



Electronic Notarization in the Context of Digital Transformation in Vietnam: Challenges and Recommendations

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Abstract

The booming of the Industrial revolution 4.0 has been affecting most countries in the world. Accordingly, the application of information technology in all fields of social life is becoming an inevitable and global trend with the aim of convenience, speediness, time, cost, manpower, travelling, and direct transaction savings. Notarization services are not out of this trend. The article focuses on the overview of electronic notarization in some countries around the world and in Vietnam; on the application of information technology and a number of obstacles and challenges to electronic notarization activities; Thereby, it proposes a number of recommendations to improve the activities in Vietnam today.

Disciplinary: State management, Technology 4.0, Digital transformation.

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1 Introduction

Currently, the definition of digital transformation has not been standardized, many organizations and businesses have their own definitions. According to Gartner, digital transformation is the use of digital technologies to change business models, creating new opportunities, revenue and value (Gartner, 2022,). Microsoft believes that digital transformation is about rethinking how organizations collect people, data and processes to create new value (Chau An, 2019). According to Bill Schmarzo, digital transformation is the application of digital capabilities to processes, products and assets to improve efficiency, enhance customers' value, manage risks and explore new opportunities to earn money. Digital transformation has a great

impact on the development of businesses and organizations. It is urgent for development. On the national scale, digital transformation has an increasing influence on GDP growth, labor productivity and employment structure (Dao Duy An, 2022). According to research by Microsoft and IDG in the Asia-Pacific region, in 2017, digital products and services contributed 6% of GDP, it was predicted that this proportion would increase to 25% in 2019 and 60% in 2021; digital transformation increased labor productivity by 15% in 2017, was expected to be 21% in 2020; 85% of jobs in the region would be transformed in the next 3 years. Recognizing the importance of digital transformation, many countries have now developed and implemented national strategies/programs on digital transformation such as the UK, Australia, Denmark, Estonia, Israel, Mexico, Singapore, Thailand, Uruguay,...(Ministry of Information and Communications, 2022).

Table 1: Asia Internet use, population statistics data and Facebook data - Mid-YEAR 2021

ASIA REGION	Population (2021 Est.)	Internet Users, (Year 2000)	Internet Users 30-JUNE-2021	Penetration % Population	Users % Asia	Facebook 30-JUNE-2021
Vietnam	98,168,833	200,000	75,940,000	77.4 %	2.7 %	75,940,000
TOTAL ASIA	4,327,333,821	114,304,000	2,772,013,116	64.1 %	100 %	1,159,867,200
Rest of World	3,548,431,766	45.1 %	2,415,095,049	68.1 %	46.6 %	1,719,703,577
All the World	7,875,765,587	100.0 %	5,187,108,165	65.9 %	100 %	2,879,570,777

(Source: <https://www.internetworldstats.com/stats3.htm>)

Electronic notarization is a certification of documents by a notary via electronic means. One method of this is to use digital signatures and digital seals to certify and confirm validity by digital certification. Electronic notarization is the process in which a notary attaches an electronic signature and notarized seal using a secure key to an electronic document (PDF or Word file).

In many documents, the terms "E-Notary" and "Digital Notary" are the same. (Department of Telecommunication, 2021). Accordingly, it is understood in the sense that the Notary Public certifies documents electronically. One method of electronic notarization is to use digital signatures and digital seals to certify and confirm the validity of the digital certification. There is also an opinion that the concept of "E-Notary" is broader than "Digital Notary" because many activities are performed by electronic devices but not digital technology, for example, setting up a live videoconference using analog technology. However, in the early 2000s, when the first countries had the idea of applying electronic notarization, digital technology had already vigorously developed and had been widely applied to most activities that use electronic equipment to transmit and store information. Therefore, "E-notary" and "Digital notary" are used with the same meaning. It can be understood that the "digital transformation of notary activities" is a fundamental change in the way of organizing, building, implementing and managing notarization service delivery processes and activities based on digital technology to create greater value and efficiency.

Before 2004, Vietnam did not uniformly apply information technology to notarization activities, some Notary offices built their own software to manage notarization activities within their units. In 2004, implementing the agreement between the Government of the Socialist

Republic of Vietnam and the Government of the French Republic, and according to the Notarized Computerization Project of the Ministry of Justice, the Ministry of Justice deployed the Master software in notarization activities to notary offices. However, the implementation is not really synchronized between localities. In 2007, this agreement ended. Since then, localities and notarial practice organizations have been proactive in applying information technology to their activities depending on their needs and conditions. Some localities with high notarization demand have built their own software for notary activities (such as Ho Chi Minh City...). The Law on Notarization 2014 stipulates the building of notarization databases in provinces and centrally run cities. This is considered an important lever and basis for promoting the application of information technology in notarization. All localities have had plans to build notarization databases, and many software has been used in notarization (such as notarization records management software, Uchi software...).

However, comparing the software currently used in notarization in Vietnam with those in some of the countries mentioned above shows that the application of information technology to notarization activities in Vietnam is not completely E-Notary because of the following reasons:

Firstly, although most of the software used in notarization today allows creating notarized documents directly and storing them in the software's database (not digitizing paper documents), notaries do not use electronic signatures or electronic seals to sign documents.

Secondly, the notarization has been carried out in the traditional way, ie. notaries receive and process paper documents, and sign and stamp on notarized documents; there have been no officially online stages in the notarization process yet. The use of software, entering information in software is now considered a secondary process, paralleling and supporting the traditional notarization process, mainly for information retrieval/sharing data storage, text editing and statistics.

2 Method

To study electronic notarization in Vietnam, the author has used a combination of traditional research methods of social science and legal science such as legal analysis method, legal efficiency assessment method, comparative legal method and expert method to achieve the goal of the study. Primary and secondary research data sources come from official documents, books, independent reports, newspapers and related parties' analyses. In addition, the experiences of senior civil servants and skilled experts have also been considered to draw conclusions and provide useful information.

3 Result and Discussion

3.1 Real Situations of Electronic Notarization in Some Countries Around the World

- In China, the application of information technology in notarization began in 2000 with much different notarial software developed by notarial organizations. After that, the China Notary Association merged into a general management system. By the end of August 2018, there were 2,961 notarial practice organizations and 13,385 notaries using the system (Chinese Notary

Association, 2018, p.19). The development and use of notary software have supported many aspects of notarization activities such as standardization of notary services, improvement of service delivery capabilities, data collection on notarization, document online submitting (customers visit the notarial practice organizations only once), sharing information about notarization transactions between notaries to reduce verification, managing a notarial practice, sharing with notaries other relevant information such as wills, intellectual property. China will exploit and implement online notarization services, remote notarization systems, and online electronic evidence storage in the near future, along with research and development of regulations on notarization so as to be in line with regulations on online transactions (Chinese Notary Association, 2018, pp. 22-24).

- In Japan, online notarization was started in 2000 for personal documents, in 2002 the scope of electronic notarization was extended to notarize company charters. However, the law stipulates that the notarization requester (or representative) must directly meet the notaries. Currently, the Japan National Notary Public Association plans to deploy electronic notarization via electronic means (smartphones, online conferences, etc.) to meet the requirement of "certification in front of notaries" in the digital environment (Chinese Notary Association, 2018, pp. 30-34).

- In Korea, the electronic notarization system has been applied since 2010, allowing users to authenticate (notaries) via computers or smartphones. This system is useful when the notarization requester lives in a place where there is no notary or outside of Korea and helps to reduce costs. However, in the past, since there were no regulations allowing notarization requests through images, even when using the electronic notarization system, requesters still had to go to a notary practice organization at least once to meet the notaries directly. From June 20, 2018, the new Korean law allows notarization requesters to meet notaries via video conference and receive notarized documents online, instead of going to the notarial practice organization. However, not all notaries in practice are allowed to perform this process, and only some licensed notaries can, so the Korean Ministry of Justice has to deal with some issues regarding technology to be able to check and verify users (notaries) and must have close coordination with the Ministry of Internal Affairs (which is the agency that issues notarial practice cards) (Chinese Notary Association, 2018, pages 60-64).

- In France, electronic notarization has been implemented since 2008. In order to do this, France has amended and supplemented many relevant regulations, including the Civil Code (amended 2000) and promulgated regulations on electronic signatures and electronic notarization. Notarized electronic documents have the same value as paper notarized documents. All electronically notarized documents are stored at the MICEN Center under the supervision of the Supreme Notary Council of France. Electronic notarization in France is considered to be a major change in notarization methods and environment, making it faster and more efficient, and notarizing documents to be stored longer (Ministry of Justice, 2018, page 7).

- In Mongolia, the National Data Center was established in 2009. The center is a state-owned organization whose main function is to provide national digital data storage, protection and

production services for Mongolia. This was followed by the adoption of the digital signature law in 2011. In 2012, research on international and foreign practices was carried out in Estonia, France, Germany, and Japan. In 2015, a study on the feasibility of the electronic notary system was carried out. In 2017, Mongolia officially established the Electronic Notary System by signing a contract with a domestic private information technology company. In 2018, all Notaries participated in the training, were granted the right to use the system and were trained on how to use the electronic notary system program. On 21 June 2018, the Law on State Registration was passed, allowing Notaries to receive, use and exchange information from the state registration database system and granting Notaries the right to representation between citizens and the state registry. On May 30, 2019, when the revised Notarization Law was passed, Notaries were granted the right to conduct digital activities and register digitally. Mongolian law prohibits the transfer of the right to access and use the electronic system to another person and in case of violation, the license to operate the notary will be void. At present, the electronic notarization system of Mongolia can work both in online and offline mode, based on fingerprints and electronic signatures, allowing the exchange of information data through connection with the data system of the State and other units (Dao Duy An, 2022).

- In Singapore, from October 1, 2019, Notaries have been required to use the e-Register system to issue notarized certificates. All these are made and extracted through the e-Register system; The certificates will be automatically assigned a serial number and a QR code. Individuals or agencies that receive notarized certificates can self-check the authenticity of documents by searching on the e-Register system. This also helps the Notary Public to store, check and report a lot because there is no need to use a paper register. The system also ensures the complete storage of all records and related papers, viewing all notarized records made and summarizing all paid fees (Dao Duy An, 2022).

Through some models of electronic notarization in some countries around the world, it can be seen that the approach to electronic notarization in countries is quite different. There are countries that use electronic devices for the entire notarization process from receiving, and processing documents to certifying documents through digital/electronic signatures and seals; Some countries only use it in one stage of the notarization process. Although the approach varies from country to country, the common trend is that the steps of the notarization process will gradually be done online via electronic means.

3.2 Some Obstacles to the Implementation of Electronic Notarization in Vietnam

Firstly, there is no legal framework for the implementation and recognition of electronic notarization.

Up to now, Vietnam's notarization law has not provided for electronic notarization or recognition of the value of electronically notarized documents as shown in the followings:

- Clause 1, Article 2 of the Law on Notarization defines, notarization as the work of a notarial practice organization certifying the authenticity and legality of a contract or other civil transaction *in writing*, the accuracy, legal, not contrary to social ethics of the translation of *papers and documents* from Vietnamese to foreign languages or from foreign languages to Vietnamese which must be notarized as prescribed by law, or individuals or organizations voluntary to request notarization.

- The Law on Notarization stipulates that the notarization request dossier includes: Notarization request form; Draft contracts and transactions; A copy of the identity document of the notarization requester; A copy of the certificate of ownership, right to use, or a copy of a substitute paper prescribed by law for a property that is required by law to register ownership or the right of use in case of a contract or transactions related to that property; Copies of other documents related to the contract or transaction that are required by law (the copy is a photocopy, a printed copy or a typed copy with complete and accurate content as the original and do not have to be authenticated).

- Article 40 of the Law on Notarization stipulates the process and procedures for notarization as follows: first, the notary examines the *papers* in the notarization request dossier; when the notarization requester agrees to all contents of the draft contract or transaction, he/she shall *sign on each page* of the contract or transaction. The notary requires the requester to present the *original copy* of the above-said documents for comparison before recording testimonies and signing on each page of the contract or transaction.

- Clause 1, Article 5 of the Law on Notarization stipulates the value of notarized documents as follows: Notarized documents take effect from the date on which they are *signed and stamped* by the notary public.

The above regulations show that currently, notarization in Vietnam is of the paper mode, not electronic one via electronic means.

According to Article 119 of the Civil Code 2015 on the form of civil transactions, “Civil transactions may be created verbally, in writing or through specific acts; civil transactions via electronic means in the form of data messages in accordance with the law on e-transactions shall be deemed to be written transactions”. The 2005 Law on Electronic Transactions and its guiding documents stipulate that: if the law requires information to be presented in writing, a data message is considered to meet this requirement if the information in the data message is accessible and usable for reference when necessary (Law on Electronic Transactions, 2005), and where the law requires a document to have a signature, that requirement for a data message is considered satisfactory if the electronic signature used to sign the data message meets the prescribed conditions, where the law requires the document to be stamped by the authority the organization, then that requirement for a data message is considered met if that data message is signed by the electronic signature of the agency or organization that meets the prescribed conditions and the electronic signature is authenticated (Government, 2018). Thus, with the provisions of the Civil

Code and the law on electronic transactions, it is possible to sign and seal electronically notarized documents while still meeting the provisions of the Law on Notarization.

However, even when applying the provisions of the Civil Code and the Law on Electronic Transactions, the legal framework for the implementation of electronic notarization is still controversial and needs clarification. The Law on Electronic Transactions does not apply to the issuance of certificates of land use rights, ownership of houses and other real estate, documents on inheritance (National Assembly, 2005), citizen identification is still granted in the form of a physical "card" (National Assembly, 2014; Government, 2018)... so the requester still has to submit the paper notarization dossier, the notary still has to accept and handle the notarization request according to paper dossiers.

Because the product of electronic notarization is notarized documents in the form of electronic data, while there is no regulation to clarify the legal value of electronically notarized documents, the receipt and use of electronically notarized documents in procedures that notarized documents are "input dossiers", such as procedures for registration of changes in land, housing, tax payment, etc., are not possible. For example, in Ho Chi Minh City, online public services related to land and housing change registration have not yet been submitted online so far (level 3, 4) (Pham Thi Binh Thuan, 2021). If only deploying electronic notarization within the notary industry, it will not promote its effectiveness, but also cause difficulties for people when it is necessary to carry out the next procedures.

Secondly, the construction of a notarization database currently does not really serve for electronic notarization.

Article 62 of the Law on Notarization stipulates that the notarial database includes information on the origin of assets and transaction status of assets and information on preventive measures applied to assets related to notarized contracts or transactions. The above regulation contains more governing content for "data" (information) than for procedures.

Therefore, when building a local notary database, the Department of Justice and the People's Committees of the provinces and centrally-run cities usually focus more on creating a mechanism to store and share data, and there is little interest in building an electronic process to replace the traditional notarization process (in addition, the law does not provide for electronic notarization, as mentioned above). This orientation makes the software used in notarization mainly support notarization activities, operating beside the traditional process and the traditional notarization process is the main and in effect.

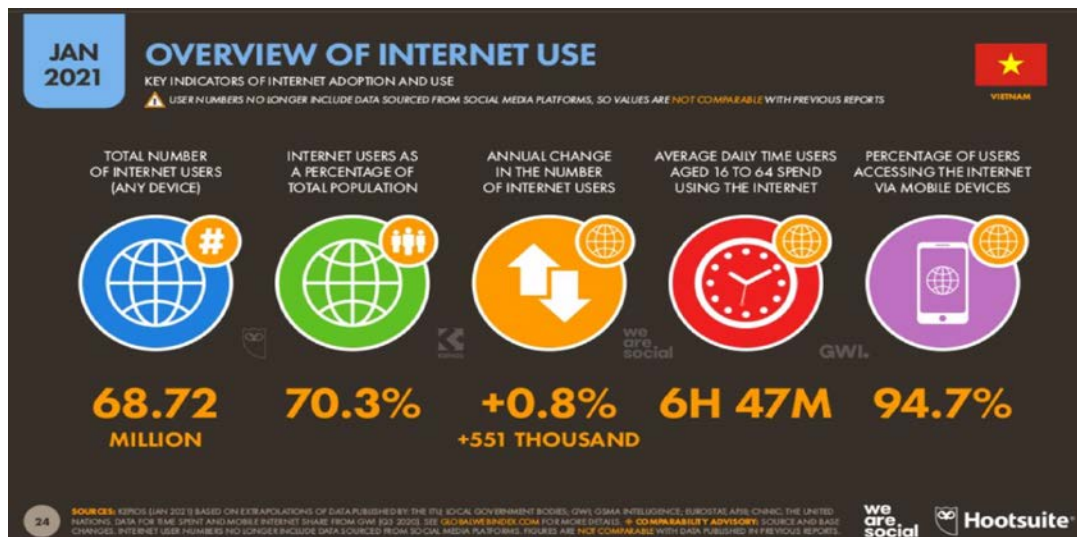
In addition, although Article 62 of the Law on Notarization stipulates that the notarial database includes 3 main groups of information, including information on the origin of assets, in practice, to build a database notarization with full information as prescribed by the Law on Notarization is currently facing many difficulties.

Third, the application of information technology in notarization is not uniform in localities.

Two important conditions for electronic notarization are the coverage of the Internet and the platform (software), of which the Internet is a prerequisite.

According to a report ranking the level of Internet development of 75 countries in the world published in the Economist in 2017, Vietnam ranked 40/75 in terms of quality of Internet network infrastructure and level of Internet access and Internet usage, and 42/75 for Internet access, including people's access skills, culture, and regulatory policies, due to limited understanding of digital skills as well as Internet access skills (Pham Thi Binh Thuan, 2021). Meanwhile, according to data from M-Lab, a research organization established based on the cooperation between Google, Princeton University, and the Institute of Open Science and Technology, Vietnam's Internet access speed in 2018 fell one level compared to 2017, equal to the average speed of the world (Internet World Stats, 2022).

The above assessments reflect the reality of Vietnam that, although the percentage of Internet users in urban areas of Vietnam is quite high, there is still a large number of people in rural and remote areas are lacking infrastructure, facilities and skills to use the Internet.



(Source: <https://www.vnetwork.vn/vi/news/thong-ke-tinh-hinh-internet-viet-nam-nam-2021>)

Thus, the implementation of electronic notarization will face difficulties in non-urban areas, while the Law on Notarization stipulates that notaries are only allowed to notarize contracts and real estate transactions within the scope of provinces, centrally run cities where the notarial practice organization is located, that is, notarization requesters cannot ask notary practicing in another locality to notarize real estate contracts or transactions in their local.

In addition, the coverage of software used in notarization activities in localities where the Internet is available is not uniform, many places do not have the software. The functions of the software are also different, some allow to process documents directly, at the same time as notarizing paper documents, and some are only used to enter information after notarization is completed...

Fourth, is the reticence of digital transformation in notarization.

The transition from traditional notarization to electronic mode is not simply a matter of assigning electronic signatures and seals to a notarized document or saving stationery for notarial organizations. This is a revolution that completely changes the way notarization is performed as well as the form of notarized documents, followed by changes in other relevant procedures and processes (such as registration ownership, right to use property, tax payment, etc.). When performing electronic notarization, not only changes in relevant law provisions and notarization processes but also notarization practitioners (notarial practice organizations, notaries, secretaries...) and notarization requesters must also have major changes in their approach and skills in notarization as well as in receiving outputs of notarization activities. Experiences from reforms in notarization such as the transition to mandatory use of software... show that this change always causes reticence, hesitation, and unwillingness to accept and use the new. This is a big obstacle in the process of implementing electronic notarization, especially in the early stages, and needs the determination of relevant agencies and organizations, especially state management agencies such as the Ministry of Justice and the Local Department of Justice.

In addition, fake documents in notarization activities are also a problem, especially the ones certifying ownership and right to use the property. Notaries mainly use skills and knowledge to identify fake documents when handling notarized documents. In other words, the notaries must have direct contact with the paper documents, using the senses to look for signs of security or traces of forgery. If electronic notarization is performed without information on the real owners and on the origin of the property from the land management agencies, there is a high risk of forgery, affecting the work of the notaries as well as the safety of the transactions. Similarly, the situation of forging notarization requesters is also increasing, while the notary database is not connected to population data, so notaries still have to rely on checking paper identity documents to determine the authenticity and fakeness of papers. This is the main cause of reticence when deploying electronic notarization.

In addition, according to the provisions of the Law on Notarization, the notary office is an enterprise, so there is always a consideration between costs and profits. Meanwhile, the cost of implementing electronic notarization is expected to be high. In urban areas, where there are many transactions, the revenue from notarization activities can recompense for the investment costs. Notary offices may be willing to invest to improve the quality of their operations. However, in areas where there are few contracts and transactions, the cost of equipment, transmission lines, etc. to implement e-certificate will be an obstacle affecting the organizations' determination to apply electronic notarization.

3.3 Recommendation

Firstly, building a legal framework for public investment. The legal corridor for public investors should not and cannot just be the Law on Notarization (mainly stipulating the form and procedures for notarization), but there needs to be a fundamental change in the value and how to use electronically notarized documents with other procedures in which notarized documents are an

"input" component (such as procedures for registration of ownership rights, use of assets after the transfer, procedures for tax payment) ...). In order to do this, it is inevitable that the regulations on administrative and (non-administrative) procedures of the relevant organizations (credit organizations...) also need to be changed, allowing the receipt and processing of electronic dossiers (Pham Thi Binh Thuan, 2021). This leads to a major change in the entire legal system of Vietnam, especially regulations on land, civil, housing, commerce, business, and taxes. Therefore, when amending the law, we need to ensure uniformity and consistency.

Regulations on recognition of the evidence value of notarized documents certified by the Notary Public, signed with a digital signature and stored in the Centralized Notary Database. Notarized electronic documents stored in the Centralized Notary Database have the same evidential value as paper documents signed and stamped by the parties and the Notary. In case there is a discrepancy between the notarized document (paper version) kept by the parties) and the electronically notarized document stored in the Centralized Notary Database, the priority shall be applied according to the content of the electronically notarized documents.

Secondly, building technical infrastructure for e-Notary. As analyzed above, in order to have an e-Notary, a technical foundation (Internet, software...) is very important. The foundation is not limited to notarial organizations only but also connects with other organizations such as land registries, tax agencies, and credit organizations to become an information sharing and linking network. In addition, the connection of data on population and real estate with the notary database, notarization information security mechanism and system as well as ensuring the safety of electronic signatures on electronically notarized documents, is a key factor for effective e-certificate, especially in the current situation of fake and fraudulent documents...

With the current situation of Vietnam, when the application as well as conditions for the application of information technology in notarization in different localities, building a general and unified infrastructure throughout the country is very unfeasible. Therefore, it is necessary to have an incentive mechanism so that localities with better conditions (such as Hanoi, Ho Chi Minh City...) can implement the e-Government scheme, at least for real estate transactions, which are notarized according to the jurisdiction of the districts - in each locality, from which to learn and replicate the model nationwide at an appropriate time.

Thirdly, increasing the coverage and use of the Internet throughout the country. Notarization not only takes place in big cities but also in all localities, therefore, the vision of building urban infrastructure needs to have a roadmap for implementation in all localities. To do that, step by step improve the quality of the Internet network infrastructure and the level of Internet use as well as the ability to access the Internet so that people in all areas can use electronic notarization when they need it (Pham Thi Binh Thuan, 2021).

Fourth, ministries, branches and localities, according to their functions and tasks implement synchronously and effectively the Politburo's Resolutions and Directives, the Government's programs and plans, and the resolutions of the Politburo and decisions of the Government and the

Prime Minister on promoting the development and application of IT; focusing on solutions to promote innovation, increase IT application in state management, especially in solving administrative procedures, providing online public services for urgent and related fields to people and businesses. Step by step implementing the national information systems on population, land, construction, enterprises, etc. to promulgate legal documents for the implementation of electronic documents and records.

Regulating on the construction of a centralized notarial database (managed and operated by the Ministry of Justice) on a national scale to store all notarized documents with evidence value, document keeping, and other documents related to notarization and authentication activities.

Fifth, promoting the implementation of hiring IT enterprises to provide partial or full rental services, including hardware, software, transmission lines, and solutions for state agencies to provide online public services. To ensure information security, ministers, heads of ministerial-level agencies, government-attached agencies, and presidents of People's Committees of provinces and centrally run cities may appoint contractors; determine the temporary short-term rental price (under 12 months) if the necessary conditions are not met to determine the stable rental price.

Sixth, supplement, upgrade and integrate online public services of ministries, branches, localities and affiliated units onto the electronic portals of ministries, branches and localities. Integrate online public services of ministries, branches and localities onto the National Portal Public Services. Regulating permission for the application of online notarization processes and other ones on the basis of a centralized Notary Database when all conditions are met (the Government promulgates detailed regulations as proposed by the Ministry of Justice).

4 Conclusions

From an economic perspective, digital notarization significantly saves costs for society. It has not been calculated precisely, but supposing that each notarized transaction has at least 3 participants, the notarization process is 10 minutes shorter than before, with nearly 5.7 million notarization documents, it can save about 350,000 working days each year. If each notarized transaction can reduce the travel cost by 1 km for people, each year society will reduce the cost of 5.7 million km of commuting. According to reported data, in the past 5 years on average, the notarial industry has contributed about 300 billion VND to the state budget. However, if digitizing and applying digital notarization as proposed above, the amount of money that notarial practice organizations can save from annual record keeping will be equivalent to 300 billion VND (Dao Duy An, 2022).

However, to ensure the security of information and data for electronic notarization, it is necessary to conduct security at many levels: network level, user authentication level, and database level. At the same time, authentication and data encryption need to have an authentication mechanism, access authorization, and encryption of information and data for access to information and services that need to identify the users to ensure the safety of the website in the process of exploitation and operation.

5 Availability of Data And Material

All information is included in this study.

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