

## Reconstruction of the *Ius Constituendum* for Cyber Notary in E-GMS as *Relaas Acta*



Rizka Tiara Kusuma<sup>1</sup>, Marsella Maurin Souissa<sup>2</sup>, Wanda Shicilya<sup>3</sup>, Putu Ayu Sriasih Wesna<sup>4</sup>

<sup>1,2,3,4</sup> Warmadewa University & Terompong No. 24, Sumerta Kelod, Denpasar, Bali 80239

**ABSTRACT:** The aim of writing this article is to deepen insight related to Reconstruction of the *Ius Constituendum* of Cyber Notary in E-GMS as *Relaas Acta*. This research uses a normative legal research method in the form of a statutory approach. During the COVID-19 pandemic, Indonesia first used E-GMS which was adapted to Cyber Notary. However, various problems arose during its implementation. The research results show that there is legal uncertainty regarding cyber notary regulations in Indonesia regarding E-GMS where the deed is drawn up by a notary as a *relaas acta*, so that a draft legislation is needed as the legal basis for cyber notaries in the future to guarantee the validity of an authentic deed.

**KEYWORDS:** Technology, Cyber Notary, E-GMS, *Ius Constituendum*, Notarial Deed

### I. INTRODUCTION

Technological developments in Indonesia have experienced very significant growth, where it is easy to carry out daily activities and activities. Modern society currently lives in the era of information technology which is currently known as "disruptive era" or the era of industrial revolution 4.0. So that in its implementation, the development of information technology has penetrated various aspects of life, especially in the legal field (Syafrialdi, 2024). Electronic technology has begun to develop since ancient times and is still experiencing developments to this day. The development of electronic technology cannot be separated from the development of computers and communications. The era of globalization creates a new spirit that penetrates national boundaries, because the competitiveness index between nations is now determined by the level of innovation and progress in science and technology. The phenomenon of globalization is not only characterized by a dramatic increase in the flow of capital, goods and services in an economic context through the progress of a country's science and technology. Globalization is not only marked by spectacular increases (Muladi, 2011). Seeing the development of increasingly advanced and modern times has led to the development of the industrial revolution 4.0 (four point zero) towards revolution Society 5.0 (five point zero). As for the revolution Society 5.0 (five point zero) is a society which is centered on humans who harmonize systems related to the internet and real situations. "The goal of the revolution Society is to create a society where humans can enjoy life. Although society 5.0 starts from Japan but the goal is not only for the country itself but for all countries (Faza Irfan As Sauri Yunanto, 2024).

The change in societal culture that pursues speed and convenience in everything reflects the transition towards Society 5.0 At the moment. Society 5.0 is a concept that originates from Japan, developing along with technological advances and increasingly complex social dynamics. In this concept, advanced technology is expected to significantly advance human life. Industry in the era Society 5.0 It is hoped that it can create new innovations to overcome various challenges faced by consumers. The crucial role of the digital industry is considered very important in improving the quality of a country's economy (Aulia Zulfa & Fatma Ulfatun Najicha, 2022). Developments in the legal profession, including the Notary profession, are experiencing rapid transformation along with rapid technological developments. Technological advances are a significant challenge for legal practitioners in the future, including notaries. There is potential that some aspects of the legal profession will be automated by technology, particularly with the emergence of artificial intelligence. This phenomenon does not only apply to the legal profession but also has an impact on various other professions and types of work. The ever-growing era of digitalization allows for the possibility of shifting or replacing human roles by technology (Nehemia Aritongan, 2021). New entities, including technology companies, will meet society's need for legal services by providing systems for document creation and using artificial intelligence to support those legal services.

"The law lags behind the facts," This term states that the legal system is often unable to keep up with the latest developments in society (Pricillia Virginia Rumengan, 2021). In line with this statement, the law regarding the implementation of the office of

## Reconstruction of the *Ius Constituendum* for Cyber Notary in E-GMS as *Relaas Acta*

Notary is currently still lagging behind. The choice is whether the Notary wants to follow technological developments or stick with the conventional implementation of the position. Currently, the use of technological facilities has not been fully maximized because it has not been fully regulated in the applicable legal regulations, so can the position of Notary still provide optimal service in this era? Society 5.0 or whether Notary Public will be a position obsolete (obsolete) which is timeless, and is slowly but surely starting to be abandoned by society. The role and obligations of the Notary in producing authentic evidence must be seen as supporting business activities, not as an obstacle. Therefore, some legal regulations require that some agreements must be made in the form of authentic deeds. For example, regulations can be found in Article 7 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies or what is known as UUPT which reads: "The company was founded by 2 (two) or more people with a Notarial deed made in Indonesian.", another regulation is article 5 paragraph (1) of Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Guarantees which reads: "The encumbrance of objects with Fiduciary Guarantee is made by a Notarial deed in Indonesian and is a Fiduciary Guarantee deed."

The question arises whether the role of notaries in the future can be replaced by artificial intelligence technology. What if in the future an invention is created in the form of artificial intelligence that resembles a notary with a more sophisticated level of security than notarial deeds which are still made conventionally? To maintain the relevance of the Notary profession, it is important for them to provide services that are in line with developments in information and communication technology. Notaries need to integrate technology in their duties. Therefore, a concept is needed that directs Notaries to adapt to advances in information and communication technology on a global scale when carrying out their duties (Habib Adjie, 2017). The use of technology in carrying out the office of a Notary can prevent the Notary from potential crimes committed by clients, for example in the case of the presenter not recognizing the signature that has been affixed in front of the Notary (can be minimized by using an electronic signature), the presenter facing the Notary turns out to be a fake face (can be minimized by scanning the face), the signature affixed by the face in the treatise of the deed turns out to be not identical (can be minimized by using an electronic signature). Maximum use of technology by notaries is the answer to all these problems.

Notaries need to keep up with technological developments in order to provide better services and meet the expectations of people who want speed, convenience and accuracy. In the era Society 5.0, ideally Notary services should move towards electronic platforms known as Cyber Notary. There are regulations regarding Cyber Notary Indonesian legislation is expected to guarantee legal certainty, order and protection for all parties involved in deeds made by Notaries (Mahfuzatun Ni'mah Sona, 2022). Notaries must be able to adapt by implementing and integrating technology to be able to provide more optimal services for society in this era Society 5.0 but does not reduce the honor and dignity of the Notary's position (Stefan Koos, 2023). Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary which became UUJNP states that a Notary is a public official who can make authentic deeds (notarial deeds) and has other authorities as referred to in UUJN or other statutory regulations.

An authentic notarial deed has binding legal force. Perfect means that if one of the parties submits a notarial deed, the judge must accept and assume it is correct until proven otherwise, so that the judge cannot ask for additional evidence. Article 1868 of the Civil Code defines an authentic deed as something made in legal form by or before a public official." Articles 1870 and 1871 of the Civil Code regulate the evidentiary power of an authentic deed:

1. Outwardly;
2. Formal; And
3. Material.

Article 15 UUJN describes the authority of notaries, which in essence can be described as follows:

1. Make the original deed, confirm the date, save it, and provide grosse, copy, and quotation;
2. Registering letters in a special book for signature and date verification;
3. Recording letters privately in a book;
4. Hand copy of the original letter;
5. Checking the conformity of the photocopy with the original letter;
6. Providing legal advice on deed making;
7. Carrying out land deeds;
8. Make a deed of auction treatise.

The law grants other powers to the Notary apart from those mentioned above. Article 15 paragraph (3) UUJN defines other authorities regulated in the articles of association as the authority to ratify electronic transactions (cyber notary), make waqf pledge deeds, and airplane mortgages. The article does not explicitly state the authority behind the term "Cyber Notary" on the body. The Big Indonesian Dictionary (KBBI) originally defined "cyber" as computers and information systems/cyberspace. The

## Reconstruction of the *Ius Constituendum* for Cyber Notary in E-GMS as *Relaas Acta*

internet, telecommunications networks, computer systems, processors and systems make up cyberspace (Irfan Fanasafa, 2022). As for expert opinions regarding Cyber Notary as follows:

- a Stephen Mason:  
"Cyber Notary It was originally an idea American Bar Association (ABA) Information Security Committee " (Edmon Makarim, 2011).
- b R.A Emma Nurita:  
"Cyber Notary is a Notary who carries out the duties and authority of his position based on information technology related to the duties and functions of a Notary, especially in making deeds." (Dewa Gede Prawira Buwana dan I Nyoman Bagiastra, 2022).

Cyber notary is the newest concept contained in UUJN. Understanding cyber notary is a renewable concept in the form of a notary's authority to carry out his/her official duties electronically, as the main media intermediary for making notarial deeds, where previously deeds were written in paper form and attended in person, can now be made in electronic form using the main media. Cyber notary is a new breakthrough to balance current technological advances. However, does the UUJN accommodate all the regulations regarding cyber notary or notary regulations in order to keep pace with technological advances. Technological advances make it possible cyber notary to create authentic deeds digitally and carry out their duties routinely. General Shareholders Meeting (GMS) via teleconference and electronic signing of the deed. To make it easier for parties who are far away, cyber notary remove distance barriers.

Long distance communication technology has developed from simple methods to sophisticated systems that can transmit sound, images, signs, codes, signals, or other information via cable, wireless, or other electronic systems. Internet-based telecommunications is developing rapidly. Human thought and imagination in the internet network drives rapid innovation today. "The Internet connects people across time and countries at the speed of light. Cyber notary utilize information technology in carrying out their duties, especially in making deeds. (R.A Emma Nurita, 2021) Cyber notary simplifies the process of creating authentic deeds for legal or desired actions, agreements, or provisions. The duties and functions of Notaries as public officials cannot be separated from technological advances in society and the rapid growth of electronic transactions. Notaries have other authorities as regulated in statutory regulations, as stated in Article 15 paragraph (3) UUJNP. Other authorities mentioned in this article are explained in Article 15 Paragraph (3) UUJNP which requires a Notary to read the deed in front of two witnesses. Teleconferencing and video calling are used by cyber notary to interact with the audience. Irresponsible parties can misuse it cyber notary to confirm the notarial deed.

E-GMS and Cyber notary have a close relationship because both use information technology to authorize electronic transactions, especially in the context of electronic GMS. The electronic signature of the GMS participants is authorized by cyber notary. The notary is obliged to re-verify the electronic signatures of GMS participants by re-examining the authorized electronic deed organizer authority and the valid electronic deed. The UUPT regulates the holding of electronic GMS (E-GMS), which in some cases requires a Notarial deed for the treatise of the E-GMS. Article 77 of the Company Law changes the GMS to meet needs such as advanced technology and electronic media. Article 77 of the Company Law regulates the procedures for holding a new GMS electronically:

Teleconferences, video conferences and other electronic media can be used to hold a GMS as intended in Article 76 so that all GMS participants can see and hear each other and participate. This article allows the GMS to be held through developing electronic media. You still have to prepare the treatise of the GMS when holding the E-GMS.

E-GMS is regulated in the Republic of Indonesia Financial Services Authority Regulation 15/Pojk.04/2020 concerning Planning and Organizing General Meetings of Shareholders of Public Companies with an Electronic GMS Organizing System. Article 1 number (5) POJK Number 15/Pojk.04/2020 defines "E-GMS as an electronic system or means used to support Public Company GMS information, implementation and reporting." Apart from that, Article 3 of the Republic of Indonesia Financial Services Authority Regulation 16/Pojk.04/2020 concerning Holding General Meetings of Shareholders of Public Companies Electronically. General Meetings of Shareholders of Public Companies Electronically is permitted.

As for this problem, the author is interested in discussing the problem formulation, namely how urgent regulation is cyber notary as a legal basis for creating an E-GMS, as well as how to design it to establish the right arrangement cyber notary in the future?.

## II. METHOD

The research method used in this research is a normative legal research method in the form of a statutory approach (the statute approach). Normative legal research focuses on researching legal rules or regulations regarding a legal event which is carried out by analyzing and researching primary and secondary library materials. By using a statutory approach (the statute approach),

## Reconstruction of the *Ius Constituendum* for Cyber Notary in E-GMS as *Relaas Acta*

research was carried out by examining laws and regulations related to the problem topic. The laws and regulations used include the Civil Code, Law Number 40 of 2007 concerning Limited Liability Companies, Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Guarantees, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions. Financial Services Authority Regulations.

Another research method used in this research is the contextual approach, which is an approach that utilizes the study of notary and cyber notary concepts. This approach is an approach that prioritizes analysis of the absorption of legal needs into the law that was formed to regulate the legal context. Tiered norms are an approach that prioritizes analysis of the structure of norms, where subordinate norms are related to superior norms and superior norms are integrated into subordinate norm.

### III. RESULT AND DISCUSSION

#### A. Regulatory Urgency Cyber Notary as a Legal Basis for Making E-GMS

"Cyber notary" is a term consisting of two words, namely "Cyber" which derive from "Cyberspace", refers to cyberspace. Meanwhile "Notary" or Notary is a public official regulated by UUJN, tasked with receiving attribution powers from the State to carry out certain tasks in civil law. These two words are combined into "Cyber notary", which refers to notaries who use information and communication technology, such as electronic media digitalization systems, teleconferences, video conferences, and other networked facilities. By utilizing this technology, notary interaction with the parties involved in the process can occur without space and space limitations. time, enabling online participation by multiple parties (Edmon Makarin, 2020). Notaries are expected to adopt technology Cyber notary to improve service quality, so as to encourage rapid economic growth. In carrying out their duties, notaries need to use technology to serve the public effectively online. Digital Notary Service is a tool that can make it easier for notaries to do their work and facilitate the exchange of information between notaries and other parties involved in transactions. In his role as "a tool of society engineering" The law functions to ensure that all aspects of development can proceed in accordance with the mandate of the 1945 Constitution. Therefore, the law must be enforced along with development, to avoid problems arising due to legal uncertainty in the future.

Some challenges in implementation "Cyber notary" especially in the formation of notarial deeds, namely as follows:

1. The notary is required to know the presenter or be introduced by two witnesses based on testimony law (Article 40 UUJN).
2. The presenter, observers and translator (if any) must be present when the Notary reads and ratifies the deed (Article 44 UUJN).
3. Notary solidarity is related to its authority and work area (Articles 18 and 19 UUJN).
4. According to Article 42 UUJN, a Notarial deed must be readable. Article 16 paragraph 1 letter f requires the Notary to collect deeds every month in a book that can accommodate 50 deeds.
5. The notary is obliged to make and keep a record of the deed to prove the authenticity of the deed (Article 16 paragraph 1 letter b). If the deed is forged or misused, then the original must be kept for proof.
6. The treasury book along with tables of deeds, other books that record deeds that have been legalized, documents of validation, warm-ups, klappers, registers of protests in connection with unpaid securities, and books of wills must be maintained according to time.
7. Article 16 paragraphs (2), (3), (4), and (5) must be adhered to when the original deed is drawn up.

Many regulations in Indonesia have activated the concept Cyber Notary, so that Notaries can utilize information technology in carrying out their duties. However, legal unity is needed to avoid overlap in the application of these rules. Legislation regarding concepts Cyber Notary should clearly regulate technological progress. Legal experts, academics and practitioners agree that this concept requires legal flexibility to adapt to information technology (Ilhaam Aditio, Yuhelson, Maryano, 2022). Based on Article 1 point 4 of the Company Law, the GMS has authority that is not delegated to the Board of Directors or the Board of Commissioners, within the limits stipulated in the law or the company's articles of association. Article 78 of the Company Law regulates annual GMS and other GMS. The Directors' report regarding the company's performance one year ago and their plans for the following year are evaluated and decided at the annual GMS. Meanwhile, an Extraordinary General Meeting of Shareholders (EGMS) was held to discuss and resolve urgent problems (Anisitus Amanat, 1996). In his book, Achmad Ichsan states that a GMS is a testament or important decision of a company unless it conflicts with the law or the company's articles of association (Ichsan, 1986). Thus, the GMS must be held in an orderly manner and recorded in the Deed of Meeting Treatise to provide legal certainty for all GMS decisions. Article 21 paragraph (4) and paragraph (5) of the Company Law also requires the Notary to document and declare any changes to the articles of association made by the GMS within 30 days of the decision has been taken.

## Reconstruction of the *Ius Constituendum* for Cyber Notary in E-GMS as *Relaas Acta*

In most cases, shareholders and their proxy representatives attend the GMS directly in front of a Notary. Based on Article 76 of the Company Law, the GMS must be held at the company's domicile in Indonesia. Article 77 of the Company Law allows GMS to be held using teleconferencing, video conferencing or other electronic media with the possibility that all GMS participants can see, hear and participate directly. Advances in information technology make it possible to hold GMS effectively online. At each electronic GMS, all participants are required to approve and sign the treatise of the meeting. E-GMS was used during the COVID-19 pandemic, where many activities were carried out online to stop the spread. To combat the COVID-19 pandemic, the government is streamlining bureaucracy to restore economic stability. One step is to issue POJK POJK Number 15/Pojk.04/2020 and POJK Number 16/Pojk.04/2020. In accordance with Article 1 number 3 POJK Number 16/Pojk.04/2020, "A GMS conducted electronically is the implementation of a GMS by a public company which is conducted using teleconference, video conference or other electronic media."

Teleconferencing that has legal implications is used to make important decisions or to provide information or testimony in legal proceedings. Public teleconferences differ from legal teleconferences in terms of these implications. Articles 76 and 77 of the Company Law regulate conventional and modern (teleconference) GMS. Participants who attend sign the treatise of the GMS in a conventional GMS. However, a teleconference GMS can use electronic signatures. In Yahya Harahap's book it is stated that electronic media used to hold a GMS electronically must first fulfill Article 77 of the formal requirements of the PT UUPT. This includes the ability of all GMS participants to see and hear the proceedings of the meeting and participate directly. Yahya Harahap also stated that the electronic media of the GMS must meet these formal requirements. If one of the written provisions is not implemented, then electronic media cannot hold a GMS (Harahap, 2016):

- 1) Show shareholders the written regulations, GMS materials and agenda required to vote on each GMS agenda;
- 2) Allowing all GMS participants to follow and interact with each other during the meeting;
- 3) Calculating attendance for the GMS quorum;
- 4) Voting and counting valid votes, including if there are several types of shares or shares;
- 5) Capture the entire GMS interaction in sound, movement, audio visual or other electronic format;
- 6) Providing electronic power of attorney for GMS attendance and voting.

OJK's new policy regarding POJK Number 16/Pojk.04/2020 implements GMS in Indonesia, especially for companies listed on the Indonesian Stock Exchange (Emiten). This policy allows Issuers to hold GMS electronically with certain requirements:

- 1) E-GMS can be implemented using the service provider or Issuer system.
- 2) E-GMS service providers and publishers must follow the regulations.

The E-GMS organizer must be able to provide a copy or duplicate of the document to the notary which at least contains (Ismatul Izzat, 2021):

- a Information regarding personal data of shareholders attending via electronic media;
- b Information on shareholders who provide power of attorney via electronic media;
- c Results of data collection of attendance quorum and decision quorum; and
- d Copies or duplicates of recordings of all interactions during the GMS via electronic media which are then placed in the treatise of the GMS treatise.

Article 12 POJK Number 16/Pojk.04/2020 requires notaries to sign the treatise of the Extraordinary GMS. The presenters must appear before a Notary to prepare the authentic deed. This is different from UUJN Article 16 paragraph (1) letter m, which requires a minimum of two witnesses or four witnesses, especially when making a testamentary deed privately and signed by the presenter, witness and notary when making the deed which is read in public. According to Article 1868 of the Civil Code, an authentic deed is a deed made by or before an authorized public official at the place where it is made. The requirements for an authentic deed according to Article 1868 of the Civil Code are:

1. The Act must be made by or in front of a public official;
2. The deed must be made in a form according to the provisions of the law;
3. Public officials, by or in the presence of the person appearing, must have the authority to make the deed (G.H.S. Lumban Tobing, 1999).

Those conditions make non-authentic deeds private, with the deed-making office as a public office. The deed-making office in making a deed is divided into two types of deed, namely:

1. Notary (door) can make a *relaas deed/deed of service* (official report, official report, report). In the deed, the official explains objectively what he saw and did without the party's initiative. There is no comparison and the full responsibility of the notary defines this deed.

## Reconstruction of the *Ius Constituendum* for Cyber Notary in E-GMS as *Relaas Acta*

2. Party act (party actors) is an agreement made before a deed-making official, at the request of the parties who have that interest. The comparison in this deed explains the authority of the parties to make a deed before a Notary (Maulida Luthfiyatul Azizah dan Muhaimin, 2022).

An authentic deed can become a private deed if the conditions are not met. At the EGMS, the attendance requirement is carried out online via video without being present in front of a notary, thereby causing problems in the future because it violates Article 1868 of the Civil Code and Article 16 paragraph (1) letter m UUJN. Unless the following conditions are met, a notarial deed has the power of proof as a private deed permitted under Article 1869 of the Civil Code:

1. Lack of authority of relevant public officials;
2. The absence of relevant public officials;
3. Deformed in terms of shape.

The legal subject acting in a deed greatly influences the ability of the parties to carry out legal actions which are indicated to be able to give rise to certain legal consequences if these requirements are not met. Thus, the deed can be declared void at the request of the interested party if the subjective requirements for the parties to appear before the Notary are not initially fulfilled. A notarial deed has the ability to be a strong evidentiary tool if all procedures are followed. A deed can have the ability to become the same means of proof as a private deed if procedures are violated and proven in court. The judge will determine the evidentiary value of the deed in this case. Certification printouts are also electronic documents under other notarial authority, such as transaction certifications cyber notary. This electronic document must meet the requirements for the validity of a deed in Article 1868 of the Civil Code. Cyber notary In UUJNP, it is increasingly possible with the regulation of Electronic Transactions in Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions or what is also known as the ITE Law. The ITE Law states that "Electronic Transactions are legal acts carried out using computers, computer networks and/or other electronic media" in Article 1 paragraph (2). In Edmon Makarim's book it is stated that the ITE Law strengthens cyber notary in Indonesia, it allows Notaries to work remotely using technology (Hanif Windarrahman, 2022).

Should cyber notary implemented in Indonesia in accordance with Article 15 Paragraph 3 UUJN, but there are no additional regulations yet. Because there are no regulations regarding this matter, the notary profession has difficulty serving the public. Legal services with cyber notary requires a clear legal basis so that notaries can carry out their duties and provide services to the community. Therefore, adequate regulations are needed to provide legal certainty in the preparation of notarial deeds, especially during the COVID-19 pandemic which requires flexible and efficient services. An electronic deed can be verified for its correctness, has the same evidentiary power as a private deed, and can be ratified by a notary as well as the initials of witnesses and notaries. Cyber Notary protected by UU ITE due to the basic application A special law overrides a general law which means that specific laws override general laws. In this case, the ITE Law overrides the UJUN (Junita Faulina, Abdul Halim Barkatullah, Djoni S Gozali, 2022). It is said that because the ITE Law provides legal certainty regarding the making of deeds cyber notary which can override the provisions of Article 16 paragraph (1) letter m UUJN because in Article 16 paragraph (7) it is also regulated that it is not mandatory to read the deed before a notary if the presenter has such a wish because the presenter has previously read it himself, knows and understands it. will be the contents of the deed. This could be an opportunity for implementation cyber notary on the duties and authority of the notary position.

Organizing an E-GMS still has to prepare the treatise of the GMS as a notarial deed. Notaries can voluntarily attend the E-GMS to prepare treatise. There are two ways to make meeting treatise into a notarial deed:

1. If the Notary makes a deed in the form of treatise of the GMS, then the treatise of the meeting must be made by the Notary himself.
2. With the Meeting Decision Statement (PKR), give authority to the representative who is also present in the meeting to make and restate the meeting treatise in front of the Notary.

This is usually applied to GMS which requires the treatise of the meeting to be drawn up using a notarial deed without the presence of a notary directly at the GMS when the notarial deed is drawn up (Wardani Rizkianti 2016). If the treatise are made in the form of a notarial deed, then the process begins electronically with the notary making the deed of the GMS results via teleconference and reading it so that it can be seen by all GMS participants. Digital signatures are used to sign deeds after all parties have approved them. GMS participants, witnesses and notaries sign digitally (Cyndiarnis Cahyaning Putri, Abdul Rachmad Budiono, 2019). GMS treatise must be prepared, but not authentically. The GMS is made authentically if the agenda is the transfer of rights, whereas if the agenda for the annual GMS is not required to be given authentically. The chairman of the meeting and at least one shareholder appointed by the GMS participants are required to prepare and sign the treatise of the GMS, including the annual GMS. Authentic GMS treatise do not need to be signed by the chairman of the meeting and at least one shareholder.

## **Reconstruction of the *Ius Constituendum* for Cyber Notary in E-GMS as *Relaas Acta***

PKR is made no later than 30 days after the GMS decision based on Article 21 paragraph (5) UUPT. Making E-GMS treatise in the form of a notarial deed based on PKR will not cause problems because the PKR will be brought before a notary so that when the notarial deed is formed it can be carried out in accordance with the provisions of Article 16 paragraph (1) letter m UJUN, namely reading the deed in front of facing directly. However, the possibility of its implementation is still hampered by the legal regulations faced by notaries. Regulations regarding making deeds using electronic media have not been explicitly regulated in the UJUN and ITE Law in accordance with the public's need to follow current developments in information technology. Even though the laws and regulations do not explicitly regulate the creation of notarial deeds electronically, this does not rule out the opportunity to use teleconferencing media. Specifically for public companies, there are separate regulations in POJK Number 15/POJK.04/2020 and POJK Number 16/POJK.04/2020. However, it should also be noted that in its implementation there is no legal certainty regarding electronic deeds in general. Therefore, notaries need to apply the principle of caution when making an authentic deed.

### **B. Plan the Right to Establish Arrangement Cyber Notary in the Future**

Cyber Notary refers to an electronic notarial deed. Video conferencing and digital signatures are one example. These technologies cannot be denied and are undoubtedly proof of the progress of a nation or state. The problem is, a Notary in carrying out his duties which is based on the UJUNP, namely, the Preamble to the UJUNP states that it is the duty of a Notary to make authentic deeds to guarantee certainty, order and legal protection. See also Civil Code Article 1868 (Civil Code). An authentic deed must be based on law, made by an official, and made in the country of origin. Legal certainty for all Indonesian people is needed to make Indonesia a rule of law country. This law must be enforced by all institutions within the government, especially law enforcement, which aims to protect the public. It is hoped that the notary can help make this happen. Considering the many authorities as state officials appointed by the Minister of Law and Human Rights of the Republic of Indonesia, Notaries are the foundation of legal certainty in society. One ruler creates an authentic deed that guarantees legal protection. Notaries are often involved in legal matters involving deeds and authentic evidence (Tan Thong Kie, 2007). Notary services are closely related to community services. Especially in business. Speed and flexibility are needed in the business world, as well as legal certainty.

The belief underlying the UJUNP is that it can provide definite legal certainty so that in the process of making an authentic deed, which is designed in such a way, it is able to provide strong evidence in terms of its probative value. One of them is, the document must be read in front of the parties, which aims to ensure that all parties know and understand the contents of the agreement stated in the authentic deed and the parties who are binding each other in the deed must be present before the notary to sign the deed that is made. As time goes by, notaries in Indonesia are expected to be able to follow this progress by adapting the practice of making authentic deeds to standards cyber notary which has been widely adopted by other developing countries. Issuance of reports Ease of Doing Business (EODB) from the World Bank shows that the business world wants policies that support the ease of doing business in countries, because this will improve the country's image as a friendly investment environment.

The implementation of EODB in Indonesia will open up job vacancies for the community, especially the younger generation. Because today's young generation better understands and knows how to operate the technologies that are developing in society, with this application it will give birth to golden generations who are good at running businesses independently with the availability of sophisticated tools and technology. Of course there needs to be support from the Indonesian government, in providing these tools and technology. When viewed from a notary's perspective, it is known as cyber notary which, as explained above, is an electronic tool to be used by the deed-making official in making the deed, especially in the business sector, namely E-GMS. However, in reality, currently Notaries cannot carry out activities cyber notary as a whole because it is constrained by the UJUNP which regulates the obligations of the parties to appear, and at the beginning of the deed the sentence "Appear before me" is clear. This sentence makes UJUNP article 16 letter m the prefix to a notarial deed.

Indonesia has a goal so that in the future, it wants and dreams for Indonesia to become a country based on definite laws. The meaning of the word definite here is that the laws that regulate it are not vague or empty. Where legal certainty is a guarantee of the rights and obligations of someone who carries out legal actions or actions. Because the law has the characteristic of binding everyone within the legal environment (Sudikno Mertokusumo, 2007). So awareness is needed from the public and especially law enforcement officials so that they can ensure and implement and uphold these legal norms. To create a sense of comfort and provide protection for the community. One of the concerns of society today is the profession of a notary or deed-making official, where the deed-making official has the function and obligation as an official who is authorized to make an authentic deed that is binding on both parties and has valid evidentiary value in the eyes of the law. Alone. It is known that the notary's profession as an official who makes deeds is given the benefits of being a public official, where this position is given by the Minister of Law and Human Rights of the Republic of Indonesia. And the authority of the deed-making official, one of which is to organize.

## Reconstruction of the *Ius Constituendum* for Cyber Notary in E-GMS as *Relaas Acta*

In the early stages of company formation, a notary helps make matters easier. They make authentic deeds such as the Deed of Establishment of a Limited Liability Company for entrepreneurs. Indonesia needs its cyber notary for three reasons. First, the government wants Indonesia to rank at least 40 in the EODB, and President Joko Widodo said at the International Congress that notaries must stay abreast of the latest developments. Second, the EODB index indicator includes the formation of a Limited Liability Company (PT). As a public official who has state authority, the Notary must understand the UUJN and changes in the PT establishment process. Third, Article 22 UUJN allows notaries to disclose information by considering three factors, among others.

The indicator "business activities" as a determinant of regional notary needs shows that the notary profession is closely related to the business world. Therefore, notaries must adapt to business trends and time efficiency in making deeds. Cyber notary is also related to information management and electronic transaction regulations. Notaries manage information and transactions electronically in Indonesia, including signatures using digital media technology, according to the government. Where the ITE Law concerns giving initials digitally which has the same legal force as a manual signature under certain conditions. Several countries have implemented electronic notarization or cyber notary in their national legal system, especially to ensure the authenticity of electronic information, especially in the context of the use of initials or digital signatures. The United States and France are two examples of countries that represent different legal traditions, but both have introduced electronic or notarization cyber notary in their national legal systems (Priscillia Virginia Rumengan).

While several other countries are considering implementing similar systems, here is a brief overview:

### 1. United States:

The United States has separated regulations on conventional notaries and electronic notaries since 2017. The US government considers notaries working electronically to be a legal necessity along with advances in information technology. Deed-making officials or public officials who wish to carry out electronic notarial actions must have additional qualifications and adequate electronic system infrastructure.

### 2. France:

France requires electronic notaries to register wills in the will database Association for the Development of Notaris Services. French notaries use electronic notary books to secure electronic signatures and document management.

### 3. Netherlands:

In the Netherlands, notaries only have the responsibility to legalize or verify a person's signature and identity before they can obtain Digital Certificate from the CSP organizer for electronic applications. The Dutch Notary Law allows notaries to make copies or summaries of deeds electronically in accordance with the provisions of Council of State.

### 4. Germany:

Deed-making offices located in Germany and Federal Chamber of Notaries ( BNotK ) can issue digital certificates to attorneys, judges, and other law enforcement professionals. BNotK can be a direct notary or cyber sub-notary depending on the application.

### 5. South Korea:

South Korea has regulations regarding electronic notary in the UUJNP, where public notaries must fulfill the requirements set by the Ministry of Justice to carry out electronic notarial actions. These requirements include the availability of equipment and electronic systems that are useful to support electronic and computerized document certification. All this shows that various countries are developing or have implemented electronic notarization in their legal systems in response to advances in information technology.

Digital identity verification will become increasingly important in the future with the possible virtualization of social life (metaverse), where the dynamic nature of the visuals produced by technology and virtual avatars makes trust in virtual spaces difficult. Because people will find it increasingly difficult to differentiate between what is real and what is AI, due to the increasing development of electronic technology today. Therefore, there is an urgent need to prove a clear and unambiguous digital identity in cyberspace. Socially and culturally, technological developments have significantly changed the way people work and behave, including in terms of transactions, which have shifted from traditional direct or indirect models to online (Emma Nurita, 2012).

Cyber Notary must be distinguished from those who use technology cyber. Notaries who use teleconferencing to meet with share owners who cannot come at the meeting and only attend the meeting via electronic media are called Cyber-User Notary (NPCs). Power of attorney and permanent power of attorney should be shown to the Notary. However, cyber notary can authenticate documents electronically. This includes digital certification and notation systems. To illustrate, we often hear about "shopping online". The use of this term is sometimes inappropriate. For example, when a consumer selects an item via a website or social media, then makes a payment via ATM or mobile banking using his or her mobile phone, this is not actually shopping online. This is more of a traditional form of shopping that utilizes the Internet (online). On the other hand, if the site provides a direct payment option with a debit or credit card, then the transaction can be categorized as online shopping. Analogy, in context



## Reconstruction of the *Ius Constituendum* for Cyber Notary in E-GMS as *Relaas Acta*

cyber notary, every step in the Notarial action process is carried out digitally so that it can be referred to as cyber notary. One person cyber notary use electronic and/or digital signatures or initials to carry out their duties (Priscillia Virginia Rumengan).

With this development, notaries as legal service providers must have an understanding of information technology in order to be able to manage the legal products they produce. There are several areas that can be considered a cyber notary that require the involvement of a notary, for example:

- 1) Electronic Certificate Provider or Certified Authority (CA) is an independent and neutral service provider entity that issues certificates to link cryptographic keys to user identities. The CA's duties also include registering the public key along with the user name as the subject of the certificate.
- 2) Electronic expert group E-Commerce (ECEG) defines e-commerce as all trade transactions carried out via facsimile, telex, internet or telephone. This definition only applies to computer-to-computer transactions over open or closed networks.
- 3) UUPT allows online General Shareholders Meetings via teleconference or video conference, thereby enabling cyber notary activities.
- 4) The Directorate General of General Legal Administration, Ministry of Law and Human Rights of the Republic of Indonesia provides an Online Legal Entity Administration System (SABH) to the public.
- 5) Data Sharing: Information technology can help Notaries in carrying out their duties. In this case, the Resident Identity Card is in the form of an E-KTP which helps the Notary identify the parties who made the deed.
- 6) Correspondence Online: Cyber notary can send files to clients more easily. Clients can scan and send administrative files such as KTP, KK, NPWP, Sale and Purchase Agreement, etc. via email.
- 7) Consultation Online : Notaries can use email, chat, or other social media to consult with their clients regarding deeds.
- 8) Electronic auction or e-procurement namely procedures for obtaining government goods and services that all utilize advances in information and communication technology.

This revolution made society rethink its ontological, epistemological, value and methodological beliefs. For example, a Notary must follow I will faithfully exercise the office of delivery which requires customary work. The Notary's approach to formal truth must be in accordance with what has been decided. Notaries are required to follow this SOP in carrying out their duties (Habib Adjie, 2011). The battle of patterns is ongoing, and if the new pattern wins, the scientific community will accept it, leading to the creation of a new paradigm that is completely different from the previous one. The manufacturing revolution 4.0 has resembled legal and human relations. Legal information engineers are in high demand in law firms, courts, police, and prosecutors' offices. Ignoring these technological advances is impossible. Some aspects of legal work are similar to technology, so AI can replace them. AI engines will work together with legal professionals to achieve better, faster, and more accurate results by combining human and machine intelligence (Widodo Dwi Putro, 2021). Lawyers in Indonesia who practice civil law must master various languages and new technologies for drafting agreements, including smart contracts, contract automation, digital signatures and digital contracts. Technology in notary authority aims to make notary work more practical and efficient for clients. We must understand the current legal provisions (established right) and community needs (to establish the right) to evaluate "more practical" and "simpler" concepts.

From the description of the discussion above, if future arrangements or to establish the right Based or electronic notary has become possible and permitted by legal regulations in Indonesia, it will be a new breakthrough in the provision of services in the notarial sector. In principle there is nothing more important for a notary in terms of the need for signing, to appear personally before the notary to affix or acknowledge the required signature, an identity to be verified, while existing technology will facilitate the need for such services. Looking at several laws and regulations and the discussion above, an introduction to the concept cyber notary in Indonesia has received a lot of support from the Indonesian government, and the government has facilitated the use of technology with its existence. In the ITE Law, there are agencies that have strategic information systems that must be protected; incorporate Government Regulations, such as executive orders. The role of notaries is also expected to increase the use of information technology, use and provide services through electronic systems and carry out transactions electronically in accordance with the needs of notaries participating in electronic transactions. In particular, tech-savvy and savvy notary offices that can become brokers or consultants and even data bank data centers, where the confidentiality of electronic documents is better guaranteed. Only some notary authorizations can be used with digital signatures. Notaries must be able to provide solutions to create healthy competition and in accordance with positive law or established right applicable to support development in Indonesia. Indonesia is sometimes slow in creating new solutions, when the international world talks about cyber notary, it's not too late to make the concept a reality cyber notary because it needs to be supported to improve the services of the notary industry.

Currently in Indonesia, use cyber notary itself, it cannot be done comprehensively, especially in the preparation of E-GMS where in the UUJNP notaries have obligations which in making the deed must be carried out in accordance with the Law that regulates their position. However, notaries are expected to be able to keep up with developments and advances in sophisticated technology

## Reconstruction of the *Ius Constituendum* for Cyber Notary in E-GMS as *Relaas Acta*

and make it easier for people without meeting face to face but to be able to carry out transactions wherever and whenever. Currently notaries are faced with 2 (two) choices, namely carrying out their position in accordance with statutory regulations which still use notarial methods and having to work traditionally with the risk that the notary will be left behind by the world's current technological civilization which every year has new breakthroughs, or notaries can make new breakthroughs with their authentic deeds, especially E-GMS, which also carries the risk of falsification of data or signatures of the presenters.

In this situation or situation, the notary is required to be more thorough, careful and more careful in carrying out his actions cyber notary This is so that you are not easily fooled by sophisticated technological advances. So if activities cyber notary This is done continuously, it is hoped that the Laws governing the Position of Notaries and other Laws which still support that notaries must work traditionally are able to change following changes and developments in existing technology. In this way, notaries in Indonesia are able to compete with notaries from other developed countries. With equal competition, it is hoped that Indonesia will be able to attract the interest of foreign investors who will invest their capital in Indonesia.

### IV. CONCLUSION

During the COVID-19 pandemic, Indonesia used E-GMS for the first time. Many people, especially business people, find it difficult to conduct face-to-face meetings. To improve the economy, the Indonesian government issued POJK Number 15/Pojk.04/2020 and POJK Number 16/Pojk.04/2020. E-GMS is the holding of teleconferences, video conferences or other general meetings of shareholders of public companies electronically as intended in Article 1 number 3 POJK Number 16/Pojk.04/2020. UUPT Articles 76 and 77 state that the GMS is held at the Company's head office in Indonesia. General Meeting of Shareholders (GMS) online possible based on Article 77 UUPT. This article states that the GMS can be held via teleconference, video conference or other electronic media so that everyone can see, hear and participate. All E-GMS participants must approve and sign the treatise of the meeting. Article 15 paragraph (3) UUJNP Number 2 of 2014 allows this cyber notary to carry out these duties, however, Article 16 paragraph (1) letter m regulates the duties of a notary in making deeds. This article requires the notary to read the deed in front of the audience. This obstacle is found in the ITE Law, Article 5 paragraph (4) letters a and b, which excludes written electronic information and transactions from the law if they are made by a notary or deed-making official. The uncertainty of the laws and regulations made by the government creates a dilemma for notaries because they have to be faced with the choice between notaries having to continue working traditionally with the risk of being left behind by other notaries who have taken advantage of technological advances which will become more advanced every year, or The notary will choose to carry out the notarial deed based on cyber notary but with minimal limitations, becoming a notary in carrying out cyber notary You must be extra careful and thorough, and careful in matching the data of the parties who will carry out or bind themselves to the notarial deed.

It is hoped that with these technological advances the implementation of *ius constituendum* will be implemented cyber notary able to provide fresh air for notaries in Indonesia in carrying out their deeds, especially those related to the business sector, thereby providing opportunities for foreign investors who wish to invest their capital in Indonesia no longer need to come and meet face to face with a notary to make an agreement to establish a PT or in E-GMS itself. Because large developing countries are currently using it cyber notary in carrying out transactions related to the deed and the E-GMS. It is hoped that over time, Indonesia will be able to catch up and be able to compete with other developing countries. It is hoped that by making cyber notary As a notary's habit of making deeds, people are becoming increasingly accustomed to the method cyber notary and the law itself will emulate the growth and demands of society itself. Where the Law is able to provide protection and a sense of security for the parties and notaries and deed-making officials to perform the method cyber notary in making the deed. If cyber notary can be implemented in its entirety by changing or adding special articles in the Law which regulate the authority and obligations of the Notary's position, so that in the future notaries and deed-making officials will find it easier to carry out deeds, especially in the business sector, without the need for the parties to appear directly in person. Notary or official who makes the deed.

By notary applying cyber notary continuously to the community, especially in the business sector, it is hoped that it will become a habit and the community will understand that cyber notary it must begin to be used in making deeds by a notary. Therefore if cyber notary It has become a habit that the government is expected to give prizes to senior notaries and prospective notaries in the form of a revised law. Because the UUJN which was created in 2008 was then updated to become the UUJNP which was formed in 2014, and after that until now there have been no further updates to the UUJNP which serves as a guide for notaries in carrying out their obligations and authority as deed-making officials. It is hoped that the UUJNP will be amended or have special articles added to it, so that there are no articles that have vague or empty norms that will become an obstacle for prospective notaries in the future. Because we don't want UUJNP to become an obstacle to the profession of a notary or public official in carrying out their profession as a deed-making official. Which will collide with existing legal norms and technology which is

## Reconstruction of the *Ius Constituendum* for Cyber Notary in E-GMS as *Relaas Acta*

becoming more and more advanced every year. If UUJNP does not support progress towards the concept cyber notary. This means that notaries in Indonesia will not be looked at by foreign investors who want to invest or start a business in Indonesia.

### ACKNOWLEDGMENT

I would like to express my gratitude and appreciation to all the lecturers of the Master of Notary Postgraduate Program at Warmadewa University for guiding, helping, and providing scientific support in this research.

### REFERENCES

- 1) Aditio, Ilhaam., Yuhelson., & Maryano. (2022). Kepastian Hukum Dalam Pelaksanaan Rapat Umum Pemegang Saham Melalui Video Konferensi Berdasarkan Konsep Cyber notary Di Indonesia. *Jurnal Sosial Dan Budaya Syar-I*, 9(5).
- 2) Adjie, Habib. (2017). Konsep Notaris Mayantara Menghadapi Tantangan Persaingan Global. *Jurnal Hukum Respublica*, 16(2).
- 3) Agustin. Nurlaily. & Seroja, Triana Dewi. (2022). Technological Advancement in The Society 5.0 Era for Notary in Indonesia: Glory or Obsolere?". *Legal Brief*, 11(3).
- 4) Aritongan, Nehemia. (2021). Digitalisasi di Lembaga Hukum dan Tantangan Profesi Hukum di Masa Depan. *Prosiding Seminar Nasional Kewarganegaraan*.
- 5) Adjie, Habib. (2011). *Kebatalan dan Pembatalan Akta Notaris*. PT. Refika Aditama.
- 6) Amanat, Anisitus. (1996). *Pembahasan Undang-Undang Perseroan Terbatas 1995 dan Penerapannya dalam Akta Notaris*. Rajawali Press.
- 7) Azizah, Maulida Luthfiyatul., & Muhaimin. (2022). Kajian Yuridis Penandatanganan Akta yang dilakukan Notaris di Luar Kantor berdasarkan Alasan-Alasan Tertentu. *Notary Law Journal*, 1(4).
- 8) Buwana, Dewa Gede Prawira., & Bagiastra, I Nyoman. (2022). Keabsahan Akta Notaris Berbasis Cyber Notary Melalui Teleconference. *Jurnal Kertha Semaya*, 11(1).
- 9) Faulina, Junita., Barkatullah, Abdul Halim., & Gozali, Djoni S. (2022). Kedudukan Akta Notaris Yang Menerapkan Konsep Cyber Notary Di Masa Pandemi Covid19 Di Indonesia. *Notary Law Journal*, 1(3).
- 10) Harahap, Y. (2016). *Hukum Perseroan Terbatas*. Sinar Grafika.
- 11) Ichsan, A. (1986). *Dunia Usaha Indonesia*. Pradnya Paramita.
- 12) Izzat, Ismatul. (2021). Analisis Yuridis Terhadap Pelaksanaan RUPS Secara Cyber notary (E-RUPS) Dalam Peraturan Otoritas Jasa Keuangan, *Jurnal Signifikan Humaniora*, 8.
- 13) Koos, Stefan. (2023). The Digitization of Notarial Tasks - A Comparative Overview and Outlook of 'Cyber Notary' in Indonesia and Germany. *The Indonesian Journal of Socio – Legal Studies*, 2(2).
- 14) Kie, Tan Thong. (2007). *Study Notariat & Serba Serbi Praktek Notaris*. Ichtiar Baru Van Hoeve.
- 15) Makarim, Edmon. (2020). *Notaris dan Transaksi Elektronik*. PT. Raja Grafindo Persada.
- 16) Makarim, Edmon. (2011). *Modernisasi Hukum Notaris Masa Depan : Kajian Hukum Terhadap Kemungkinan Cyber Notary di Indonesia*. *Jurnal Hukum dan Pembangunan*, 41(3).
- 17) Mertokusumo, Sudikno. (2007). *Penemuan Hukum Sebuah Pengantar*. Liberty.
- 18) Nurita, R.A Emma. (2012). *Cyber Notary Pemahaman Awal dalam Konsep Pemikiran*. Refika Aditama.
- 19) Putri, Cyndiarnis Cahyaning., & Budiono, Abdul Rachmad. (2019). *Konseptualisasi Dan Peluang Cyber notary Dalam Hukum*. *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan*, 4(1).
- 20) Putro, Widodo Dwi. (2021). *Disrupsi Dan Masa Depan Profesi Hukum*.
- 21) Rumengan, Pricillia Virginia. (2021). Analisis Akta Notaris dalam Era Cyber Notary Ditinjau dari Asas *Tabellionis Officium Fideliter Exercebo*. *Indonesia Notary*, 3.
- 22) Rizkianti, Wardani. (2016). Akta Otentik Rapat Umum Pemegang Saham (RUPS) Melalui Media Telekonferensi (Mekanisme Pembuatan Dan Kekuatan Pembuktiannya). *Jurnal Yuridis*, 3(1).
- 23) Syafrinaldi. (2024). *Hukum Di Era Revolusi Industri*.
- 24) Sona, Mahfuzatun Ni'mah. (2022). Penerapan Cyber Notary di Indonesia dan Kedudukan Hukum Akta Notaris yang Berbasis Cyber Notary. *Jurnal Officium Notarium*, 2(3).
- 25) Tobing, G.H.S. Lumban. (1999). *Peraturan Jabatan Notaris*. Erlangga.
- 26) Windarrahan, Hanif. (2022). Penerapan Cyber Notary Sebagai Solusi Dalam Pembuatan Risalah RUPS Elektronik Pada Masa Pandemi. *Jurnal Hukum Tora*. 8(2).
- 27) Yunanto, Faza Irfan As Sauri. (2024). Urgensi Pembaharuan Cyber Notary Dalam Undang-Undang Jabatan Notaris Berdasarkan Perkembangan Teknologi. *Jurnal Notarius*, 17(1).

## Reconstruction of the *Ius Constituendum* for Cyber Notary in E-GMS as *Relaas Acta*

- 28) Zulfa, Aulia & Najicha, Fatma Ulfatun. (2022). Urgensi Penguatan Identitas Nasional dalam Menghadapi Society 5.0 di Era Globalisasi. *Jurnal Kalacakra*, 3(2).



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.