information and documents can be accessed, displayed, and are guaranteed to be intact and accountable. This is intended to anticipate if in the future some parties reject and deny the validity or existence of such electronic information and documents as stated in the provisions of Article 7 Law on Information and Electronic Transactions. Thus, any form of information and documents made electronically must be ensured in accordance with and derived from an electronic system that meets the requirements under the laws and regulations.

2. *Strength of Evidence of Notarial Deed in the Application Concept of Cyber Notary*

a. *Strength of evidence assessment based on Law on Notary Position*

Although using complete evidence, the assessment of the strength of evidence can still be paralyzed by the evidence of the opponent. Evidence of the opponent is any evidence that aims to deny the legal consequences desired by the opposing party or to prove the untruth of the events proposed by the opposing party. Evidence of opponents is not possible against decisive or determining evidence. Determining evidence is complete or perfect evidence that does not allow evidence of an opponent

The process of proof in civil cases only recognizes evidence in a limited manner as stated in Article 164 *Herziene Indonesische Reglement/ 284 Reglement Buitengewesten*, and Article 1866 Civil Code; i.e. letters, witnesses, suspicions, confessions and vows. Meanwhile, the evidence presented at the trial at this time has extended to the use of evidence in the form of electronic documents produced from information technology products such as CDs, VCDs, DVDs and writings on social media and other electronic devices so that it provides its own problems in the process proof in court.

b. *Strength of evidence assessment based on Law on Notary Position*

Unlike Indonesia, which uses the Civil Law system, a Notary is appointed by an authorized ruler who aims to serve the interests of the general public and receive an honorarium from the general public. Deeds made by civil law notaries have more strength; i.e. to ratify that the facts written in them are true and cannot be sued again by the parties.⁹ Therefore, the deed made by and before a notary is an authentic deed.

If the limit regarding the authenticity of a notarial deed as determined in 1868 the Civil Code is violated, it will affect the strength of evidence of the deed. These provisions are stated and stipulated explicitly in the Civil Code in Article 1869 and in the terms and rules of office of the notary itself.

“A deed that cannot be treated as an authentic deed caused by a public official who is not authorized or incompetent, is deformed in form, and strength is equivalent to private deed if it is signed by the parties (Article 1869 of the Civil Code)”.

Those violations are contained in the provisions of the Articles as follows:

⁹ *Ibid*, page 243.

- 1) Article 16 paragraph (9) Law on Notary Position Amendment concerning the notarial deed reading requirements in paragraph (1) letter m; i.e. “reading the deed before the appearer in the presence of at least 2 (two) or 4 (four) special witnesses for the making of a private will, and signed at that time by the appearers, witnesses, and notary.
- 2) Article 41 of the Law on Notary Position Amendment states sanctions for strength of evidence that the deed becomes private deed for violation of the provisions of Article 38, Article 39 and Article 40; i.e. with regard to the form of deed. In addition, the Notary must also pay attention to the conditions regarding the parties facing and witnesses that can be used in making the deed, including the ability to act in carrying out a legal action, the witness must be known and introduced to the Notary, all of which are included or stated in the deed .
- 3) Article 48 of the Law on Notary Position Amendment describes the prohibition on the replacement, addition, deletion, insertion, omission and/ or writing of repression of the written deed that has been made. Violations of the provisions referred to in paragraph (1) and paragraph (2) result in a deed only having the strength of evidence as private deed and can be a reason for those who suffer losses to demand reimbursement, compensation and interest to the Notary.
- 4) Article 49 Law on Notary Position Amendment, regulates the conditions for each change to the deed as referred to in Article 48 paragraph (2) which must be made on the left side of the deed. If the change cannot be made on the left side of the deed, the change is made at the end of the deed before closing by pointing to the changed part or by inserting an additional sheet.
- 5) Article 50 paragraph (5) of the Law on Notary Position Amendment requires that the method of write-off be carried out in such a way that it can still be read in accordance with what was originally stated, and the number of words, letters or numbers crossed stated on the left side of the Deed.
- 6) Article 51 paragraph (4) Law on Notary Position Amendment, regulates sanctions if corrections to typographical errors or typographical errors are not made before the appearers, witnesses and Notaries and do not deliver the news to the parties.
- 7) Article 52 paragraph (3) Law on Notary Position, regulates sanctions for Notaries who make deeds on their own behalf.

Furthermore, to determine notarial deed which has the strength of evidence as private deed, it can be seen and determined from the contents in certain articles which directly confirm that the Notary is committing a violation. Thus, the deed includes the deeds that have strength of evidence as private deed. This is regulated in the provisions of Article 84 Law on Notary Position.

These articles explicitly state that the violation by a Notary will make the deed he/ she made becoming private deed. However, if it is not expressly stated in the relevant article as a deed that has strength of evidence as private deed, then, other Articles categorized as violations according to Article 84 Law on Notary Position are included in the deed which is null and void.¹⁰

c. Strength of Evidence Assessment based on Law on Information and Electronic Transactions

The Article 5 Law on Information and Electronic Transactions statement has provided a clear and firm basis for the recognition of electronic deeds as valid and acceptable evidence in the process of verification in the Court, so it is possible to have strength of evidence that is equated with documents made in on paper. This is related to the nature and electronic information and/ or electronic documents in the form of electronic deeds that can be transferred in several forms of print-out so that they can be equated with documents made on paper.

Meanwhile, what is meant by expansion in paragraph (2) is to add evidence that has been regulated in civil procedural law in Indonesia. In this case, electronic information and/ or electronic documents, as electronic evidence, add to the type of evidence regulated in Article 164 of *Herziene Indonesische Reglement/ 284 of Reglement Buitengewesten*, as well as Article 1866 of the Civil Code. Since it is an extension of the available evidence, so that the information can be used as legal evidence in the Court and can have strength of evidence that is equated with documents made on paper, the process of organizing the electronic system must meet the minimum verification requirements.

The minimum requirements for electronic information and/ or electronic documents are declared valid to be used as evidence if they use an electronic system in accordance with the provisions stipulated in Article 16 of Law on Information and Electronic Transactions. In addition, electronic information must be able to prove that appropriate efforts have been made to ensure that an electronic system has been able to protect the availability, integrity, authenticity, confidentiality and accessibility of electronic information. In addition, testing of the minimum requirements determined by law also needs to be done first; whether the manufacture of electronic documents has been done using an electronic system that is safe, reliable, and operating properly.

Testing and verifying information and electronic documents can be carried out by an independent institution. For example, there are special authorities which is authorized to verify independent and trusted third parties known as Certification Authority (CA) institutions; so, the validity is longer questionable. In this case, the information or electronic document has met the minimum standard of proof because the proof of legal theory states that a piece of evidence submitted at the trial must fulfill the full formal and material requirements in accordance with the law so that it is valid to become evidence. Meanwhile, in Law on Information and Electronic Transactions, arrangements for electronic systems will still be further regulated in Government Regulations. So, the arrangement will be expected to avoid unnecessary debates regarding the validity of the evidence.

What about copies of electronic documents or printed results? Does it also have the same strength of evidence as the original document? Regarding this matter, we can refer to the general explanation of Article 6 of Law on Information and Electronic Transactions which states that the principle of doubling electronic systems results in original information not being distinguished from its copy. So, it is no longer relevant to be distinguished. In addition to provisions that exclude information, it must be in the form of written documents, electronic information and/ or electronic documents are considered valid as long as the information contained in them fulfills the formal and material requirements of the electronic document so that it has proof value.

We can see the provisions on formal and material requirements in Article 1 point 4, Article 5 paragraph (3), Article 6, Article 7 and Article 16 Law on Information and Electronic Transactions which explain that:

- It is in the form of electronic information that is created, forwarded, transmitted, received or stored, which can be seen, displayed and/ or heard through a computer or electronic system; including writing, sound, images, and so on that have meaning or definition or can be understood by people who are able to understand it;
- It is declared valid if using/ originating from an electronic system in accordance with the provisions stipulated in the Law;
- It is considered valid if the information contained in it can be accessed, displayed, guaranteed the integrity, and accounted for so that it explains a situation.¹¹

¹¹ Habib Adjie, *Nullification and Cancellation of Notarial Deed*, Refika Aditama, Bandung, 2011, page 66. Constitution of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions, *Op. Cit.*, Article 1 point 4, Article 5 paragraph (3), Article 6, Article 7 and Article 16.

Based on the information from the formal and material conditions mentioned above, so that an electronic document meets the minimum verification limit, it must be supported by expert witnesses who understand and provide assurance that the electronic system used to create, forward, send, receive or store electronic documents has been in accordance with the provisions in the law. In addition, he/she can also guarantee that the electronic documents remain the same like the first time it was made without any changes when received by the other entitled party (integrity), guarantee that the document really originates from the person who made it (authenticity) and guarantee that it cannot be denied by the maker (non-repudiation). Therefore, according to the author, in the process of proof in the Court, electronic documents/ deeds do not require an original document/ deed. This is of course provided that the document/ electronic deed can be accessed, displayed, guaranteed integrity, and can be accounted for in order to explain a situation and does not apply to letters which according to the law must be made in written form including notarial deed or deed made by conveyancer.

According to the author, this Article states that certain electronic evidence that is declared invalid by law must be made in writing by a notary or an authorized official who makes a deed; for instance, the Birth Certificate must be made by officials of the Civil Registry, the Marriage Certificate is made by an official of the Religious Affairs Office, or the land certificate must be made by Conveyancer. So, it is still an exception for Notaries to make deeds electronically. According to the author, this exception is related to the provisions of Article 1868 of the Civil Code that an authentic deed is made in the form specified by the Law by or before the general authority authorized for this matter at the place of the deed was made.

There are requirements that must be fulfilled in making the deed, according to the provisions of Article 1868 of the Civil Code and the provisions contained in Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 Law on Notary Position/ Law on Notary Position Amendment, resulting in an electronic deed or deed made electronically by a Notary, based on Article 5 paragraph (1), (2) and (3) Law on Information and Electronic Transactions, are considered as valid evidence in the Court and have the same strength of evidence as the proof of the letter and can even have the same strength of evidence as the authentic deed. As a result, it does not have the same strength of evidence as authentic proof of letter or deed. Even though it is still recognized as evidence at the trial, the strength of evidence is equated with private deed.

This will certainly result in the difficulty of applying the cyber notary concept in Indonesia. Furthermore, this difficulty concerns the conditions for making deeds that must be made in the form and determined by the Law; i.e. based on the Civil Code and based on the Law or regulation concerning the Notary Position itself.

Conclusion

Opportunities for implementing cyber notary are wide open after the enactment of Law No. 12 of 2014 Amendment to Law No. 30 of 2004 concerning Notary Position, Law No. 11 of 2008 concerning Information and Electronic Transactions as well as Law No. 40 of 2007. However, the implementation is still difficult to realize because it is constrained by various regulations such as the Civil Code and even from the Law of Notary Position and Law on Information and Electronic Transactions itself. Constraints contained in the Law on Notary Position Amendment include the obligation to read the deed directly before the appearer, the physical presence and the making of deeds that have been determined in accordance with the terms and formats as stipulated in the Law on Notary Position Amendment and according to the provisions of Article 1868 Civil Code.

Notarial deed, which is based on the concept of cyber notary in the form of electronic or electronic deed, does not or yet does not meet the requirements as an authentic deed according to the Law on Notary Position Amendment or Law on Information and Electronic Transactions. Thus, the strength of evidence is the same as the strength of evidence of a letter or deed made privately. Therefore, to maintain the authenticity of deeds made electronically through the concept of cyber notary which has the perfect

strength of evidence, it can only be carried out through revisions or changes to the articles in the relevant laws and regulations; including Law on Notary Position, Law on Information and Electronic Transactions and the Civil Code.

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Legislation

Law No. 30 of 2004 concerning Notary Position

Law No. 2 of 2014 concerning Amendment to Law No. 30 of 2004 concerning Notary Position

Law No. 11 of 2008 concerning Information and Electronic Transactions.

Law No. 40 of 2007 concerning Limited Liability Companies

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