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THE ISSUANCE OF ELECTRONIC COVERNOTES BY NOTARIES IN CREDIT AGREEMENTS IS ABLE TO GUARANTEE CERTAINTY, AUTHENTICITY AND LEGAL PROTECTION IN THE DIGITAL ERA

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Abstrak

Advancements in information technology have encouraged the digitalization of notarial services through the E-Office Notary concept, including the issuance of electronic cover notes in credit agreements. Although this practice provides efficiency in banking administrative processes, it raises legal issues regarding its status, authenticity, legal certainty, and legal protection due to the absence of explicit regulations. This study aims to analyze the legal status of electronic cover notes issued by notaries based on the Law on the Notary Profession and the Law on Electronic Information and Transactions, as well as to examine their ability to provide legal certainty and protection for related parties in the digital era. Using a normative legal research method with statutory, conceptual, and analytical approaches, this study finds that electronic cover notes are merely administrative documents and do not have the status of authentic deeds. The lack of harmonization between notarial and electronic transaction regulations creates uncertainty in their implementation. Therefore, regulatory reform and harmonization are necessary to establish legal certainty regarding electronic cover notes within digital notarial services.

INTRODUCTION

The development of information technology has brought significant changes to public service systems, including the legal sector. Digitalization has not only transformed the way society communicates but has also encouraged the transformation of legal services to become more effective, efficient, and adaptive to technological advancements. In the notarial sector, this transformation has been realized through the concept of the E-Office Notary, namely the utilization of information technology to support notaries in carrying out their duties and authorities, such as the use of the General Legal Administration System (Administrasi Hukum Umum/AHU Online), the Legal Entity Administration System (Sistem Administrasi Badan Hukum/SABH), electronic fiduciary registration, digital document storage, and electronic communication with relevant parties (Makarim, 2020). These developments indicate that digitalization has become an essential requirement in modern notarial practice, in line with the increasing number of electronic transactions in the business and banking sectors.

One of the implementations of the E-Office Notary that has developed in practice is the issuance of an electronic covernote by a notary in credit agreements. A covernote is a statement issued by a notary to explain that the completion process of certain legal documents, such as the establishment of security rights or the registration of mortgage rights (*Hak Tanggungan*), is still in progress. In banking practice, a covernote is frequently used as an administrative basis for banks to proceed with the credit disbursement process before all legal requirements have been fully satisfied. The advancement of information technology has also transformed the issuance of covernotes, which are no longer limited to physical documents but are increasingly issued in electronic form and transmitted through digital media to accelerate service delivery for banking institutions and other relevant parties.

Although this practice has become widespread, there is currently no specific legal regulation governing the legal status of electronic covernotes within the Indonesian legal system. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Office of Notary (UUJN) does not explicitly regulate the authority of notaries to issue covernotes, while Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (UU ITE) likewise provides no specific provisions regarding the legal status of electronic covernotes. This legal vacuum creates uncertainty regarding the legal standing of electronic covernotes, particularly when such documents are used as the administrative basis for credit disbursement by banking institutions.

On the other hand, there is a regulatory disharmony between the Law on the Office of Notary (UUJN) and the Law on Electronic Information and Transactions (UU ITE) in accommodating the development of electronic-based notarial services. The UUJN still requires the physical presence of the appearing parties, the reading of the deed, direct signing, and the retention of the original deed (*minuta akta*) as part of the notarial protocol, as stipulated in Article 16 paragraph (1) letter (m) of the UUJN (Adjie, 2008). Conversely, the UU ITE recognizes electronic information, electronic documents, and electronic signatures as legally valid evidence, provided that they satisfy the requirements prescribed by law (Law Number 1 of 2024, arts. 5 & 11). Nevertheless, Article 5 paragraph (4) of the UU ITE excludes documents that, by law, must be executed in the form of a notarial deed. This difference in the legal construction of the two statutes gives rise to normative conflicts in the implementation of the E-Office Notary, particularly concerning the use of electronic documents issued by notaries.

The lack of clear regulations concerning electronic covernotes not only affects legal certainty for notaries but also creates legal risks for banking institutions and the public as users of notarial services. From the perspective of the law of evidence, a covernote does not constitute an authentic deed as referred to in Article 1868 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*), and therefore does not possess the same evidentiary value as a notarial deed (Lumban Tobing, 1999).

Nevertheless, in practice, covernotes are frequently positioned as administrative documents that significantly influence the credit disbursement process. This situation has the potential to generate differing interpretations regarding the function, legal force, and scope of a notary's responsibility should disputes subsequently arise among banks, debtors, or third parties.

Several previous studies have examined the concept of cyber notary, the digitalization of notarial services, and the legal position of covernotes. Research conducted by Makarim (2011) primarily focused on the prospects for implementing the cyber notary concept within the Indonesian legal system. Adjie (2022) examined the functions and characteristics of covernotes in notarial practice as well as the limits of a notary's authority in issuing them. Meanwhile, Sona (2023) analyzed the implementation of the cyber notary concept in relation to the validity of notarial deeds in the digital era. However, these studies have not comprehensively examined the relationship between the legal status of electronic covernotes, the regulatory disharmony between the UUJN and the UU ITE, and their implications for legal certainty, authenticity, and legal protection in the implementation of the E-Office Notary. Accordingly, a research gap remains that warrants further scholarly examination.

This study offers a novel contribution by analyzing the legal status of electronic covernotes as electronic administrative documents within the implementation of the E-Office Notary, while examining the normative conflict between the Law on the Office of Notary (UUJN) and the Law on Electronic Information and Transactions (UU ITE). Furthermore, this study investigates the extent to which the issuance of electronic covernotes can provide legal certainty, authenticity, and legal protection for the parties involved in credit agreements in the digital era. The findings are expected to contribute to the academic development of notarial law while also providing recommendations for regulatory reform that is more adaptive to the rapid advancement of information technology.

Based on the foregoing discussion, this study aims to analyze the legal status of electronic covernotes issued by notaries in credit agreements under the Law on the Office of Notary (UUJN) and the Law on Electronic Information and Transactions (UU ITE). In addition, this study examines the extent to which electronic covernotes are capable of providing legal certainty, authenticity, and legal protection for the parties involved in the implementation of the E-Office Notary in the digital era.

LITERATURE REVIEW

Agreement

An agreement, or contract, constitutes one of the primary sources of obligations in civil law. According to Article 1313 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*), an agreement is an act whereby one or more persons bind themselves to one or more other persons. Mariam Darus Badrulzaman defines an agreement as a legal relationship established between two or more parties based on mutual consent, thereby giving rise to legally recognized rights and obligations. Within such a legal relationship, the rights and obligations of each party remain enforceable as long as the agreement fulfills the applicable legal requirements. Similarly, Satrio explains that an agreement is a legal act arising from the mutual consent of at least two parties, which produces legal consequences in accordance with the terms agreed upon by those parties.

For an agreement to possess legally binding force and be recognized under the law, it must satisfy the validity requirements stipulated in Article 1320 of the Indonesian Civil Code. These requirements consist of four cumulative elements: first, the existence of mutual consent freely given without mistake, coercion, or fraud; second, the legal capacity of the parties to enter into an agreement, meaning that they have reached the legal age of majority and are not under legal guardianship (*curatele*); third, the existence of a definite subject matter that is identifiable and legally transferable; and fourth, a lawful cause, meaning that the purpose or content of the agreement must not conflict with statutory law, public order, or accepted moral principles.

Furthermore, Subekti defines an agreement as a legal bond established between two parties, expressed either orally or in writing, containing promises or commitments that create reciprocal rights and obligations. This principle is reinforced by Article 1338 of the Indonesian Civil Code, which provides that every lawfully executed agreement shall bind the parties as law (*pacta sunt servanda*). Consequently, every agreement must be performed in good faith, reflecting the fundamental principle that legally valid contracts impose binding obligations upon the parties who have voluntarily entered into them.

Digital Credit

In general, Article 1 paragraph (11) of Law Number 10 of 1998 concerning the Amendment to Law Number 7 of 1992 on Banking defines credit as the provision of money or claims equivalent to money based on an agreement between a bank and another party, whereby the borrower is obliged to repay the debt within a specified period together with the agreed interest. According to Fuady, a credit agreement in the banking sector constitutes a mandatory legal relationship and is categorized as a real contract. In the implementation of credit distribution, banks are required to uphold the prudential principle in order to minimize the risk of non-performing loans and maintain the stability of the banking system.

Along with the rapid development of information technology, the mechanism for credit distribution has gradually evolved into a digital form, commonly referred to as digital credit or digital lending. Sutan Remy Sjahdeini argues that the digitalization of banking services and financial technology (fintech) lending should be capable of providing a level of legal protection equivalent to that offered under conventional banking practices. Accordingly, the use of electronically executed credit agreements and electronic creditworthiness assessments must ensure reliability, authenticity, and legal certainty so that the parties' intentions are accurately represented and protected within the framework of contract law.

In Indonesia, the principal legal framework governing digital credit activities is established under Law Number 11 of 2008 on Electronic Information and Transactions, as most recently amended by Law Number 1 of 2024 (UU ITE). The agreement underlying digital credit transactions is recognized as an electronic contract. Pursuant to Article 1 point (16) of the UU ITE, an electronic contract is defined as an agreement entered into by the parties through an electronic system. More specifically, digital lending activities conducted by information technology-based lending service providers are regulated and supervised by the Financial Services Authority (Otoritas Jasa Keuangan/OJK) through OJK Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services (Layanan Pendanaan Bersama Berbasis Teknologi Informasi/LPBBTI).

Electronic Covernote

In Indonesian notarial and banking practice, a covernote, also referred to as a letter of statement, is a document that originates from customary legal practice and practical needs rather than from explicit statutory regulation. According to Adjie, a covernote is essentially neither an authentic deed nor a document that can be equated with a notarial deed. Instead, it serves as a statement containing a notary's moral commitment or assurance to complete the legal process of establishing collateral security, which remains pending at the time the covernote is issued. In the banking sector, a covernote functions as an administrative document that enables banks to proceed with the disbursement of credit before the formal perfection and registration of collateral have been completed before the relevant authorities.

Tan Thong Kie further argues that a covernote issued by a notary creates only a moral obligation rather than a legally binding one. Consequently, if delays or problems arise in the completion of collateral registration due to circumstances beyond the notary's fault, the notary cannot be held legally liable for the value of the credit disbursed based on the covernote. This view emphasizes that the legal function of a covernote is limited to providing administrative assurance during the transitional stage of completing legal formalities and should not be interpreted as creating the same legal consequences as an authentic notarial deed.

Within the implementation of the E-Office Notary, the conventional covernote has evolved into an electronic document. Pursuant to Article 1 point (4) of the Law on Electronic Information and Transactions (UU ITE), an electronic covernote falls within the category of an Electronic Document. However, Lumban Tobing explains that a statement issued by a notary outside the form of an authentic deed is legally classified as a private document (*akta di bawah tangan*). Consequently, an electronic covernote does not possess the evidentiary value of an authentic deed but instead carries free evidentiary value (*vrij bewijskracht*), meaning that its evidentiary force is not predetermined by law and depends entirely upon the judge's assessment in judicial proceedings.

Notary

A notary is a public official vested with the authority to draw up authentic deeds and exercise other powers as provided under Law Number 30 of 2004 on the Office of Notary, as amended by Law Number 2 of 2014 (UUJN). As a public office established by the State, a notary occupies a position of trust entrusted with ensuring legal certainty in private legal relationships. The principal authority of a notary is stipulated in Article 15 paragraph (1) of the UUJN, which authorizes notaries to prepare authentic deeds concerning all legal acts, agreements, and legal determinations required by law or requested by the interested parties. Through this authority, notaries play a central role in guaranteeing the authenticity, validity, and legal certainty of legal transactions.

In the digital era, the role of notaries has become closely associated with the concept of the cyber notary. The elucidation of Article 15 paragraph (3) of the UUJN introduces this concept by recognizing the authority of notaries to certify transactions conducted electronically. According to Makarim, the concept of a cyber notary extends beyond the mere digitalization of paper-based documents. Instead, it positions the notary as a trusted repository responsible for ensuring information security, verifying the identity of the parties involved, and maintaining the integrity of electronic data used in cyber transactions. Accordingly, the cyber notary concept reflects the evolving role of notaries in responding to technological developments while preserving the fundamental principles of legal certainty and public trust.

With regard to the effectiveness of legal regulation in the digital era, Utrecht's Theory of Legal Certainty emphasizes two essential elements of legal certainty. First, the existence of general legal norms that provide clear guidance for individual conduct, and second, the assurance that individuals are protected against arbitrary actions through legal rules that are effective, consistent, and free from normative contradictions. Accordingly, within the context of digital notarial services, the harmonization of legal regulations constitutes a fundamental prerequisite for achieving optimal legal certainty. This theoretical perspective provides the conceptual basis for assessing whether the existing legal framework governing electronic covernotes and the implementation of the E-Office Notary is capable of ensuring legal certainty, legal protection, and the effective performance of notarial functions in the digital era.

RESEARCH METHOD

This study uses a normative legal research method with statutory, conceptual, and analytical approaches. The statutory approach is applied by examining relevant legal provisions, particularly the Law on Notary Profession and the Law on Electronic Information and Transactions, to analyze the legal position of electronic cover notes issued by notaries. Meanwhile, the conceptual and analytical approaches are used to examine the concepts of notarial authority, electronic documents, legal certainty, authenticity, and legal protection in the digital era.

The data used in this study consist of primary and secondary legal materials obtained through literature studies. Primary legal materials include relevant laws and regulations, while secondary legal materials include books, scientific articles, and other legal references related to electronic notarial services. The collected materials are analyzed qualitatively to identify legal problems and formulate conclusions regarding the validity and legal consequences of electronic cover notes in E-Office Notary practices.

RESULTS AND DISCUSSION

Legal Position of the Covernote in Digital Credit Agreements Within the Indonesian Legal System

The authority of a Notary in issuing a statement letter commonly known as a *covernote* is not explicitly regulated in the Notary Law (UUJN), its amendments, or Government Regulation Number 37 of 1998. In banking practice, the position of a *covernote* is only morally binding based on practical needs and customary practices. Its validity depends on the Notary's responsibility and remains binding as long as the Notary does not deny the signature contained in the document. A *covernote* does not constitute evidence of credit collateral but merely functions as a statement issued by a Notary or Land Deed Official (PPAT) explaining that the process of credit or collateral binding has taken place. Therefore, although it is issued by a public official, a *covernote* is not an authentic deed but rather a statement containing the Notary's commitment to complete certain legal processes related to credit collateral that are still in progress (Budiyono & Gunarto, 2025).

In banking activities, credit is one of the primary business activities that generates income through interest and provision fees. Article 1 Number 11 of the Banking Law defines credit as the provision of money or equivalent claims based on a loan agreement between a bank and another party, in which the borrower is required to repay the debt within a specified period with a predetermined amount of interest. Banking activities, including credit distribution, must be conducted based on the prudential principle as stipulated in Article 2 of the Banking Law. Therefore, before approving credit applications, banks are required to conduct an analysis to ensure the security and soundness of banking activities.

A *covernote* issued by a Notary cannot be considered as collateral evidence because its function is limited to providing information to the bank regarding the ongoing process of completing collateral binding until it obtains the status of Mortgage Rights. In this context, a *covernote* emphasizes the principle of trust between the parties involved, including the relationship between the Notary and the client, the Notary and the bank, as well as the Notary and related institutions (Budiyono & Gunarto, 2025).

A digital credit agreement is a form of agreement conducted through electronic means. In Indonesia, the primary legal basis governing electronic transactions, including digital agreements, is the Electronic Information and Transactions Law (UU ITE). According to Article 1 Number 16 of Law Number 11 of 2008 concerning Electronic Information and Transactions, as amended by Law Number 19 of 2016 and Law Number 1 of 2024, an electronic agreement is defined as an agreement formed through electronic information exchange between the parties involved. Furthermore, Article 18 Paragraph (1) of the UU ITE confirms that electronic agreements have the same legal force as written agreements. Therefore, as long as digital credit agreements comply with the provisions stipulated in the UU ITE, their legal position is equivalent to conventional credit agreements (Nurdin, 2025).

The regulation of digital credit agreements is also supported by several other legal instruments, including the Indonesian Civil Code (KUH Perdata), Law Number 21 of 2011 concerning the Financial Services Authority (OJK), Financial Services Authority Regulation (POJK) Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services (LPBBTI), Law Number 8 of 1999 concerning Consumer Protection, and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The Civil Code, particularly Article 1320, regulates the requirements for the validity of agreements, namely the existence of consent between the parties, legal capacity, a specific object, and a lawful cause. Meanwhile, Article 1338 establishes that legally valid agreements are binding as laws for the parties who create them. Law Number 21 of 2011 grants authority to the OJK to regulate and supervise the financial services sector, including digital-based financial services. Furthermore, POJK Number 10/POJK.05/2022 provides specific regulations regarding digital lending activities and establishes legal protection standards for both fund providers and recipients (Nurdin, 2025).

The UU ITE serves as the main legal foundation for regulating electronic agreements, including digital credit agreements. This regulation recognizes the validity of electronic documents and electronic signatures, allowing digital agreements to have equal legal standing with conventional written agreements. Electronic agreements can therefore be used as legal evidence, serve as the basis for enforcing rights and obligations between parties, and support legal actions against debtors who commit defaults (Makarim, 2016).

The Electronic Information and Transactions Law (UU ITE) provides the main legal framework for regulating electronic agreements, including digital credit agreements. This regulation also covers legal aspects related to the identity of the parties, interest provisions, penalties, and dispute resolution mechanisms that may arise from electronic transactions. Through these provisions, the UU ITE provides legal legitimacy for digital credit agreements and recognizes their binding force within the national legal system. The provisions contained in the UU ITE have also been adopted in several implementing regulations, including Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 and Bank Indonesia Regulation (PBI) Number 13/12/PBI/2018, which further regulate technical and legal aspects of digital-based credit agreements (*Jurnal Rechtens*, 2025).

The UU ITE can be considered the most comprehensive regulation governing electronic agreements because it provides recognition of electronic contracts as valid legal instruments. Article 1 Number 1 of the UU ITE defines electronic information as one or more sets of electronic data containing information that can be processed and understood through electronic systems. Furthermore, electronic agreements formed through electronic systems have legal consequences equivalent to written agreements. Therefore, digital credit agreements are legally recognized and may serve as a basis for enforcing the rights and obligations of the parties, become valid evidence in court proceedings, and support the execution process against debtors who fail to fulfill their obligations (Makarim, 2016).

In addition to the UU ITE, more specific regulations have been implemented to supervise digital credit practices, particularly those related to technology-based financial services. Financial Services Authority Regulation (POJK) Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services (LPBBTI) serves as the legal basis for peer-to-peer (P2P) lending activities conducted through digital platforms. This regulation aims to ensure that digital financial transactions are carried out transparently, fairly, and in accordance with consumer protection principles. The regulation also establishes obligations for financial service providers to maintain accountability, protect user data, and ensure that digital lending activities comply with applicable legal standards (Syamsul Bahri et al., 2019).

Furthermore, Law Number 8 of 1999 concerning Consumer Protection provides additional legal guarantees for consumers involved in digital credit transactions. Consumers have the right to obtain accurate, clear, and non-misleading information regarding credit requirements, including interest rates, loan periods, and potential risks. In addition, digital credit service providers are required to implement personal data protection standards to prevent misuse of consumer information. These provisions demonstrate that consumer protection is an essential aspect in maintaining fairness and legal certainty in digital credit transactions (Nurdin, 2025).

The existence of these legal regulations confirms that digital credit agreements have been formally recognized and possess binding legal force within the Indonesian legal system. However, to prevent misuse by either creditors or debtors, all parties involved must understand and comply with applicable regulations. Compliance with Financial Services Authority regulations and the protection of consumer rights are key factors in creating fairness and legal certainty in digital credit transactions. Therefore, despite providing convenience and flexibility, the implementation of digital credit agreements must continue to prioritize transparency, accountability, and prudential principles to prevent losses for any party involved (Tan, 2020).

Legal Certainty in the Preparation of Digital Credit Agreement Deeds by Notaries

The concept of *cyber notary* represents a new innovation aimed at improving the quality of public services in the field of notarial practice. The implementation of *cyber notary* is based on collaboration between the government and the Indonesian Notary Association (INI) to adopt information technology in carrying out notarial duties, including the digitalization, authentication, and legalization of legal documents. This initiative seeks to create a more effective and efficient notarial service system through fundamental reforms in administrative procedures within the notarial sector (*Jurnal Rechtens*, 2025).

Article 15 Paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Position of Notary states that, in addition to the authorities regulated in previous provisions, a Notary may exercise other authorities as determined by applicable laws and regulations. The explanation of this provision includes the authority of a Notary to certify electronic transactions (*cyber notary*), prepare waqf pledge deeds, and handle aircraft mortgage registration. However, this provision has not been fully harmonized with Article 16 Paragraph (1) Letter m of the same law, which requires a Notary to read the deed before the parties, witnessed by at least two witnesses, and signed directly by the parties, witnesses, and the Notary at the same time. This situation indicates a legal inconsistency between the development of digital notarial authority and the formal procedures that still rely on physical presence (Pamungkas, Suryadi, & Efritadewi, 2021).

Law Number 19 of 2016 amending Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) defines electronic documents as information created, sent, received, forwarded, or stored in various electronic formats that can be accessed, displayed, or processed through electronic systems. These documents may consist of text, audio, images, symbols, codes, or other forms of information that have meaning and can be understood by individuals with relevant expertise. In relation to the authority of Notaries in certifying electronic transactions through the *cyber notary* concept, the printed results of such certification may be categorized as electronic documents. However, to obtain the status of an authentic deed, the document must fulfill the requirements stipulated in Article 1868 of the Indonesian Civil Code (KUH Perdata), namely that the deed must be made according to the legally determined procedures, prepared by an authorized official, and executed within the official's legal jurisdiction (Hassanah, 2016).

Therefore, a notarial deed created through the *cyber notary* method using teleconference technology may still be considered valid as long as its form and substance comply with Article 1868 of the Civil Code and Article 38 of Law Number 2 of 2014 concerning the Position of Notary. An authentic deed must fulfill certain formal requirements, and in a digital context, its validity depends on the availability of a reliable, secure, and professionally managed electronic system to maintain the authenticity of the document. This principle is consistent with the concept of authentic deeds under the Notary Law, which recognizes that such deeds possess strong evidentiary value because they contain formal legal truth. Furthermore, Article 1877 of the Civil Code provides that the executional force of an authentic deed may be suspended if there is an allegation of forgery in accordance with civil procedural law (Syahrani, 1999).

In the era of globalization, notarial services have gradually shifted toward electronic-based systems known as *cyber notary*. Therefore, Indonesia requires specific regulations to ensure legal certainty, maintain order, and provide legal protection for all parties involved in the creation of deeds, including Notaries. The rapid development of information and communication technology has created a digital environment through internet networks, allowing communication processes to move from conventional methods to paperless digital systems that operate beyond physical and geographical limitations (Chastra, 2021).

In Indonesia, the concept of *cyber notary* remains a subject of debate and has not yet been fully recognized as an urgent legal necessity. Although technological developments have enabled Notaries to perform their duties remotely through digital platforms, its implementation continues to face obstacles due to existing legal provisions. This occurs because the Notary Law (UUJN) still adopts a conventional paradigm based on direct physical interaction. However, recent developments indicate increasing recognition of the *cyber notary* concept through Article 15 Paragraph (3) of the UUJN, which states that other authorities regulated by legislation include the certification of electronic transactions (*cyber notary*), the preparation of waqf pledge deeds, and aircraft mortgage registration. Although this recognition remains limited, it represents a positive step toward the development of *cyber notary* practices in the future (Putri & Budiono, 2019).

In implementing notarial duties based on the *cyber notary* concept, the presence of witnesses remains an essential requirement in the preparation of authentic deeds. Article 16 Paragraph (1) Letter m of the UUJN requires a Notary to read the deed before the parties, witnessed by at least two witnesses, and ensure that the deed is signed simultaneously by the parties, witnesses, and the Notary. Meanwhile, Article 5 Paragraph (4) of the UU ITE explicitly excludes notarial deeds from being recognized as valid electronic documents as legal evidence. These differences between regulations may create juridical issues for Notaries, including civil, administrative, and criminal consequences. Furthermore, the provisions of Article 16 Paragraph (1) Letter m appear inconsistent with Article 15 Paragraph (3) of the UUJN because the implementation of *cyber notary* allows deeds to be created remotely, including electronic reading and signing processes without the physical presence of witnesses, which contradicts the formal requirements established by the UUJN (Pamungkas et al., 2021).

The United States has developed legal regulations that recognize electronic signatures as having equal legal status to conventional signatures through the Electronic Signatures in Global and National Commerce Act (*E-Sign Act*). The term "*Cyber Notary*" was initially introduced in the United States by the Information Security Committee of the American Bar Association in 1994. It was described as a new legal profession with functions similar to public Notaries but focusing primarily on electronic documents rather than physical documents. Cyber Notaries were envisioned as internationally recognized legal professionals entrusted with a high level of trust and responsible for carrying out specialized electronic legal transactions beyond the traditional functions of public Notaries (Tan, 2020).

According to Utrecht's theory of legal certainty, legal certainty consists of two main aspects. First, general legal norms provide guidance to individuals regarding actions that are permitted and prohibited. Second, legal certainty protects individuals from arbitrary actions by the government because general rules allow society to understand the limitations and authority of the state in regulating citizens' rights and obligations (Syahrani, 1999).

Based on Utrecht's theory, legal regulations must possess a general character so that society can clearly understand which actions are allowed and which are prohibited.

However, Indonesia currently does not have specific regulations governing *cyber notary* practices, and inconsistencies remain between existing legal provisions. As a result, legal certainty has not been fully achieved because certainty can only exist when there is no contradiction between one legal rule and another. The creation of digital notarial deeds remains uncertain due to the lack of harmonization between the UUJN and the UU ITE regarding the authority of Notaries to utilize technology in preparing electronic deeds. This uncertainty causes many Notaries to hesitate in applying digital technology for the creation of authentic deeds through online services.

In the context of creating digital credit agreement deeds, legal certainty in Indonesia is based on various regulations governing notarial authority, the validity of digital documents, and legal protection for parties involved in electronic transactions. A Notary has the authority to prepare authentic deeds as regulated under Law Number 2 of 2014 concerning the Position of Notary. However, the development of digital transactions creates new challenges regarding the recognition and legal validity of deeds made electronically. Although the UU ITE and its amendments through Law Number 19 of 2016 provide a legal foundation for electronic agreements, authentic deeds must still fulfill formal requirements involving the physical presence of the parties and direct signing before a Notary as required under the UUJN. This requirement becomes a significant obstacle in establishing digital credit agreement deeds because electronic transactions generally do not involve direct physical interaction between the parties.

As a response to these developments, Notaries may perform legalization or *waarmerking* of electronic documents created and agreed upon by the parties, allowing such documents to serve as valid evidence in the event of disputes. Nevertheless, fully digital notarial deeds have not yet obtained the same legal status as conventional authentic deeds because the UUJN still requires traditional procedures. In other words, the creation of digital credit agreement deeds by Notaries has not fully obtained legal certainty due to the absence of comprehensive regulations supporting the use of electronic documents and electronic signatures in notarial practices.

To address these challenges, regulatory reform is required to accommodate developments in digital technology, including the recognition of certified electronic signatures as part of valid legal procedures. Clearer legal provisions would enable Notaries to perform their roles more effectively in ensuring security and legal certainty for parties involved in digital credit agreements. Furthermore, regulatory harmonization would strengthen legal protection within the electronic transaction ecosystem and support the modernization of notarial services in Indonesia (Indriani, Ali, & Muhshi, 2024).

Ius Constituendum Regarding the Preparation of Digital Credit Agreement Deeds by Notaries

The United States, as a country that adheres to the common law legal system, regulates electronic notaries based on the United States Model Notary Act of 2010. In 2017, the regulation of e-notaries followed a legal model adapted from the United States Model Electronic Notarization Act of 2017. The United States Model Electronic Notarization Act of 2017, which was adopted through state or regional legislation with an advanced legal enforcement model, integrates electronic notarization regulations into the existing paper-based notarization system, thereby creating a unified and integrated electronic and non-electronic notarization system. Several regulations related to cyber notary under the United States Model Electronic Notarization Act of 2017 include several important aspects.

The first aspect concerns notary registration. Chapter 3 of the United States Model Electronic Notarization Act of 2017 stipulates that in order for a notary to create electronic deeds or perform cyber notary functions, the notary must register or apply to become a notary who has authority to prepare electronic deeds. In addition, a notary must have completed special training courses and successfully passed examinations related to such courses.

The second aspect relates to the existence of cyber notary systems and providers. In the United States, specific systems and providers have been developed to facilitate the implementation of cyber notary services. According to Article 2-7 of the United States Model Electronic Notarization Act of 2017, an electronic notarization system refers to "a set of applications, programs, hardware, software, or technologies designed to enable a notary public to perform electronic notarization."

The third aspect concerns electronic seals and signatures. A notary is authorized to provide electronic seals and electronic signatures. Furthermore, the notary is required to electronically sign every notarial deed using an appropriate electronic signature mechanism.

The fourth aspect involves the use of teleconference media. According to Article 5A-1 of the United States Model Electronic Notarization Act of 2017, audiovisual communication refers to the ability to see, hear, and communicate with another person in real time through electronic means.

The fifth aspect concerns repertorium or deed records. Based on Chapter 9 of the United States Model Electronic Notarization Act of 2017, the recording of deeds or inventories may be conducted electronically while maintaining backup copies or physical archives.

The United States has also developed an online notary operating system through a platform called Online Notary US. Through this platform, the public can use mobile phones or computers to connect with online notaries (Online Notary US, 2018).

Many countries, both those adopting common law and civil law systems, have established regulations regarding cyber notary. Along with technological developments and changes in the current era, performing notarial duties conventionally has several limitations, including limited storage space for notarial deeds, violations of the authenticity requirements of deeds, identity fraud by appearers, forgery of notarial deeds, conflicts of interest in deed preparation, and confidentiality protection issues.

These problems represent some of the challenges that may arise in the daily practice of the notarial profession. Considering these potential issues, regulatory reform is highly necessary to adapt legal systems to the development of information and communication technology in the current digital era. In the future, regulations concerning online-based notaries have the potential to provide benefits and become solutions to various obstacles commonly found in conventional systems.

The deviation and storage of notarial deeds and notarial books can be carried out digitally through computerized systems. The rapid development of technology has also created new phenomena. In practice, many notaries currently utilize cloud computing services, such as Google Drive or iCloud, to store deed-related documents because these services provide convenience and accessibility for office workers.

Furthermore, future regulations should provide facilities allowing meetings between parties and notaries to be conducted through teleconference media rather than requiring only direct face-to-face meetings. To protect the interests of notaries, an electronic system capable of tracking an individual's actual personal data is required, which should be accessible by notaries as public officials. Several European countries have implemented comprehensive electronic identity management systems that allow notaries to verify the legality and identity of individuals involved in legal processes.

Notaries are required to maintain the confidentiality and security of notarial deeds in carrying out their duties; however, the possibility of forgery of deeds or notarial documents still exists. Through the implementation of digital systems, a notarial network can be established to prevent and overcome fraudulent practices involving notarial documents. In addition to traditional preventive measures, technological tools such as watermarks or barcodes can also be utilized to strengthen the authenticity and security of notarial deeds.

To prevent conflicts of interest in the preparation of original deeds, the rights of the parties involved can be guaranteed through an electronic identity system capable of ensuring the formal authenticity of the deed by proving the absence of conflicts of interest. With the support of population administration systems, relationships between notaries, parties, and witnesses can be traced and verified (Putri, 2020).

Furthermore, if computerized document storage systems are used as a security mechanism, unauthorized parties can be prevented from accessing notarial office archives. These technological improvements demonstrate the potential utilization of electronic systems in carrying out notarial duties, which may be designed and implemented in the future.

The regulation of cyber notary in the future is expected to provide various benefits, both for individuals requiring legalization of notarial deeds and for notaries who possess the authority to provide such services in an increasingly developing digital era. The integration of technology with the cyber notary concept is expected to improve the efficiency of notarial work and reduce problems that may arise outside the jurisdiction of notaries. The advancement of digital technology has also generated the concept of online-based notaries. Traditional values may undergo adjustments over time as long as they remain aligned with applicable laws and regulations. Therefore, the development of notarial science becomes essential to advance the profession and the notarial community. In particular, notaries need to provide services that are more efficient, faster, and easier to access. Accordingly, clearer legal regulations regarding the implementation of cyber notary in the future are required (Putri, 2020).

First, future regulations need to consider the principle of *tabellionis officium fideliter exercebo*. Human development, national development, and modernization processes are inevitable. The globalization era has brought extensive impacts on various sectors, including technology and law. Similar to other sectors, law has also been influenced by technological advancements. The emergence of modern technology, such as the internet, has provided convenience and comfort in daily life. Currently, technology has become an inseparable part of human activities. Therefore, every sector, including law, must be able to adapt to technological developments in order to remain relevant and exist within society.

The major changes that occurred during the Industrial Revolution have also shaped modern lifestyles. The First Industrial Revolution was characterized by the emergence of steam-powered machines that replaced human labor in England. Meanwhile, the Second Industrial Revolution brought changes through industrial electrification and mass production systems, which subsequently influenced work patterns, lifestyles, human social interactions, and even the surrounding environment.

These two major events significantly influenced changes in legal systems. When the Third Industrial Revolution began, automation technology, computers, and information technology emerged, allowing various tasks to be performed independently without direct human involvement. Currently, society has entered the Fourth Industrial Revolution, which is characterized by the integration of digitalization, production processes, and information and communication technology. The main challenge today lies in the effective implementation of existing laws and regulations within the context of technological development (Nugroho, 2021).

Ironically, Law Number 2 of 2014, which should serve as the primary legal foundation for regulating online-based notarial services, does not explicitly regulate cyber notary. The concept is only mentioned in a limited manner within the explanatory section of the regulation. Even in several legal studies, the term cyber notary is often discussed only briefly without further elaboration. Therefore, if Indonesia intends to formulate regulations concerning cyber notary in line with the rapid development of information and communication technology, the principle of *tabellionis officium fideliter exercebo* may no longer be fully relevant.

This principle may instead become an obstacle because it tends to maintain conventional notarial practices and hinder adaptation toward electronic systems or digitalization (Nugroho, 2021).

Third, future regulations regarding cyber notary are closely related to regulatory aspects. The rapid development of information and communication technology has significantly affected various aspects of social life, including the role and function of notaries. This development continues to increase, particularly regarding cyber notary, which has actually been mentioned in the explanation of Article 15 paragraph (3) of the Notary Position Act (UUJN). However, this regulation remains limited only to the explanatory section and has not been explicitly and comprehensively formulated in the form of clear provisions regarding the implementation of cyber notary.

The inconsistency between Article 15 paragraph (3) of the Notary Position Act (UUJN) and Article 5 paragraph (4) of the Electronic Information and Transactions Law (UU ITE) indicates that cyber notary cannot yet be effectively implemented. Furthermore, other provisions within the UUJN also have not provided adequate support for the implementation of this concept. Therefore, specific and more detailed regulations regarding cyber notary are required to ensure that deeds prepared by notaries maintain their status as authentic deeds.

Existing regulations cannot simply be disregarded because they serve as important instruments in creating legal certainty and maintaining legal order within society. In this regard, the government has a strategic role in providing direction, supervision, and strengthening legal and political institutions as part of the national system. As a state based on the rule of law, Indonesia places law above politics, rather than allowing politics to determine the direction of law. The formulation and implementation of national legal policies must therefore be based on the principles contained in the 1945 Constitution of the Republic of Indonesia (Siregar, 2022).

From the perspective of *ius constituendum* (future law or the law that is expected to exist), the process of preparing digital credit agreement deeds by notaries currently still requires regulatory reform in order to adapt to technological developments in digital financial transactions. Law Number 2 of 2014 concerning the Notary Position Act

(UUJN) still requires the preparation of authentic deeds to be conducted through direct physical presence before a notary and signed manually, which creates obstacles in implementing online digital credit transactions.

Meanwhile, Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) and its amendments have recognized the validity of electronic documents as legal evidence. However, there is still no explicit regulation stating that digitally formatted notarial deeds have the same legal position as physically prepared authentic deeds. Therefore, legal reform is needed to enable notaries to prepare authentic deeds digitally while continuing to uphold the principles of validity, authenticity, and adequate legal protection.

The regulatory framework that may be developed within the concept of *ius constituendum* includes several important aspects. First, there must be legal recognition of notarial deeds prepared electronically using certified electronic signatures that have been officially recognized by the state. Second, strengthening digital infrastructure for notaries is essential, including the development of online registration and validation systems that enable the virtual presence of parties through reliable security mechanisms.

Third, the Notary Position Act (UUJN) needs to be integrated with legal provisions governing financial technology (*fintech*) and digital transactions so that the authority of notaries to prepare electronic deeds obtains stronger legal legitimacy. Fourth, clear supervision and standards are required in the preparation of electronic deeds to prevent potential misuse and provide adequate legal protection for all parties involved.

Through comprehensive and directed legal reform, notaries can adapt to developments in the digital era without abandoning their function as public officials responsible for ensuring legal certainty and protection in digital credit agreements. Therefore, *ius constituendum* regarding digital credit agreement deeds prepared by notaries should be directed toward establishing regulations that are more inclusive, responsive to technological developments, while still adhering to the principles of legal validity.

CONCLUSION

Based on the analysis and discussion, it can be concluded that the issuance of electronic covernotes by notaries in credit agreements has not yet been able to provide adequate legal certainty, authenticity, and legal protection for all parties in the current digital era.

Legally, electronic covernotes are considered ordinary electronic documents with administrative characteristics and are prepared privately, so they do not have the same legal status as authentic deeds as regulated under Article 1868 of the Civil Code. This limitation arises due to regulatory inconsistencies between the Notary Position Act (UUJN) and the Electronic Information and Transactions Law (UU ITE). Although Article 15 paragraph (3) of the UUJN provides opportunities for cyber notary practices, Article 16 paragraph (1) letter m of the UUJN still requires the reading and signing of deeds directly before the parties. Furthermore, Article 5 paragraph (4) of the UU ITE explicitly excludes notarial deeds from recognized electronic documents within the legal evidentiary system.

As a result, the authenticity of electronic covernotes remains weak because they are not supported by officially recognized electronic signatures, causing their evidentiary value to be equivalent to privately signed documents whose validity may be challenged in court. Therefore, electronic covernotes cannot yet provide sufficient legal protection for the parties involved, including banks that cannot obtain executorial security and notaries who may face legal liability due to delays in completing administrative guarantees.

Thus, legal reform (*ius constituendum*) is required through specific regulations harmonizing the UUJN and UU ITE by recognizing digital notarial documents, verified electronic signatures, and virtual presence mechanisms. Such reforms are necessary to establish a secure E-Notary ecosystem that provides stronger legal certainty in the future.

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