

# CYBER NOTARY JURIDICAL REVIEW IN THE LEGAL SYSTEM IN INDONESIA

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## ABSTRACT

Development of information technology has a positive impact on improving the economy, one of which is transactions via the internet where a person can make a sale and purchase agreement without having to meet face to face considering the very long distance between the two parties. The role of the Notary is demanded to be able to participate in the development of technology and information, because in an electronic transaction it is very possible for the intervention of a Notary as a trusted third party in conventional transactions. Draft Cyber Notary wants to provide a legal frame, namely that the act of facing the parties or facing before the Notary, which later the Notary will no longer have to meet physically (face to face) in a certain place. Legality of Notary-Based Deeds Cyber notary as an Act Authentic based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary and positive law in Indonesia does not have perfect proof like an Authentic Deed, because the Notary Deed uses cyber notary it does not fulfill the Authenticity requirements of a Deed as stated in the provisions of Article 1868 of the Civil Code. In addition, Law Number 2 of 2014 concerning Amendments to Law Number: 30 of 2004 concerning the Position of Notary Public and Law Number 11 of 2008 concerning Information and Electronic Transactions also do not explicitly accommodate the implementation Cyber Notary to an Authentic Deed, so that the Deed made by a Notary uses Cyber Notary does not have the same evidential force as the Authentic Act. Notary Act by using cyber notary not recognized as electronic evidence. This is because there is a prohibition in the provisions of Article 5 paragraph (4) of Law Number 11 of 2008 concerning Information and Electronic Transactions.

**Keywords:** Cyber Notary, Authentic Deed, Electronic Transaction.

## INTRODUCTION

Modernization has caused significant changes to attitudes, mentality, knowledge, skills and social structure in order to lead to a prosperous life which will require the will and skills to modernize various aspects of life including economic, legal, health and other aspects.[1] At this time, the existence of the internet and all-sophisticated technology integrated into facilitating human work, one of which was the work of the notary profession.[2] Term Cyber Notary already existed in 1995 but due to legal ignorance and technological advances hampered the development of this effort. According to Lolly Amalia Abdullah Director of Information Systems in her comments on Online Law Cyber Notary is a concept that utilizes technological advances in carrying out the duties and authority of a Notary. Digitizing documents is a challenge for Notaries, especially with regard to document authentication. [3] Advances in information technology have had a positive impact on improving the economy, one of which is transactions via the internet where a person can make a buying and selling agreement without having to meet in person considering the very long distance between the two parties. The role of the Notary is demanded to be able to participate in the development of technology and information, because in an electronic transaction it is very possible for the intervention of a Notary as a trusted third party in conventional transactions.[4]

Since the enactment of Law No. 19 of 2016 Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions, slowly but surely buying and selling transactions are shifting from conventional to electronic-based, hence they are known as ecommerce. Not only is that, the line of government administration, especially public services, also promoting electronic-based services or what is known as E-Government. This is as stipulated in the government program, namely, the development of Information and Telecommunications Technology (ICT) with the term E- Government.[5] In the case of public services, there is a type of non-government service, but it is very closely related to the implementation of public services and is thick with regulations because their duties and functions are regulated by law, namely Notaries in Article 1 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 Concerning the



Position of Notary Public, it is stated that "Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws".

So far, conventional Notary services are very inappropriate if Notaries still use conventional methods in providing services in the field of electronic transactions where speed and timeliness and efficiency are needed by the parties in conducting transactions. The development of the function and role of a Notary in an electronic transaction process is popularized by the term Cyber Notary. Authority of a Notary based on Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary which contains the phrase "other authority" regulated in laws and regulations, among others: the authority to certify electronically (Cyber Notary), make deeds, pledges, endowments, and aircraft mortgages. In the elucidation of Article 15 paragraph (3) it is alluded to the authority of a Notary in carrying out certification that is carried out electronically (Cyber Notary). An explanation of what is meant by Cyber Notary is not explained in detail and the scope is not explained. Because it is not specifically explained, the writer decides to interpret from the root of the sentence. The term certification comes from English "certification" which means temporary statement or endorsement in Dutch "certify" which means ratification, all underhanded letters or underhanded deeds that are signed, or stated with fingerprints can be requested for approval from the head of the District Court, Regional Head, through the local pamong or to a Notary.[6] Understanding Cyber Notary Until now, from various sources of literature and the opinions of experts, there is no definitive, binding understanding. According to Emma Nurita the main principle is applied cyber notary is the provision of an understanding that so far notaries in carrying out their duties and authority of office, namely in making a deed, both the parties or a relaas deed always have to face each other or always meet physically in a certain place. However, with the use or application of information technology, this is no longer necessary.[7]

Draft Cyber Notary want to provide a legal frame, namely that the act of facing the parties or facing before the Notary, which later the Notary will no longer have to meet physically (face to face) in a certain place, in this case the parties may be in a place that is different from the Notary's position or area of office, on the other hand the parties are in a different place.[8] Changes to this development do not rule out the possibility of making a quite large positive contribution to the implementation of the duties and powers of a notary. As it is known that the existence of a Notary is based on the need for a Notarial deed which has the strength of binding evidence and as strong evidence and has essential juridical value in every legal relationship when a dispute occurs in people's lives.

The notary also acts as a public official and is given the main duties and powers by the State to serve the public and the public interest in making authentic evidence in the civil field in the form of an authentic deed. So that the development of Information and Communication Technology can give birth to changes so that the role and performance of Notaries can be optimized and not left behind in following these changes in accordance with the demands of modern society and the rapidly developing times. Besides that, the various benefits and advantages that will be obtained because of course the implementation of the Notary's duties is faster and saves time and is practical.

Menurut Norbert Wiener cyber derived from the word cybernetic which means a combination of several sciences including computers, mathematics, electrical engineering and psychology, meaning cyber is related to computerization which is electronic media in cyberspace (cyber space) which is used for one-way or reciprocal communication online.[9] If related to article 16 paragraph (1) letter m of Law Number 2 of 2012 Amendments to Law Number 30 of 2004 concerning the Position of Notary Public which states: "Whereas in carrying out his position the Notary is obliged to read the deed before the appeared in the presence of at least 2 (two) witnesses or 4 (four) special witnesses for the making of a will under the hand and signed at the same time by the appearer, witness and Notary". Based on this formulation, it is clear that there is a direct meeting between the parties before a Notary. While in concept cyber notary on the contrary, this direct meeting is not absolute because its function is replaced by a telecommunications device, so this is where a conflict of law arises between conventional notarial deed products and electronic notarial deed products or Cyber Notary.

#### PROBLEM FORMULATION:

1. How is the legal regulation regarding Cyber Notary in the Legal System in Indonesia?
2. How is the Legality of Notary Deed based Cyber Notary as an Authentic Deed?



## RESEARCH METHODS

The research method used in this research is normative legal research. Normative legal research (normative legal research) is research conducted by examining the laws and regulations that apply or are applied to a particular legal issue. Normative legal research examines law from an internal perspective with the object of research being legal norms.[10] Normative research is often referred to as doctrinal research, namely research whose object of study is documents of laws and regulations and library materials.[11] Normative legal research is also called research that is focused on examining the application of rules or norms in positive law.[12] According to I Made Pasek Diantha, normative legal research functions to provide juridical arguments when there is a vacuum, ambiguity and conflict of norms. Furthermore, this means that normative legal research plays a role in defending the critical aspects of its legal science as a normative science.<sup>[13]</sup> The approach used is the statutory approach (statute approach) and conceptual approach (conceptual approach).

## RESULTS AND DISCUSSION

### 1. LEGAL ARRANGEMENTS REGARDING CYBER NOTARY IN THE LEGAL SYSTEM IN INDONESIA

After the enactment of Law Number 11 of 2008 concerning Information and Electronic Transactions on April 21, 2008, the form of documents/deeds/contracts was expanded, which was originally only in written form to be presented electronically and at the same time the existence of this Law became the legal umbrella. The characteristics of documents/deeds that were previously in written form, were used to explain or state a legal event, and can be used as evidence are now in an increasingly widespread form. Not only limited to forms in the form of letters, securities, securities, deeds, sound recordings, pictures in films, through the definition of electronic documents mandated by Article 1 paragraph (4) of Law Number 19 of 2016 concerning Information and Electronic Transactions provides the form of documents can be in the form of: Analog, Digital, Electromagnetic, Optical, or the like, which can be seen, displayed, and/or heard through a Computer or Electronic System, including but not limited to writing, sound, pictures, maps, designs, photos or the like, letters, signs, numbers, Access Codes, symbols or perforations that have meaning or meaning or can be understood. However, the substance emphasized is that electronic documents contain information regarding a legal event. In its amendments to Law Number 19 of 2016, the preamble only contains juridical reasons for deficiencies in Law Number 11 of 2008 in the form of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with considerations of security and order. In a democratic society, it is necessary to amend Law Number 11 of 2008 concerning Information and Electronic Transactions in order to realize justice, public order and legal certainty. Article 2 of Law Number 11 of 2008 which reads: "This law applies to every person who commits legal acts as stipulated in this law, both within the jurisdiction of Indonesia and outside the territory of Indonesia, which has legal consequences in the jurisdiction of Indonesia and/or outside the jurisdiction of Indonesia. Indonesia and detrimental to Indonesia's interests." The author sees a legal loophole in the sound of this article where the phrase "applies to every person who commits legal acts both within the jurisdiction of Indonesia and outside the jurisdiction of Indonesia." This norm goes beyond proper authority, a country has its own sovereignty so that a Laws by one country cannot regulate legal actions outside its legal territory/jurisdiction where that country is sovereign.

As we understand, a legal norm can be applied when the country has entered into a bilateral or multilateral agreement or adopted an international convention and has effectively ratified and enforced it. The phrase "which has legal consequences in the jurisdiction of Indonesia and/or outside the territory of Indonesia and harms Indonesia's interests" creates a one-sided interpretation that only benefits Indonesia's interests and is not balanced. Even though Article 18 of Law Number 11 of 2008 regulates the authority to choose the law that applies to international Electronic Transactions, this phrase suggests that this Law is only present to prevent losses for Indonesia, not to resolve disputes in a balanced and complete manner..

Related to Cyber Notary cannot be separated from the Main Regulation, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary as the main basis Cyber Notary. In the Preamble letter b which reads "that in order to guarantee certainty, order and legal protection, authentic written evidence is needed regarding actions, agreements, determinations and legal events made before and by authorized officials." still emphasizes that the main means of evidence which have authentic characteristics must be written to explain and prove



regarding acts, agreements, determinations, and legal events made before or by authorized officials. In consideration of the letter d which reads "that several provisions in Law Number 30 of 2004 concerning the Office of a Notary are no longer in line with developments in law and the needs of society, so it is necessary to make changes" This preamble should be able to accommodate social changes, developments in information technology, and the needs therein which should be accommodated as well as utilized Cyber Notary, electronic deeds, as well as electronic systems in the formulation and preparation of deeds as an authentic means of proof. Article 1 of the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 regarding the Position of Notary Public regulates and provides general understandings related to the scope of the Office of a Notary Public, there are several things that have a correlation with documents and/or deeds namely :

1. Article 1 Notary Deed, hereinafter referred to as Deed, is an authentic deed drawn up by or before a Notary in the form and procedure stipulated in this Law.
2. Minuta of the Deed is the original of the Deed which includes the signatures of the appearers, witnesses, and the Notary, which is kept as part of the Notary Protocol.
3. A copy of the Deed is a word for word copy of the entire Deed and at the bottom of the copy of the Deed is stated the phrase "provided as a COPY of the same sound".
4. Excerpt of the Deed is a quote word for word from one or several parts of the Deed and at the bottom of the quote the Deed contains the phrase "given as a QUOTATION".
5. Grosse Deed is one of the copies of the Deed for acknowledgment of debt with the head of the Deed "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD", which has executive power.
6. Notary Protocol is a collection of documents which are state archives that must be kept and maintained by a Notary in accordance with statutory provisions.

From the definitions above, it does not appear that electronic documents or deeds have been explicitly mentioned, most of them are still oriented towards written deeds which have not been linked to electronic certificates as a result of an electronic system.

The provisions of Article 15 paragraph (3) of Law Number 2 of 2014 concerning amendments to law number 30 of 2004 concerning the Office of a Notary stipulates that a Notary also has other authorities regulated in laws and regulations. This has been mentioned in the elucidation of Article 15 paragraph (3) concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary, one of which is regarding cyber notary. The elucidation of this article becomes the legal umbrella for certifying transactions carried out electronically (Cyber Notary). However, the explanation of this article conflicts with the norms of the next article, namely article 16 paragraph (1) letter m of Law number 2 of 2014 concerning amendments to law number 30 of 2004 concerning the Position of Notary Public which essentially states: "that the Notary must be present to read and sign the deed before the appearer at the same time and witnessed by at least 2 (two) people", In addition, the deed made still has a question mark whether it has fulfilled the authenticity of the deed stipulated in Article 1868 of the Civil Code (KUHPerdata) or not because the provisions in Article 1868 of the Civil Code are a requirement for the authenticity of a deed which states that an authentic deed is a deed which is made in the form determined by law, made by or before public officials who have power for that at the place where the deed is made.

Knowing that there is a condition of laws and regulations that are not harmonious (contradictions between articles) especially in Article 15 paragraph (3) with Article 16 paragraph (1) letter m Law number 2 of 2014 concerning Amendments to Law Number 30 of 2004 regarding the Office of Notary. Where Article 15 paragraph (3) regulates the stipulation that a Notary has other authorities regulated in laws and regulations, one of which is to provide opportunities to practice using Cyber Notary. With can docyber notary Therefore, technically in notarial practice, the parties cannot meet face-to-face but can be assisted by information technology intermediaries. This is clearly contradictory to the provisions of article 16 paragraph (1) letter m which stipulates that "The notary must be present to read and sign the deed before the appearance attended by at least 2 (two) witnesses, or 4 (four) special witnesses for the making of a will under the hand, and signed at the



same time by the appearer, witness, and Notary". However, this is an exception and becomes the basis for justifying practice cybernotary where in article 16 paragraph (7) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public opens the opportunity for cyber notary for the existence of electronic documents or electronic deeds because it is not mandatory to read the deed before a notary when the appearer wants the deed not to be read out because the appearer has read, knows and understands its contents, provided that this is stated in the cover of the deed and on each page of the deed minute initialed by appearers, witnesses, and notaries. Thus the making of an electronic deed can be justified and the strength of proof is equated with a private deed and can be upgraded to an authentic deed when the appeared before the Notary for validation is carried out, and initialed by the witness and Notary.[14]

From the description above, the technical implementation cyber notary regarding the procedure for making a Notary deed related to the validity contains 3 (three) main points, namely:

1. Notary deed as explained in Article 1 paragraph (7) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary is an authentic deed made by or before a Notary according to the form and procedure stipulated in the this law;
2. In the case of certification referred to in the elucidation of Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary Public, it is considered the same as an underhand deed that has been ratified by a Notary(legalization), thus the certification process carried out by a Notary is only like legalizing a deed that is not an authentic deed where the date, time, location and details of legal events cannot be ascertained with certainty by the Notary. The notary must be able to provide certainty on the date and signature of the parties/appearances, the method is to have it read and signed before the notary and the parties. In the presence here is meant to be physically present not through the assistance of information technology facilities.
3. It can be a cyber notary carried out by a Notary in the form of a certificate, which means a private document registered before a Notary (waarmerking). If so then the consequences even if done with cyber notary will not cause problems because the Notary has no responsibility either for the certainty of the date, time or content as well as the form of the letter made by the parties/appearers.[15]

## 2. BASED LEGALITY OF NOTARY DEEDCYBER NOTARY AS AN AUTHENTIC DEED

According to Article 1 number 7 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public, states that:"Notarial Deed, hereinafter referred to as Deed, is an authentic deed drawn up by or before a Notary in accordance with the form and procedure stipulated in this Law." Regarding the form of the notarial deed as stated above, it is explained in more detail in Article 38 of Law no. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, namely:

Each act consists of:

Beginning of the deed or head of the deed, Body of the deed, End or closing of the deed:

1. The beginning of the deed or the head of the deed contains:
  - a. Deed title
  - b. Deed number
  - c. Hours, days, dates, months and years, and;
  - d. Full name and domicile of Notary
2. The body of the deed contains:
  - a. full name, place and date of birth, nationality, occupation, position, position, place of residence of the presenters and/or the person they represent;
  - b. information about the position of acting against
  - c. the content of the deed which is the will and desire of the interested parties; and
  - d. full name, place and date of birth, as well as occupation, position, position and place of residence of each identifying witness



3. The end or closing act contains:
  - a. a description of the reading of the deed as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7);
  - b. a description of the signing and place of signing or translation of the deed, if any;
  - c. full name, place and date of birth, occupation, position, position and place of residence of each deed witness; And
  - d. a description of the absence of changes in the making of the deed or a description of the changes which may be in the form of additions, deletions or replacements as well as the amount of the changes.
  
4. Deeds of substitute notaries and temporary notary officials, in addition to containing the provisions referred to in paragraph (2), paragraph (3), and paragraph (4), also contain the number and date of appointment determination, as well as the official who appointed them.

A notarial deed can become an authentic deed if it meets statutory requirements, especially Article 1868 of the Civil Code. Based on the definition of an authentic deed in Article 1868 of the Civil Code, there are 3 (three) requirements for an authentic deed, namely

1. The deed must be made in the form and procedure determined by law.
2. An act made by (door) or in front of (ten overstaan) a public official.
3. Officials must have the authority to make the deed.

In addition to the size or limitations regarding the authenticity of a deed as referred to in Article 1868 of the Civil Code, there are also civil sanctions that affect the deed if the Notary commits an act of violation of certain articles, namely the Notary Deed will have the power of proof as a private deed or in other words the deed has lost its authenticity.[16]

Article 1869 of the Civil Code stipulates that the limitation of a notarial deed as a private deed can occur if it does not comply with the provisions because:

1. The general official in question is not competent; or
2. The incompetence of the public official concerned; or
3. Defective in form.”

These provisions are explicitly stated in certain articles in Law no. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary which states that if it is violated by a notary, then a notarial deed has the power of proof as a private deed, namely in Article 16 paragraph (9) which refers to Article 16 paragraph ( 1) letter m and paragraph (7) of Law no. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary is included in the form of a notary deed, because the reading of the deed by a notary in the presence of the parties and witnesses is an obligation to explain that the deed made is in accordance with the will of the person concerned , and after reading it is then signed by the appearers, witnesses, and the notary at the same time, it must be stated at the end of the notarial deed. Likewise, if the notary does not read it in front of the parties, but the parties wish to read the deed themselves, then the wishes of the parties must be stated at the end of the notarial deed. Thus, whether the deed is read or not read must be stated at the end of the deed. If this is not done, there are formal aspects that are not fulfilled which result in the deed being flawed in terms of form. Regarding the reading of the deed by a Notary is a must in every authentic deed, the reading of the deed is part of past or formalization of the deed (reading and signing). Because the deed was drawn up by a Notary, it must also be read out by the Notary concerned, not by another person such as an assistant or Notary employee. Based on the explanation above, if viewed under Article 5 paragraph (1), (2), (3) of the Law Law Number 11 of 2008 concerning Information and Electronic Transactions which reads:

- 1) Electronic information and/or electronic documents and/or printouts are valid legal evidence;
- 2) Electronic information and/or electronic documents and/or printouts as referred to in paragraph (1) are an extension of valid evidence in accordance with the procedural law in force in Indonesia;
- 3) Electronic information and/or electronic documents are declared valid if they use an electronic system in accordance with the provisions stipulated in this law.



Furthermore, in Article 15 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions which reads: "Each Electronic System Operator must operate the Electronic System reliably and safely and be responsible for the proper operation of the Electronic System." Then also in Article 16 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions which reads "As long as not stipulated otherwise by a separate law, every Electronic System Operator is required to operate an Electronic System that meets the minimum requirements as follows:

- a. Can display the complete Electronic Information and/or Electronic Documents in accordance with the retention period stipulated by Laws and Regulations;
- b. Can protect the availability, integrity, authenticity, confidentiality and accessibility of Electronic Information in the Electronic System Operation;
- c. Can operate in accordance with procedures or instructions in the Electronic System Operation;
- d. Equipped with procedures or instructions announced in language, information, or symbols that can be understood by the party concerned with the Electronic System Operator; And

It is. Have an ongoing mechanism to keep procedures or instructions up to date, clear, and accountable.

An electronic document form can have original and original evidentiary strength if it uses an electronic system in a safe, reliable and responsible manner. However, according to Indonesian positive law, related to the Notary Deed of enforcement, cyber notaries are not recognized as electronic evidence. This is because there is a prohibition in the provisions of Article 5 paragraph (4) of Law Number 11 of 2008 concerning Information and Electronic Transactions which reads: "Provisions regarding electronic information and/or electronic documents as referred to in paragraph (1) do not apply to:

1. Letters according to the law must be made in written form;
2. The letter and its documents which according to the Law must be made in the form of a notarial deed or a deed made by a deed-making office."

Thus, when linked to the Notarial deed against enforcement cyber notary where the notarial deed is in electronic form (electronic deed), then the strength of the notary deed does not have perfect proof like an authentic deed, this is because the notary deed in electronic form (electronic deed) does not meet the requirements for the authenticity of a deed, in addition to Law No. 2 of 2014 and Law Number 11 of 2008 concerning Information and Electronic Transactions also do not accommodate this.

#### **CONCLUSION:**

1. Provisions of Article 15 paragraph (3) of Law Number 2 of 2014 Concerning Amendment to Law Number 30 of 2004 concerning the Office of a Notary which brings fundamental changes to the working procedures of a Notary which can be carried out by cyber notary. However, this article conflicts with the provisions of the next article, namely article 16 paragraph (1) letter m of Law number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary. When associated with conflicting norms between enforcement Cyber notary which violates the Notary's work area because of its basic nature borderless (Cross-border) and real time online (based on the current time) then it should be seen as an aspect of justice in it. With notarial conditions, especially regarding Cyber Notary which at this time there are still many contradictions and disharmony with the legal framework so that it has implications Cyber Notary not optimal yet. It has become clear that barriers are hindering implementation Cyber Notary the main thing is related to the limitation of the notary's work space and the requirement for the notary to meet and deal directly with the parties.

2. Legality of Notary-Based Deeds Cyber notary as an Authentic Deed based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary and positive law in Indonesia does not have perfect proof like an Authentic Deed, because the Notary Deed uses cyber notary it does not fulfill the Authenticity requirements of a Deed as stated in the provisions of Article 1868 of the Civil Code.

In addition, Law Number 2 of 2014 concerning Amendments to Law Number: 30 of 2004 concerning the Position of Notary Public and Law Number 11 of 2008 concerning Information and Electronic Transactions also do not explicitly accommodate the implementation of Cyber Notary to an Authentic Deed, so that the Deed made by a Notary uses Cyber Notary does not have the same evidential force as the Authentic Act.

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