

Legal Review of Electronic Signatures in Signing Notarial Deeds Reviewed from Law No. 2 of 2014 Concerning Amendments to Law No. 30 of 2004 Concerning the Position of Notary

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Abstract. *The signature in a notarial deed in the past was a wet or conventional signature, but with the development of the current era, there are many electronic signature practices. Notarial deeds with wet signatures have been recognized as valid in the eyes of the law, while notarial deeds with electronic signatures have not yet been recognized as valid, so it is necessary to analyze their nature in order to find legal arguments so that electronic signatures can be used in parallel in electronic certificates in civil procedural law. The legal force of the electronic signature needs to be analyzed if there is a dispute between parties to the electronic agreement and also the position of the electronic signature can or cannot be equated with the legal purpose of a conventional signature. This study uses a normative legal method with a statutory regulatory approach and a conceptual approach. The conclusion is that the validity of the electronic signature in a notarial deed, as stipulated in the Electronic Information and Transactions Law, is still not recognized.*

Keywords: *Electronic; Notary; Signature.*

1. Introduction

The rapid development of technology and information has brought significant changes to human life. The various conveniences offered by the development of technology and information have enabled relationships between humans to take place quickly and easily without taking into account aspects of space and time.

Indonesia, which is in the era of globalization, is marked by the era of information and communication technology (ICT) which introduces cyberspace (virtual world) through the internet network, communication with paperless electronic media. Indonesian society will enter a virtual

world that is abstract, universal, free from place and time through electronic media.¹ In addition to the above, the Covid-19 pandemic has had an impact on all community habits, face-to-face activities have become online, then called online and minimized the existence of a meeting. This has encouraged the whole world to undergo a transformation towards the era of the information society, especially Indonesia, which is required to be able to adapt so as not to enter the digital divide, namely isolation from global developments because it is unable to utilize existing information. One form of transformation is the application of electronic signatures.

Law is one of the means for every society or legal entity to fulfill life with social norms. The needs of life are manifested in the form of clear legal products and have legal certainty and firm law enforcement actions from law enforcement officers.² In this era of globalization, it is undeniable that there is continuous development in it, including the law itself. Because legal science cannot ignore and close its ears to the fundamental changes that occur. One of the legal professions that follows the era of globalization is the notary. In its explanation, the notary according to Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary Article 1 Paragraph (1) states that: "A notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws."

The authority of a notary is regulated in Article 15 Paragraph (1) of the UUJN namely a notary is authorized to make authentic deeds regarding all acts, agreements, and determinations required by laws and/or desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosee, copies and extracts of the deed. The position of a notary as a public official in the authority possessed by the notary himself in terms of making authentic deeds and other authorities cannot be given to other officials, as long as these authorities do not become the authority of other officials, then these authorities can only be possessed by a notary.³ The services of a notary have become a necessity for society, not only in making deeds, but also as a witness or mediator in transactions carried out.⁴

Within the scope of the duties of the Notary's office, namely making evidence desired by the parties for a certain legal action, and the evidence is in the civil

¹Mariam Darus Badruzaman, 2001, "Mendambakan Kelahiran Hukum Saiber (Cyber Law) di Indonesia", Medan: Pidato Purna Bhakti, p. 3.

²A.A. Andi Prajitno, 2010, *Pengetahuan Praktis Tentang Apa dan Siapa Notaris di Indonesia*, CV. Putra Media Nusantara, Surabaya, p. 11

³Habib Adjie, 2008, *Hukum Notaris Indonesia (Tafsir Tematik Terhadap UU No. 30 Tahun 2004 tentang Jabatan Notaris)*, Refika Aditama, Bandung, p. 40

⁴Edmon Makarim, 2014, *Notaris Dan Transaksi Elektronik Kajian Hukum Tentang Cybernotary Atau Elektronik Notary*, Jakarta: PT Raja Grafindo Persada, p. 6.

law realm, and that the Notary makes the deed because there is a request from the parties who appear. Without a request from the parties, the Notary will not make any deed, and the Notary makes the intended deed based on evidence or information or statements of the parties stated or explained or shown before the Notary, and then the Notary frames it outwardly, formally and materially in the form of a Notarial deed, while still adhering to the legal rules relating to the legal action in question which is stated in the deed.⁵

Along with the development of society which is also accompanied by the increasingly rapid development of electronic transactions, Notaries in carrying out their duties and functions as public officials certainly cannot be separated from technological advances as developments in society. In carrying out these duties, it has been stated in Article 15 paragraph (3) of Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Regulation of Notary Positions, State Gazette of the Republic of Indonesia 2014 Number 3, Supplement to the State Gazette Number 5491 (hereinafter referred to as Law No. 2 of 2014).

The problem that then arises in making authentic deeds electronically is related to the obligations that must be carried out by the Notary for the deeds he makes. Based on these legal principles, the evidentiary force of an electronic signature is the same as the evidentiary force of an authentic deed, namely complete and perfect in accordance with the provisions of Law No. 11 of 2008.

The use of digital signatures has been stipulated in Law No. 19 of 2016 Article 1 number 12 concerning Electronic Information and Transactions. According to the principle of consensualism, an agreement born at the moment when an agreement or consent is reached between the two parties regarding the main points of what is the object of the agreement. Before reaching an agreement, the two parties will first hold discussions and offers related to the object of the agreement.

2. Research Methods

The research method used in this study is normative legal research. Normative Legal Research is legal research conducted by examining library materials or secondary data alone.⁶ This research conducted to identify various laws and regulations in the field of intellectual law and notary law.

The research approach used by the researcher is the Statute Approach. The types

⁵Waw Wawan Tunggal Alam, 2001, *Hukum Bicara Kasus-Kasus dalam Kehidupan Sehari-hari*, Jakarta: Milenia Populer, p. 24.

⁶Soerjono Soekanto & Sri Mamudji, 2001, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Jakarta: Rajawali Pers, p. 13-14.

of data used in this thesis research are 3 primary legal materials, secondary legal materials, tertiary legal materials. For research material collection techniques is a field study, literature study. the method of data analysis is carried out by interpreting the law against the legal materials that have been collected and processed, and also using qualitative analysis by describing the processed data in detail in the form of sentences. then conclusions are drawn by thinking based on existing facts.

3. Results and Discussion

3.1. Legal Review of Electronic Signatures in the Signing of Notarial Deeds according to Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary

A signature can be defined as a composition (letters) of written signs from the signer, by which the person making the statement/information can be individualized.⁷

According to Law No. 10 of 2020 in article 11 paragraph 3, a signature is a sign as a symbol of a name as commonly used, including initials, stamps or signature stamps or initials, stamps or name stamps or other signs as a substitute for a signature, or electronic signature as intended in the law in the field of electronic information and transactions.⁸

Electronic signatures or commonly called digital signatures are created to facilitate business transactions. This electronic signature is used to validate documents. Article 1 number 19 of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (hereinafter referred to as PP No. 82 of 2012) explains the definition of an electronic signature as a signature consisting of electronic information that is attached, associated or related to other Electronic Information used as a verification and authentication tool. Article 1 number 20 of PP No. 82 of 2012 determines the definition of a Signatory as a legal subject that is associated or related to an Electronic Signature. Article 53 paragraph (1) of PP No. 82 of 2012, explains that an Electronic Signature functions as an authentication and verification tool.

UUJN provides opportunities for the implementation of notarial services through an electronic system, as stated in Article 15 paragraph (3), although it indirectly states that notaries can legally carry out their duties electronically.

However, the provisions of Article 5 paragraph (4) of the ITE Law state that "Electronic Information and/or Electronic Documents as referred to in paragraph

⁷Herlien Budiono, 2007, *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan*, PT. Citra Aditya Bakti, Bandung, p. 220.

⁸ Article 11 Paragraph (3) Law No. 10 of 2020 concerning Stamp Duty.

(1) do not apply to letters which according to the Law must be made in written form and letters and documents which according to the Law must be made in the form of a notarial deed or a deed made by a deed-making official."

In practice, notaries must follow developments in the era, especially in Article 15 paragraph (3) of the JN Law which emphasizes that notaries have other authorities which are regulated in statutory regulations. According to the explanation of Article 15 paragraph (3) of the JN Law.

But in Indonesia there are still no regulations governing it, because some of the contents of the Notary Law come from the colonial era, in it there are still elements that are completely inconsistent with the current situation and the drafters of the law have not thought about it for the long term, how in the future the progress of information and communication technology which is growing and developing very rapidly in Indonesia is so very influential on growth in the economic and development sectors, from technological advances can also support the creation of service services that use sophisticated technology.⁹

3.2. What are the obstacles and solutions to electronic signatures in signing notarial deeds

Several obstacles in the implementation of electronic signatures in signing notarial deeds. One of them is that the law often experiences delays in adjusting or following the development of society in line with the growth of science and technology, this situation results in a legal vacuum. It is the nature of the birth of a law, when the law is made, the designers are unable to record and reach all the realities or social phenomena that exist in society. A social reality shows that information technology is developing much faster than law and has changed the patterns and behavior of society, for example in business transactions from conventional patterns by face-to-face or offline contracts shifting to the era of electronic contracts via computers by means of online contracts.

a. Obstacles that hinder the implementation of Electronic Signatures in the Signing of Notarial Deeds

The first obstacle is the limitation imposed by the ITE Law which does not allow letters/documents in written form and/or in notarial deeds to be made electronically. This is further strengthened in the UUJN which regulates that notaries must be physically present when reading deeds or signing deeds. The implementing regulations for electronic signatures are regulated in PP 82 of 2012. That an electronic signature is a signature consisting of electronic information of the party signing and as a tool for authentication and verification as regulated in Article 1 number 19. Article 54 determines regarding certified signatures and uncertified signatures. The difference between the two types of electronic

⁹R.A. Emma Nurita, *Cyber Notary Pemahaman*, p. 17.

signatures is that a certified signature is made using a third party (electronic certification organizer) and has the power of proof with an electronic certificate issued by the organizer as valid evidence. An uncertified signature is made without using a third party and does not receive proof in the form of an electronic certificate because it does not use the services of an electronic certification organizer.

The implementation of Cyber Notary needs to be considered other authorities of Notaries based on Article 15 paragraph 3 of the UUJN, it is written that the authority to certify transactions carried out electronically, to make deeds of waqf pledges and aircraft mortgages. Cyber Notary itself basically already has a place in the Indonesian legal system, but what is problematic in the implementation of Cyber Notary in Indonesia is the use of electronic signatures, in which case the strength of the evidence is questioned while the process of making the deed is the same as the process of making a conventional deed. In another sense, according to Zainatun Rossalina, if the certification in question is equated with a private letter that is legalized by a notary (legalization), then the certification in question is not an authentic deed, this is because in legalization, a notary must be present in a physical sense to provide certainty of the date and signature of the parties/applicants. Meanwhile, if certification has the same meaning as a private letter registered by a notary (warmerking), then the certification itself is not an authentic deed because the notary has no responsibility for the certainty of the date, time or content and form of the letter made by the applicant.

So with the regulation regarding electronic signatures regulated in the ITE Law and PP 82 of 2012 which is the legal basis. It's just that the UUJN does not yet have clear regulations governing the application of electronic signatures to provide convenience for the parties and notaries in signing deeds electronically, but only by sending documents electronically, they can be directly signed electronically as well. However, there are other provisions in the ITE Law in Article 5 paragraph 4 which stipulate that electronic transactions do not apply to letters that must be made in written form and notarial deeds. However, it does not provide restrictions on electronic signatures on notarial deeds electronically. Basically, deeds are not made by hand manually, but are typed on a computer in digital form. As physical evidence and in the UUJN, notaries are required to keep the minutes of their deeds as a notary protocol until their term of office is completed and transferred to a replacement notary. Notarial deeds can be said to be not ideal if they violate the provisions as regulated in the UUJN and their validity can be proven both from the external, material and formal aspects.¹⁰

The second obstacle is that there must be media or tools or applications that support the implementation.electronic signature. An electronic signature is a

¹⁰Rifa'i, A., & Iftitah, A. "Bentuk-Bentuk Pelanggaran Hukum Dalam Pelaksanaan Jabatan Notaris". *Jurnal supremasi*, 8(2), 4-4, 2018, p. 47.

signature consisting of Electronic Information that is attached, associated or related to other Electronic Information that is used as a means of verification and authentication. Due to different distances, times and places.

So, the electronic signature is usually done in electronic transactions, namely legal acts carried out using computers, computer networks, and/or other electronic media. So that an electronic signature is a process that must be passed through quite a long time. So that the use of electronic signatures (digital signatures) in notarial deeds, especially party deeds, is still not possible.

The next obstacle is the difficulty of verifying the authenticity of an electronic signature. Using an Electronic Signature does have advantages, such as being cost-effective, can be done anytime, can be made directly on a computer and so on. However, when it will be used as evidence, it is very risky in certain conditions, especially if you sign an official document either in your personal name or in the name of a company.

Although Electronic Signatures can be used as a sign of approval in a digital document, their validity can be questioned because there is still potential for manipulation. This is because the signature does not contain information about who and when the signature was affixed, so this document needs to go through a digital forensic test during the trial. As a result, the proof of the validity of this type of document becomes weaker.

Furthermore, as digital transformation in the work environment and the digital economy continues to grow amid the pandemic, the popularity of electronic signatures (TTE) continues to increase globally, including in Indonesia. Digital signatures themselves have two types if referring to Government Regulation Number 71 of 2019 concerning the Implementation of Digital Systems and Transactions, Article 60 paragraph 2 which states that there are two types of digital signatures, namely certified and uncertified.

An uncertified digital signature is a digital signature that does not involve a service provider and also does not obtain an operating permit from the authorized authority. The authority referred to in this case is the Ministry of Information of the Republic of Indonesia which issues certificates for each digital signature service provider.

Meanwhile, certified digital signatures are issued by digital signature service providers that have been registered with the Ministry of Information of the Republic of Indonesia. These service providers are licensed to operate an encryption system for securing digital signatures.

In Government Regulation Number 71 of 2019 concerning the Implementation of Digital Systems and Transactions which is a reference for the Ministry of Information of the Republic of Indonesia regarding digital signature services, it states that digital

signature services or service providers must be registered with the government. This means that all forms of certified electronic signatures issued by Electronic Certification Providers (PSrE) issued by other than certified institutions can be doubted even though they can still be used.

b. Solution for implementing Electronic Signatures in Signing Notarial Deeds

As the author has explained above, in the digital era like today, notaries do not have to close their eyes to the development of the times because notaries must also be able to respond and be able to balance their abilities with technological and information advances. A sophisticated technology that can make notaries and parties no longer limited in the dimensions of space and time, notaries must be able to offer a new solution to create healthy competition in supporting the acceleration of development in Indonesia.

Although with these dynamics, notaries have a very important role in realizing the acceleration of development in Indonesia, because notaries have many transactional relationships in the fields of economy and development. Currently, the electronic information and telecommunications system has been implemented in almost all sectors of life in society which ultimately also encourages the development of the community's economy.

The author concludes that Electronic Signatures can be equated in legal purposes with conventional signatures if the electronic signature is made in accordance with the requirements in Article 11 paragraph (1) and (2) of the ITE Law and PP No. 82 of 2012 so that the electronic signature can be said to be legally valid, therefore the Indonesian Notary Association can submit suggestions to the government to revise the JN Law, the ITE Law and other laws and regulations so that there can be synchronization between the laws governing authentic deeds so that the use of digital signatures or other electronic documents can be implemented properly. because there is no article that regulates with certainty how cyber notary related to electronic signatures can be applied, so that later in the UUJN it will regulate the requirements for electronic signatures on Notarial deeds, because electronic signatures have become a necessity for the community and Notaries to facilitate services.

In addition, according to the author, the Government can make special rules regarding electronic signatures for Notaries because UUIE only regulates Notary documents and electronic signatures. These special rules are such as rules regarding the procedure for signing deeds electronically and also the procedure for the parties to appear before the Notary later. Because electronic signatures provide convenience for Notaries or parties, such as convenience in terms of time and cost efficiency.

For the sake of the interests and legal protection of a Notary in carrying out his duties, a Notary must master all regulations related to his duties, this is none other

than so that the deed made by the Notary is not legally flawed, which can result in the deed being null and void or can be canceled. Likewise, for parties who need his services or who ask for a deed to be made, they must also be able to act honestly and not make up the desired deed. Thus, between the Notary and the parties who need the Notary's services must have high integrity and morality in order to realize legal protection and certainty.

There is no reason whatsoever for a Notary not to apply the principle of caution in carrying out his/her duties. This means that all actions and deeds made in the context of making an authentic deed must always be based on applicable laws and regulations so that they can be legally accounted for.

4. Conclusion

Electronic signatures can be equated in legal purposes with conventional signatures if the electronic signature is made in accordance with the requirements contained in Article 11 paragraph (1) and (2) of the ITE Law and PP No. 82 of 2012 so that the electronic signature can be said to be legally valid because the electronic signature is applied to facilitate business transactions. The use of electronic signatures (digital signatures) in notarial deeds, especially party deeds, is still not possible. The use of digital signatures or electronic signatures is still possible in release deeds, for example in the deed of the General Meeting of Shareholders ("GMS") held by video conference method as regulated in Article 77 of the PT Law. The use of digital signatures itself is also not possible because in terms of the law itself it is not yet possible, especially the Notary Law because in the JN Law there are still several absolute requirements for an authentic deed as stated in Article 16 paragraph (1) letter m that a notarial deed must be signed at that time by the person appearing, witnesses and notary. In addition to the JN Law, the ITE Law in Article 5 paragraph (4) letters a and b of the ITE Law also emphasizes that documents made in the form of notarial deeds are not included in electronic information and/or electronic documents. Notarial deeds made electronically do not have legal force as valid evidence according to the provisions of the ITE Law. Therefore, related to the validity of the electronic signature (digital signature), the deed made by the notary is no longer an authentic deed but rather a deed under hand.

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