

Validity of Electronic Signatures of The Notary and The Parties on The Notarial Deed

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Abstract. *The aim of this research is to determine and analyze the validity of electronic signatures on Notarial deeds and the role of the Notary in applying electronic signatures in notarial deeds. The legal issue examined in this research is the existence of a legal conflict between Article 15 paragraph (3) of the Law on Notary Positions and Article 5, Article 11 of the Law on Information and Electronic Transactions regarding the application of electronic signatures on Notarial deeds. The type of research in this research is normative juridical. The approach method used in this research is the statutory approach, conceptual approach. The research data sources used are primary legal materials, secondary legal materials and tertiary legal materials. The data collection method uses library research. The results of this research show that the validity of deeds which are signed electronically does not fulfill the authenticity of the deed because the provisions of the Notary Position Law do not explicitly regulate the use of electronic signatures. The role of the Notary in applying electronic signatures, there are no regulations that regulate it so that it cannot carry out electronic signing of deeds under any circumstances, in carrying out his office, the Notary applies the principle of legal presumption that a Notarial deed will always be considered valid and perfect in its evidentiary value before any party denies it in court. The conclusion is that electronic signatures are recognized by law, but the Law on Notary Positions does not specifically regulate this.*

Keywords: *Electronic signature; Validity; Notarial Deed.*

1. Introduction

Indonesia is currently on the path of globalization with the very rapid development of information and communication technology. In the developing era of globalization, it is marked by the availability of information and communication technology which introduces internet networks via electronic media. With the development of this era, society believes that information and

communication technology can contribute to improving social welfare as well as legal, economic, social and cultural development, because technological developments outside the law result in changes and changes.

The era of globalization has also encouraged the development of the legal system in Indonesia, this is marked by the existence of Law Number 36 of 1999 concerning amendments to Law Number 3 of 1989 concerning Telecommunications. As time went by, several deficiencies were found in this law, so it was updated with Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. This is proof that laws in Indonesia follow developments in technology and information and become supporting regulations for Indonesian society in terms of technological and information developments.

The very rapid development of technology means that society must be able to adapt to these changes. To adapt to ongoing developments, the law always keeps pace by making changes to its positive law. Even though the legal field continues to experience changes due to these developments, in reality the law continues to lag behind. This lag also has an impact on the legal profession, especially the notarial field.

A notary is a person appointed and authorized by the Department of Justice to ratify and witness various agreements, deeds, and so on.¹This means that a Notary is a person, in the sense of an individual (naturlijk person) who is given authority by law and appointed by the authority to carry out official duties that are not given to other officials as long as it concerns legal acts related to the making of public deeds or agreements.

The enactment of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, further emphasizes the important position of the Notary's position as a public official who provides legal certainty through the authentic deeds he makes. The philosophical basis for the birth of the Law on Notary Positions is the creation of guarantees of legal certainty, order and legal protection that have truth and justice as their core. Through the deed he makes, the Notary must be able to provide legal certainty to the public who use Notary services.²

Notaries also have the authority determined by statutory regulations, namely Article 15 paragraph (3), the contents of which include: the authority to certify transactions carried out electronically (cyber notary), to make waqf pledge deeds, and to mortgage aircraft. A Notary is required to be able and able to use cyber notary in order to create a service that is fast, precise and efficient, so as to accelerate the rate of economic growth.

¹Indonesia Dictionary, <http://kbbi.web.id/notaris> accessed on 28 August 2023 PKL. 10.00

²Ira Koes, 2013, Go to Notary, Achieve Hope of Success, Depok, Page. 9.

The cyber notary concept wants to provide a legal framework, namely that the act of facing the parties or presenters in front of a Notary no longer requires them to meet physically (face to face) in a certain place but does not reduce the evidentiary strength of an authentic deed. According to Edmon Makarim, when carrying out electronic transactions, electronic (digital) information exchange occurs in connection with carrying out a legal act. The relationship that arises in carrying out electronic transactions is between the organizer of the electronic transaction system and the public interest or in civil law with the parties in carrying out electronic engagements.³

Relation to electronic transactions is regulated in the Electronic Information Technology Law. Article 5 determines that electronic information or documents and their printouts are valid evidence in procedural law, information and/or electronic documents and their printouts are recognized as valid evidence. This is in line with cyber notary to be applied to the Notary profession, so the Notary acts as an organizer of electronic transactions.

In electronic transactions, the use of electronic signatures is starting to replace signatures on paper. An electronic signature is defined as a signature consisting of other electronic information that is used as a verification and authentication tool. Electronic signatures are needed to maintain the authenticity of an electronic document. The Electronic Information Technology Law also provides opportunities for a Notary and the parties to sign electronically, where electronic signatures have the same position as manual signatures in general which have legal force and legal consequences.

The problem that then arises in cyber notary is that notarial deeds made via electronic means or notaries only ratify an agreement where the reading and signing of the deed is not carried out in the presence of a notary. This will result in whether the Notary's deed meets the requirements as an authentic deed if it is related as regulated in Article 16 paragraph (1) letter c, and letter m.

In the above problem there is no legal certainty. Regulations related to the concept of cyber notary have been around for quite some time, but up to now it can be said that ideal meeting points and harmonization have not been found regarding comprehensive implementing regulations for their implementation in order to find harmonization as well as proportional best practices that are implemented in the implementation of the position of notarist in Indonesia. Based on the background of the problem above, the author is interested in conducting research regarding the Validity of The Electronic Signatures of The Notary and The Parties on The Notary's Deed.

³Wahyu Tantra Setiadi & I Nyoman Bagiastra, 2021, "The Validity of Signatures on Authentic Deeds Electronically Judging from Cyber Notary", Acta Comitatus: Journal of Notarial Law, Vol. 06, No. 01, Pg. 68, url :<https://ojs.unud.ac.id/index.php/ActaComitatus/article/view/63388> accessed on April 19, 2021

2. Research methods

This research uses a normative juridical approach, namely testing an applicable norm or provision, and this research is the main characteristic of legal research. The approach methods in research are the statutory approach and the conceptual approach. The data used includes primary data, secondary data and tertiary data. The data collection method in this research uses library study techniques. Data analysis uses descriptive and interpretation techniques.

3. Results and Discussion

3.1 Validity of the Signatures of the Notary and the Parties Electronically on the Notarial Deed

An authentic deed is written evidence in a form determined by law, made by or in the presence of an official or public employee who has authority for that purpose in the place where the deed was made as stated in Article 1867 and Article 1868 of the Civil Code. The making of the deed must be based on legal regulations relating to procedures for making Notarial deeds, so that the Notary's position as a public official no longer needs to be given another title related to the Notary's authority.⁴

Juridically, the validity of a Notarial deed includes the form, content and authority of the official who makes it and its production must meet the requirements determined by the applicable legislation. Thus, if a deed does not meet these requirements, it cannot be categorized as an authentic deed and its evidentiary strength is very weak.⁵Therefore, a Notary as a public official who has the authority to make authentic deeds must have rules that he complies with to protect the authenticity of the deeds he makes and also to maintain his honor as a Notary.

In general, a signature is an arrangement (letters) or a sign in the form of writing from the person signing, with the name of the person making the statement/information can be individualized.⁶According to Tan Thong Kie, a signature is a statement of the signature maker's (signatory's) will that by affixing his signature under a piece of writing he wants the writing to be legally considered his own writing.⁷

⁴Habib Adjie, 2017, "The Mayantara Notary Concept Facing Global Competition Challenges", *Respublica Law Journal*, Volume. 16, no. 2, p. 45. url
[:https://doi.org/10.31849/respublica.v16i2.1436](https://doi.org/10.31849/respublica.v16i2.1436)

⁵Sjaifurrachman and Habib Adjie, 2011, *Aspects of Notary Responsibility in Making Deeds*, Mandar Maju, Bandung, p. 110.

⁶Herlien Budiono, 2007, *Collection of Civil Law Writings in the Field of Notary Affairs*, Citra Aditya Bakti, Bandung, Page. 220.

⁷Tan Thong Kie, 2007, *Study of Notaries and Miscellaneous Notary Practices*, Ichtiar Baru Van Hoeve, p. 473.

In general, a signature has a broader meaning, namely a code or sign which is used as a means of legalizing a signed document, while an electronic signature has a narrower meaning, namely the application of a set of computer techniques to information that is useful for maintaining information security.

In practice, Notaries must follow current developments, especially in Article 15 paragraph (3) of the Law on the Position of Notaries - Amendments which emphasizes that Notaries have other authorities as regulated in statutory regulations. According to the explanation of Article 15 paragraph (3), namely: "what is meant by other authorities regulated in statutory regulations, among others, are the authority for transactions carried out electronically (cyber notary), making waqf pledge deeds, and airplane mortgages." Therefore, from the provisions of Article 15 paragraph (3) Notaries have the authority to make deeds electronically based on cyber notary. The presence of the cyber notary provides the possibility that Notarial deeds are not only made in person, but Notarial deeds can also be made electronically and the mechanism for reading and signing deeds is not done directly, but online or audio-visually in the presence of a Notary.

However, the application of electronic signatures is closely related to the strength of the authentic deed. One of the requirements for an authentic deed according to Article 1868 of the Civil Code is that it must be made in the presence of an official who shows that the deed was made at someone's request. In other words, the signature on the deed must be done in the presence of an official.

Apart from that, Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries confirms the obligation of the Notary to read the deed in front of an audience in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for making a testamentary deed privately, and signed at that time by the presenter, witness, and Notary.

This gives rise to the fact that apart from the Information and Electronic Transactions Law, Article 16 is also a contravention of the implementation of cyber notary (use of electronic signatures) in making authentic deeds which causes the validity of the deed made by the Notary to be questioned. In the provisions of Article 5 paragraph (4) letters a and b of the Information and Electronic Transactions Law, it is known that documents made in the form of Notarial deeds are not included in electronic information and/or electronic documents do not have legal force as valid evidence according to the provisions Constitution of electronic information and transaction. With the restrictions on the meaning of electronic information/electronic documents regulated in Article 5 paragraph (4) letters a and b, authentic deeds made electronically by a Notary are deemed unable to be valid evidence. The authenticity of the deed made by

the Notary in this case is said to be not fulfilled.⁸Notaries in carrying out their positions must still comply with the corridors of the Law on Notary Positions and the Notary Code of Ethics. If the Notary moves outside this corridor, the deed he has made could be questioned, apart from that there are sanctions that must ensnare the Notary even up to the termination of his position.

The substance in the Notary Position Law does not yet regulate the provisions regarding the application of electronic signatures, so the deed must still be made before a Notary and signed with wet ink. The application of electronic signatures in the process of making Notarial deeds cannot be justified for any reason. Unless there are regulations that explicitly regulate it. Apart from regulations, there needs to be an authentication and identification system so that an electronic signature can guarantee its originality, that the person interested in making the deed is the same person who has signed the minutes of the deed.

Although it is also possible to use an electronic signature in a deed of relaas, it is still legally unenforceable. So, if an authentic deed is made and signed electronically, the deed will not be an authentic deed, but will instead be a private deed.

3.2 The Role of the Notary in Applying Electronic Signatures to Notarial Deeds

The purpose and function of using a signature in electronic form must be able to be assessed from economic and legal aspects. Economically, the use of electronic signatures aims to be more practical, efficient, cheap and safe, while the legal aspect of using electronic signatures is expected to be helpful and easier regarding the legal process of proof relating to electronic evidence.⁹

In the Notary Position Law, it is within the authority of the Notary to certify transactions carried out electronically (cyber notary). Cyber notary is a concept that utilizes technological advances for Notaries to create authentic deeds in cyberspace and make it easier to carry out their duties every day. One example is the use of teleconferences in electronically signing deeds and General Shareholder Meetings. In its implementation, cyber notary services were initially expected to include electronic notary services in one of the articles in the Law on Notary Positions.

Notaries as officials who carry out state authority in the realm of private law are closely related to aspects of public service and the economy in general, of course they should not be seen as a rigid and static position, but must try to make

⁸Lyta Berthalina Sihombing, 2020, Validity of Electronic Signatures in Notarial Deeds, Vol. 8, no. 1, Education and development journal, South Tapanuli Education Institute, p. 138. url

[:https://www.neliti.com/id/publications/561580/keabsahan-tanda-tangan-elektronik-dalam-akta-notaris](https://www.neliti.com/id/publications/561580/keabsahan-tanda-tangan-elektronik-dalam-akta-notaris)

⁹Iqbal Anshori, Elita Rahmi and Syamsir, 2022, polemic on the application of electronic signatures in making authentic deeds, Volume 4, Number 2, Recital Review, Page. 362.

adjustments to actual phenomena, while continuing to support the government in overseeing the direction of development. in an orderly, safe and legal manner. This needs to be supported by the proactivity of the Notary himself so that he is always in tune and relevant with current developments and technology through a service that is fast, precise and efficient so that it is able to support the acceleration of the economic pace.¹⁰

Cyber notary in Indonesia it is still at the conceptual and regulative level apart from the provisions of Article 15 paragraph (3) of the Law on the Position of Notaries which states that Notaries have other authorities as regulated in statutory regulations. certifying transactions carried out electronically (cyber notary). Even though technological advances make it possible to carry out Notary positions electronically and remotely, in Indonesia this cannot currently be implemented considering that the main paradigm underlying the Law on Notary Positions is built on conventional mechanisms.

Justice is a goal to be achieved by law, because law functions to protect human interests. The ideal of law is to create justice, and law comes from justice. Therefore, justice existed before the existence of law. The Notary Position Law as an umbrella regulation in the implementation of the Notary position, there are several things that pose implementation challenges in the implementation of cyber notary. For example, the provisions of Article 15 paragraph (1) which states that a Notary has the authority to make authentic deeds regarding all deeds, agreements and stipulations that are required by statutory regulations and/or that are desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed. , keeping the deed, providing grosses, copies and quotations of the deed, all of this as long as the making of the deed is not assigned or excluded to other officials or other people as determined by law. Article 1 number 7 states that a Notarial deed is an authentic deed made by or before a Notary in the form and procedures stipulated in law. This provision confirms that as an authentic deed, the Notary's deed is bound by the provisions relating to the form and procedure for making it.

Then, in the provisions of Article 16 paragraph (1) letter m, which states that one of the Notary's obligations in carrying out his office is to read the deed in front of the audience in the presence of at least 2 (two) witnesses or 4 (four) witnesses specifically for making the deed of will is private and signed at that time by the presenter, witness, and Notary. From this provision it can be concluded that the Notary, the presenters and witnesses must be physically present together and sign the deed at the same time.

¹⁰RA Emma Nurita, 2012, *Cyber Notary: Initial Understanding of the Concept of Thought*, Refika Aditama, Bandung, Page. 17.

The Electronic Information and Transaction Law provides a fairly strong basis for electronic information/electronic documents and their printed results, according to the provisions in Article 5 paragraph (1) and paragraph (2) stating that electronic information and/or electronic documents and/or their printed results is valid legal evidence and is an extension of legal evidence in accordance with the procedural law in force in Indonesia. Furthermore, the provisions in Article 7 state that every person who asserts rights, strengthens existing rights, or rejects the rights of others based on the existence of electronic information and/or electronic documents must ensure that the electronic information and/or electronic documents in their possession originate from electronic systems that meet the requirements based on statutory regulations.

In relation to Notarial deeds, there is an exception to Article 5 paragraph (4) of the Information and Electronic Transactions Law which states that provisions regarding electronic information and/or documents do not apply to:

- (a) Letters which according to the law must be made in writing;
- (b) The letter and its documents according to the law must be made in the form of a notarial deed or a deed made by the deed-making official.

These things show that in order to create legal certainty and benefits in implementing cyber notary, it is necessary to update and harmonize regulations related to laws and regulations relating to the authority of Notaries in the use of electronic signatures, such as the Notary Position Law, the Law Code. Civil, Information and Electronic Transactions Law. So, when using an electronic signature, the Notary does not have any juridical problems regarding his authority.

The making of a deed via cyber notary occurs when there is a video conference, which begins by conveying the meaning and purpose of making a deed relating to legal actions that will later be carried out, displaying the identities of the parties with the ongoing video conference or sending identity data in softcopy form, namely email. to adjust the identity that has been displayed for all parties to the Notary so that it is continued in the making of the deed until the contents of the deed are read in front of all parties and witnesses and then continued by giving an electronic signature.

The relationship that occurs is based on the principle of presumption of legality, if there is a person who has had bad faith from the start in making an authentic deed before a Notary who himself does not know about it. The issuance of the deed creates rights and obligations between the parties and the legal consequences that may arise in the future from the authentic deed will always be binding and considered valid unless someone denies it. Likewise, a Notary in making an authentic deed must still follow existing rules, such as in the Law on Notary Positions Article 15, Article 16, Article 17, Article 38 and as long as the

action is appropriate then the Notary can be justified in relation to the principle of presumption of legality when carry out his office. If in the making of the deed there are irregularities committed by the Notary in his position of making authentic deeds, because there are no clear regulations regarding electronic signatures which are specifically regulated in the position of Notary then he may be subject to administrative sanctions in Article 85 of the Law on the Position of Notary, in effect. Civil law is linked to Article 1365, namely an unlawful act, if the parties who feel disadvantaged as a result of an electronic signature can prove otherwise from the contents of the deed. There are several consequences that can arise if the deed does not comply with the provisions, namely: the deed can be cancelled, the deed is null and void, the deed is canceled because of a court decision which has permanent legal force.

So it is necessary to update the Notary Position Law regarding the implementation of deed making, signatures and related to cyber notaries. Apart from that, there is a need for a more specific understanding and definition of the Notary's authority in carrying out certification using a cyber notary, both in making deeds, ratifying deeds and carrying out electronic signatures.

4. Conclusion

Regarding the validity of electronic signatures, there is no substance in the Law on the Position of Notaries which regulates the provisions for the application of electronic signatures, so the deed must still be made in the presence of a Notary and signed with wet ink. The application of electronic signatures in the process of making Notarial deeds cannot be justified for any reason. Unless there are regulations that explicitly regulate it. To create legal certainty and usefulness in implementing cyber notary, it is necessary to update and harmonize regulations related to laws and regulations relating to the authority of Notaries in the use of electronic signatures, such as the Notary Position Law, the Civil Code, the Information and Transaction Law Electronic. So, when using an electronic signature, the Notary does not have any juridical problems regarding his authority. It is hoped that the Government, in this case the Ministry of Communication and Information, can revise the Law on Information and Electronic Transactions in Article 5 paragraph (4) letters a and b related to the use of electronic signatures in Notarial deeds, that this Article constitutes a legal conflict for applying signatures electronic means to become valid legal evidence, considering that Article 5 paragraph (1), paragraph (2), and paragraph (3) regulates Electronic Information and/or electronic documents. This is in line with cyber notary to be applied to the Notary profession, then the Notary acts as the organizer of electronic transactions. On the other hand, electronic signatures provide convenience for Notaries and parties, such as convenience in terms of time and cost efficiency. It is also hoped that the Indonesian Notary Association, notary study program lecturers, notary students can submit suggestions to the

government to revise the Notary Position Law so that the concept of cyber notary is further regulated, because there is no article that regulates exactly how cyber notary is related to signs. electronic signatures can be applied, so that later the Law on the Position of Notaries regulates the requirements for electronic signatures on Notarial deeds, because electronic signatures have become a necessity for the public and Notaries to facilitate service.

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