

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

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Abstract. *The development of information technology has driven the transformation of notarial practices, including the implementation of electronic signatures, which are generally recognized as having legal force under the Electronic Information and Transactions Law (UU ITE). However, the Notary Law (UUJN) has not explicitly regulated the use of electronic signatures in the creation of authentic deeds, thus still requiring the physical presence of the parties. This has given rise to debate regarding the validity of electronic notarial deeds. This study aims to analyze the validity of electronic signatures of notaries and parties in notarial deeds. The method used is a normative juridical approach through a literature review, with analytical descriptive research specifications that systematically and comprehensively explain the related legal issues. The results of the study indicate that legally, electronic signatures are valid in electronic transactions, but their application in notarial deeds is still limited due to exceptions in Article 5 paragraph (4) of the ITE Law, legal constraints in the UUJN, digital security issues, and differences in legal understanding. Therefore, harmonization of regulations, strengthening digital infrastructure, and improving notary competency are important steps to ensure that electronic notarial deeds continue to have legal certainty and adequate legal protection.*

Keywords: Notary; Notarial Deed; Validity.

1. Introduction

In a state governed by the rule of law, every action and policy of the government

and society must be based on statutory regulations. As a state governed by the rule of law, Indonesia emphasizes that law is the primary means of regulating social, national, and state life. Mochtar Kusumaatmadja emphasized that law serves as a means of maintaining order and building society, so every innovation, including in the field of legal administration, must adhere to the principle of legal certainty.¹

The development of information technology in the digital era has brought about significant transformations in notarial practice, particularly regarding the use of electronic signatures in the preparation of notarial deeds. The implementation of electronic signatures is considered capable of increasing the efficiency, security, and accuracy of deed preparation without the physical presence of the parties.²

Legally, the ITE Law recognizes electronic signatures that meet certain requirements as valid evidence. However, the Notary Law (UUJN) does not explicitly regulate their use, and Article 16 of the UUJN still requires the physical presence and reading of the deed before a notary, thus giving rise to debate regarding the status of electronic deeds as authentic deeds.³

The practice of using electronic signatures for deeds of sale and purchase in Surabaya during the COVID-19 pandemic demonstrates the gap between regulation and practice. Several notaries used certified electronic signatures, but the Regional Office of the Ministry of Law and Human Rights rejected the registration of the deeds because they did not meet the physical presence requirement. Furthermore, the security and validity of digital data are also key concerns in ensuring the authenticity of electronic signatures.⁴

Thus, research into the validity of electronic signatures in notarial deeds is highly relevant. Harmonization between the ITE Law and the UUJN, strengthening digital infrastructure, and improving notarial competence are key to ensuring that electronic deeds continue to provide legal certainty and adequate legal protection, while also supporting the modernization of notarial services in the digital era.⁵

This research aims to determine and analyze the validity of electronic signatures used by Notaries and parties in making Notarial Deeds in terms of the Law on Notary Positions.

¹Mochtar Kusumaatmadja, *Introduction to Law and the Theory of the Legal State*, Jakarta: PT Gramedia, 2009, pp. 45-46.

²Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 11.

³Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Article 16 paragraph (1) letter m.

⁴Case of the Surabaya Electronic Sales and Purchase Deed, 2021, East Java Regional Office of the Ministry of Law and Human Rights.

⁵Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions; the ITE Law and UUJN as the basis for harmonizing digital regulations.

2. Research Methods

A normative legal approach through literature review, with analytical descriptive research specifications that systematically and comprehensively explain the related legal issues. The data analysis used in this study is qualitative data analysis.

3. Results and Discussion

Based on the description of Soerjono Soekanto's theory of law enforcement, it can be understood that the effectiveness of a legal norm is not only determined by the existence of written rules, but also by the readiness of law enforcement officers, the support of facilities and infrastructure, the level of public awareness, and the suitability of the law to the values that exist in society. Therefore, every social development that influences legal practice must be analyzed through these five factors to determine the extent to which the law is able to adapt and be enforced effectively.

Nowadays, the development of information technology is a social factor that directly influences the legal system and its enforcement practices. This development has brought significant changes to legal practice in Indonesia, including in the notarial field. Document digitization and the use of electronic signatures are part of this transformation. However, their application in the preparation of Notarial Deeds still generates deep legal debate.

From the perspective of Soerjono Soekanto's law enforcement theory, this problem is not only related to the substance of the law that regulates it, but also concerns law enforcement factors (notaries as public officials), means and facilities factors (availability of secure and verified electronic systems), community factors (level of acceptance and trust in electronic deeds), and legal culture factors that develop in society.

A public official has the authority to attribute to make an Authentic Deed which has perfect evidentiary power. This is expressly regulated in the Notary Law which stipulates formal and procedural requirements for making a Deed to guarantee legal certainty and protection.

Example of a Notary Deed COOPERATION AGREEMENT DEED Number: 045/EAKTA/II/2026. Made electronically through a digital notary system with a verified electronic signature generated and verified by an Electronic Certification Organizer Recognized by the Government of the Republic of Indonesia. Determined and signed in Jakarta,

Electronic signatures in Notarial Deeds raise questions about the formal validity of the Deed. This is because the Notarial Law requires the reading and signing of the Deed to be done in person before a Notary, thus giving rise to the interpretation of physical presence as an absolute requirement.

The physical presence of the parties in the creation of a deed has long been viewed as an essential element in maintaining authenticity. Therefore, the

implementation of electronic signatures could potentially be seen as contradicting the normative construction that has long been in effect in the Indonesian notarial system.⁶

1. Normative Framework of the Notary Law

The Notary Law stipulates that a notary must read the deed in front of the parties and witnesses, then sign it immediately. This phrase implies a simultaneous time and place, often interpreted as requiring a face-to-face meeting.

In conventional practice, this process ensures that the parties understand the contents of the deed before granting consent. Physical presence also serves as a means of identity verification and a form of direct supervision by the notary over the parties.

On the other hand, developments in technological law have recognized electronic signatures as a valid means of authentication. Electronic systems are even considered capable of guaranteeing high levels of data security and integrity through encryption mechanisms and electronic certification.

Normative conflicts arise when general provisions regarding electronic signatures clash with specific provisions in the Notary Law. In legal theory, the principle of *lex specialis derogat legi generali* prioritizes specific provisions over general provisions in cases of conflicting norms.⁷

2. Elements of Authenticity of Notarial Deeds

The authenticity of a Deed is determined by the fulfillment of the elements of an authorized official, the form specified by law, and legal procedures. If one of the elements is not fulfilled, then the deed has the potential to lose its authentic character and is only valuable as a private deed.

A signature in a notarial deed is not merely a symbol of approval, but an integral part of the authentic deed formation process. Its presence ensures that the parties fully understand and agree to the contents of the deed read by the notary.

In the context of electronic signatures, the signatory's identification is performed through a specific electronic system. While technologically capable of guaranteeing authentication, the question is whether this mechanism can be equated with physical presence as defined in the Notary Law.

Some academics argue that virtual presence through electronic media cannot be fully equated with physical presence. This is because the notary's professional norms contain strict formal evidentiary elements to ensure legal certainty.⁸

⁶R. Harahap, 2021, "Digitalization of Notaries and the Challenges to the Validity of Authentic Deeds," *Ius Quia Iustum Law Journal*, Vol. 28 No. 2.

⁷N. Sari, 2022, "Conflict of Norms between the ITE Law and the Notary Law," *Jurnal Rechtsvinding*, Vol. 11 No. 1, .

⁸MR Putra, 2022, "Virtual Presence in the Making of Notarial Deeds," *Journal of Law and Development*, Vol. 52 No. 3. .

3. Legal Interpretation Analysis

However, there is also a progressive view that believes legal interpretation must keep pace with societal developments. If technology can guarantee better security, integrity, and identification, then it is possible to broadly interpret the presence norm.

The teleological approach to legal interpretation emphasizes the purpose of norm formation. The primary purpose of a notarial deed is to guarantee the identity of the parties and the certainty of the agreement's contents, not merely to maintain its traditional physical form.

However, changes in interpretation cannot be made arbitrarily without explicit legal basis. In written legal systems, significant changes to the formal requirements for authenticity require revision of the law to avoid creating legal uncertainty.

The unclear status of an electronic signature in a notarial deed can impact the evidence presented in court. If the judge deems the procedure inconsistent with the Notary Law, the deed may be declared inauthentic.⁹

4. Implications and Directions for Reform

The risk of a deed being converted into a private deed can be detrimental to both parties. An authentic deed has complete evidentiary force, while a private deed only has evidentiary force after being acknowledged by the relevant party.

Furthermore, notaries may face administrative sanctions if they are deemed to have violated the terms of their position. Violating formalities in the preparation of a deed can be considered negligence in carrying out their official duties in accordance with statutory regulations.

In practice, some notaries have begun utilizing digital technology for administrative efficiency. However, the use of electronic signatures in authentic deeds remains cautious, given the lack of explicit provisions in the Notary Law.

It's important to distinguish between the digitization of minutes or copies of a deed and the process of signing the deed itself. Document digitization doesn't necessarily mean the use of an electronic signature in the creation of an authentic deed.¹⁰

Regulatory harmonization is an urgent need to address technological developments. Without harmonization, the dualism of norms between the Notary Law and electronic regulations will continue to create uncertainty in notarial practice.

Legal reforms can be made through revisions to laws or the issuance of implementing regulations that explicitly regulate the electronic signature

⁹D. Pratama, 2023, "Legal Implications of Using Electronic Signatures in Notarial Deeds," Jurnal Arena Hukum, Vol. 16 No. 1. .

¹⁰L. Wulandari, 2023, "Modernization of Notary Services in the Digital Era," Indonesian Notary Journal, Vol. 5 No. 2. .

mechanism in the creation of Authentic Deeds, including security standards and identity verification procedures.

Several countries have adopted the concept of digital notaries with arrangement. However, its implementation is always accompanied by strict regulations to maintain the integrity of the position and prevent the misuse of technology in legal transactions.

Indonesia needs to consider this experience as a reference for reforming notarial law. Modernization must not sacrifice the principles of prudence and legal certainty, the primary foundations of the Authentic Deed system.¹¹

A legal review of the validity of electronic signatures in notarial deeds. In this case, the author examines several aspects, including:

1. Notary's Position as a Public Official

A notary is a public official who is given authority by the state. The state has the authority to create authentic deeds. This authority is attributive because it is granted directly by law. Therefore, all notary actions must strictly comply with the formal provisions established by law.

As a public official, a notary public not only serves as a recorder of the parties' wishes but also as a guardian of legal certainty. This role requires great care at every stage of the deed's creation, including the reading and signing of legal documents.

A notary's responsibility does not end when the deed is completed. The notary is also responsible for the formal accuracy of the identities and statements of the parties as stated in the deed. Therefore, face-to-face procedures have long been seen as a crucial verification tool.

If an electronic signature is used without a verification mechanism equivalent to physical presence, then a problem arises.¹² That the Notary's responsibilities can become more complex, especially if a dispute arises later.

2. Formal Requirements for Signing a Deed

The signing of the deed is the final stage in the process of creating an authentic deed. This stage confirms the parties' agreement to all the contents of the deed as read by the notary. Without a valid signature, the deed lacks full evidentiary force.

The Notary Law requires that the signing take place in the presence of a notary and witnesses. This provision means that the notary must directly witness the approval process between the parties.

A literal interpretation of the phrase suggests that physical presence is a primary requirement. Presence via electronic media has not been explicitly recognized as

¹¹S. Kurniawan, 2023, "Notary Reform in the Digital Era," Indonesian Legislation Journal, Vol. 20 No. 1. .

¹²A. Firmansyah, 2022, "The Position and Responsibilities of Notaries in the Indonesian Legal System," Jurnal Yuridika, Vol. 37 No. 2. .

a valid form of presence in the context of establishing an Authentic Deed.

The difference between a wet signature and an electronic signature lies in the medium. However, from a legal perspective regarding the Notary Public, the medium has implications for the procedural validity that determines the authenticity of the deed.¹³

3. Analysis of the Principle of Lex Specialis

In the Indonesian legal system, the principle of *lex specialis derogat legi generali* plays a crucial role in resolving conflicts of law. The Notary Law specifically regulates the procedures for creating an Authentic Deed.

Meanwhile, regulations regarding electronic signatures are general and apply to various types of transactions. Therefore, in the event of a conflict, the specific provisions of the Notary Law must take precedence.

The application of this principle aims to maintain consistency in the legal system and prevent interpretations that could obscure the authority of public officials. Therefore, the use of electronic signatures in Authentic Deeds requires a specific legal basis.

Without such a legal basis, the use of electronic signatures has the potential to be seen as a procedural deviation which could have an impact on reducing the quality of the evidence of the Deed before the judge.¹⁴

4. Perspective of Legal Certainty and Protection

Legal certainty is one of the primary objectives of creating an Authentic Deed. A notarial deed is created to provide assurance that the legal events described therein actually occurred in accordance with legal procedures.

The use of electronic signatures without explicit provisions can create legal uncertainty. The parties may feel technologically secure, but the legal validity of the deed remains debatable.

Legal protection for notaries is also crucial. In the event of a dispute, the notary must be able to prove that all procedures were carried out in accordance with applicable laws.

Thus, before there is regulatory reform, the use of electronic signatures in Authentic Deeds should be limited or carried out with great care to avoid potential disputes in the future.¹⁵

5. Implications for Evidence in Court

In the civil evidence system, an Authentic Deed has perfect evidentiary force. Judges are bound by the contents of the Deed as long as there is no evidence of

¹³B. Santoso, 2022, "Formalities of Signing Notarial Deeds," *Journal of Law and Justice*, Vol. 11 No. 1.

¹⁴C. Wibowo, 2022, "Application of the Lex Specialis Principle in Conflicts of Laws and Regulations," *Constitutional Journal*, Vol. 19 No. 3. .

¹⁵E. Lestari, 2023, "Legal Certainty in the Making of Notarial Deeds in the Digital Era," *Journal of Law & Development*, Vol. 53 No. 1.

forgery or procedural flaws.

If the signing procedure is deemed not to be in accordance with the Notary Law, the judge can judge that the Deed only has the force of a private Deed.

This consequence places a heavier burden of proof on the parties. They must prove the truth of the deed's contents themselves without the protection of perfect evidentiary power.

Therefore, certainty regarding the validity of electronic signatures in Notarial Deeds is very important in determining the effectiveness of legal protection in civil court proceedings.¹⁶

A critical analysis and development of digital notaries. In this case, the author divides it into several aspects, including the following:

1. Challenges of Implementing Technology in Notary Public

Digital transformation in the legal field is inevitable with the advancement of information technology. Notaries, as institutions that guarantee legal certainty, also face the demands of modernization to remain relevant to the needs of an increasingly dynamic and technology-driven society.

The use of electronic signatures is seen as a solution to increase the efficiency of notarial services. Administrative processes are accelerated, operational costs can be reduced, and service coverage can be expanded without rigid geographic boundaries.

However, efficiency must not overlook legality and formality. Notary services differ from ordinary civil transactions because they involve the authority of a Public Official who is bound by strict procedures to ensure the authenticity of legal documents.

The main challenge lies in how to integrate technology without reducing the formal standards set by law, so that modernization runs in line with the principle of prudence in the Notary's office.¹⁷

2. The Concept of Presence in Modern Legal Perspective

Physical presence in the preparation of a deed has long been understood as a face-to-face meeting between the notary and the parties. This concept developed in the context of a conventional society that was unfamiliar with sophisticated digital communication systems.

In modern legal developments, presence has begun to be understood more flexibly through the concept of virtual presence. Online meetings with robust identity verification systems are seen as capable of replacing physical meetings in certain legal fields.

However, in the context of the Notary Office, presence not only functions as a

¹⁶F. Rahman, 2023, "The Evidential Power of Authentic Deeds and Its Challenges," *De Jure Journal of Legal Studies*, Vol. 24 No. 2. .

¹⁷G. Prasetyo, 2022, "Digital Transformation in Notarial Practice," *Journal of Business Law*, Vol. 17 No. 2. .

means of communication, but also as a formal control mechanism related to the legitimacy of Authentic Deeds.

Therefore, redefining the concept of presence requires changes to explicit norms so as not to give rise to interpretations that conflict with the principle of legality in state administrative law.¹⁸

3. Notary's Legal Responsibilities and Risks

Notaries are liable for civil, administrative, and even criminal liability if violations occur during the preparation of deeds. Therefore, every technological innovation must be considered in light of the potential legal risks that may arise.

If an electronic signature is misused or hacked, a notary could face lawsuits for negligence. Cybersecurity risks represent a new and previously unknown aspect of conventional notarial practice.

Furthermore, proving the authenticity of electronic signatures in disputes may require digital forensics expertise. This differs from wet signatures, which are relatively simpler to authenticate.

Thus, the implementation of electronic signatures must be accompanied by high security standards and a clear monitoring system so that the Notary's responsibilities remain within the limits of legal reasonableness.¹⁹

4. Comparison with International Practices

Several countries have adopted Electronic Notary Systems through specific regulations that detail procedures and security standards. These reforms were implemented while maintaining the principle of authenticity of deeds as a top priority.

In these countries, the use of electronic signatures in Authentic Deeds is only permitted if they meet strict digital certification standards and are supervised by authorized institutions.

International experience shows that modernizing notaries requires infrastructure readiness, comprehensive regulations, and increased human resource capacity in the field of information technology.

Without a mature regulatory framework, the adoption of digital systems in notaries has the potential to create legal vulnerabilities that could be detrimental to both the parties and the notary officials themselves.²⁰

5. The Urgency of Regulatory Reform

Technological developments cannot be stopped, so the law must adapt. Reforming the Notary Law is one option to accommodate the legal and measurable use of electronic signatures.

¹⁸H. Nugroho, 2022, "The Concept of Virtual Presence in the Perspective of Administrative Law," *Jurnal Negara Hukum*, Vol. 13 No. 1. .

¹⁹I. Mahendra, 2023, "Legal Risks of Notary Public Use of Digital Technology," *Jurnal Arena Hukum*, Vol. 16 No. 2. .

²⁰J. Kurnia, 2023, "E-Notary in Comparative Law Perspective," *Jurnal Rechtsidee*, Vol. 11 No. 2. .

The reform should regulate in detail the Identity Verification Procedures, Electronic System Security Standards, and Notary Responsibilities in the event of system failure or security breach.

In addition to changes to the law, implementing regulations are also needed to provide technical guidelines for notaries in implementing electronic systems safely and in accordance with the law.

With comprehensive reform, the use of electronic signatures in the creation of notarial deeds can obtain clear legal legitimacy without sacrificing the principles of legal certainty and protection.²¹

A comprehensive analysis of the validity of a signature can also be seen in several aspects, namely:

1. Legal Analysis Synthesis

The validity of Electronic Signatures in the Making of Notarial Deeds must be analyzed through a normative approach that places the Notary Law as the main basis for regulating the authority and procedures for the formation of Authentic Deeds in Indonesia.

Systematically, the requirement for attendance and signing before a notary is a formal element that determines authenticity. This element is not merely administrative but also has direct consequences for the evidentiary force of the deed in the civil justice system.

If electronic signatures are used without explicit provisions, the status of the deed can be disputed. This ambiguity has the potential to lead to multiple interpretations among practitioners, academics, and law enforcement officials.

In the context of the principle of legality, every authority of a public official must have a clear legal basis. Therefore, technological innovation in notarial law requires normative legitimacy to ensure it does not exceed the limits of authority established by law.²²

2. Balance between Modernization and Legal Certainty

Modernization of the legal system is inevitable in the digital age. However, this modernization must go hand in hand with the principle of legal certainty, which is the primary foundation of notarial practice.

Legal certainty is reflected in procedural clarity, document validity, and protection for the parties. Without certainty, a notarial deed loses its primary function as strong and reliable evidence.

The use of electronic signatures has the potential to increase service efficiency and accessibility. However, these benefits must be weighed against the potential risks if they are not supported by comprehensive regulations.

²¹K. Saputra, 2023, "Directions for Notary Law Reform in the Digital Era," Indonesian Legislation Journal, Vol. 20 No. 2. .

²²L. Hidayat, 2022, "Principles of Legality in the Implementation of Notary Offices," Ius Quia Iustum Law Journal, Vol. 29 No. 1.

Thus, the balance between innovation and legal certainty is key in determining the direction of notary law reform in Indonesia.²³

3. Practical Implications for Notaries and Parties

For notaries, clarity regarding the validity of electronic signatures is crucial to avoid potential administrative sanctions and civil lawsuits. Every official action must be carried out based on the certainty of applicable norms.

For the parties, the authenticity status of the deed determines the strength of the legal protection obtained. An authentic deed provides a stronger guarantee of proof than a private deed.

In practice, notaries must exercise caution when using electronic systems for signing documents. This caution is part of the prudential principles inherent in the notary profession.

Until there is a change in regulations, the Use of Electronic Signatures in the Formation of Authentic Deeds should be limited to administrative aspects and not at the final signing stage of the Deed.²⁴

4. Direction of Notary Law Reform

Reforming the Notary Law is a strategic step to address the need for digitalization. This reform must include clear regulations regarding the recognition of electronic signatures in authentic deeds.

These arrangements must include System Security Standards, Electronic Certification Mechanisms, and Identity Verification Procedures that can guarantee the authenticity and integrity of documents.

In addition, supervision from authorized institutions is required to ensure that the use of technology is not misused and remains within the applicable legal corridor.

Planned and comprehensive reforms will provide legal certainty while simultaneously encouraging the responsible modernization of the notary system.²⁵

Based on a normative analysis of the Notary Law, the physical presence and signing directly is still a formal requirement for the formation of an authentic deed that is valid according to law. Positive Indonesia today.

Signature electronically is generally recognized in the Indonesian Legal System, but its application in Notarial Deeds has not yet been accepted. Legitimacy explicit in the Law on the position of Notary.

Therefore, the Use of Electronic Signatures in Making Deeds Notary

²³M. Ardiansyah, 2022, "Legal Modernization and the Principle of Certainty," Constitutional Journal, Vol. 19 No. 4. .

²⁴R. Wijaya, 2023, "Principles of Prudence in Notarial Practice," Indonesian Notary Journal, Vol. 6 No. 1. .

²⁵S. Pramono, 2024, "Notary Regulation Reform in the Digital Era," Indonesian Legislation Journal, Vol. 21 No. 1

Public potential cause legal debate and the risk of degradation of the deed's status to a Private Deed if it is not supported by a special legal basis.

Thus, clear and comprehensive regulatory reform is needed so that modernization of notary can run in line with the Principles of Legal Certainty, Legal Protection, and Authenticity of Deeds as the main pillars of the Notary Office.

4. Conclusion

Based on normative analysis, physical presence and direct signing are still formal requirements for the formation of an Authentic Deed under Indonesian positive law, while electronic signatures, although generally recognized, have not yet received explicit legitimacy in the Notary Law. This has the potential to give rise to legal debate and the risk of the deed being relegated to a Private Deed if there is no specific legal basis. Therefore, clear and comprehensive regulatory reform is needed so that the modernization of Notary practice remains in line with the principles of legal certainty, legal protection, and authenticity of the Deed as the main pillars of the Notary office. Harmonization of Regulations between the UUJN and the ITE Law. Harmonization between the UUJN and the ITE Law is necessary through regulatory updates or implementing regulations governing the use of electronic signatures in authentic deeds. For example, the government or the Ministry of Law and Human Rights can establish cyber notary regulations governing legal procedures for certified electronic signatures, virtual presence, and recording of the signing process. This harmonization will provide legal certainty for notaries and parties, thereby reducing the risk of disputes regarding the validity of deeds.

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