

## Legal Review of the Validity of Electronic Signatures in Authentic Deed

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**Abstract.** *The regulation of electronic signatures has been widely incorporated into various Indonesian laws and is used by many government agencies and the private sector. Notary practice under Law Number 2 of 2014 on the Notary function has been regulated with respect to the concept of cyber notary. However, it did not further specify or detail the use of an electronic signature in a notarial authentic deed. The purpose of this research is to analyze the existence and validity of electronic signatures in notarial authentic deeds and in other forms of notarial deeds that use electronic signatures. The method used is normative legal research with a law-regulation approach. The source and type of data used are secondary data from a literature review; the analysis is prescriptive. The results show that: 1) notaries in several countries, such as the United States and Japan, have been using electronic signatures in notarial authentic deeds, even making them in digital form, due to the legal foundation that ensures the notary can legally use the electronic signature in those countries. In Indonesia, an electronic signature has been used in government agencies, such as the Ministry of Agrarian Affairs and Spatial Planning and the Ministry of Law, as well as in private parties, such as the company that held a General Meeting of Shareholders of a Limited Liability Company via electronic means. 2) Signing of the original deed using an electronic signature could not be used in Indonesia since there is no clear legal foundation that regulates the notary's authority to use the electronic signature itself. If the notary continues to use the electronic signature on notarial authentic deeds, the deeds will be considered illegal and not authentic. At the same time, the use of an electronic signature on a copy of a notary deed is supposed to be possible as long as the original deed has been completely signed by every party, witness, and the notary,*

*based on the Notary Position Regulations. The suggestion would be: 1) the government needs to implement a change in Law Number 2 of 2014 to accommodate the changing of the era. 2) The synergy between the government and notary organization would give legal certainty toward the use of an electronic signature on notarial authentic deeds by forming a legal foundation for using an electronic signature on the original deed, as well as the system and application that could make the use of an electronic signature on the practice of notary's duties easier.*

**Keywords:** Authentic Deeds; Cyber Notary; Electronic Signature.

## 1. Introduction

The development of technology and information has an impact on the legal profession, one of which is the notary profession. A notary is a public official who is solely authorized to make authentic deeds regarding all legal acts, agreements and provisions required by a general regulation or desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and therefrom provide grosse, copies and extracts of all of that as far as the making of the deed by a general regulation is not assigned or excluded to other officials or people.

Community life requires legal certainty, particularly in the public service sector, which is currently growing in line with the increasing public demand for services. This has also impacted the growth of notary services. The role of notaries in the service sector is as officials authorized by the state to serve the public in civil matters, particularly in the preparation of authentic deeds.

Article 1 number (7) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, stipulates that a notarial deed is an Authentic deed made by or before a notary according to the form and procedures stipulated by law. Article 1868 of the Civil Code states that an Authentic deed is a deed made in the form determined by law by or before a public official authorized for that purpose at the place where the deed was made. The elements of a deed can be called an Authentic deed, must fulfill the following elements, namely first, made in the form determined by law, meaning the deed must meet the requirements of the form and procedures stipulated in law; second, made by or before an authorized public official, meaning the making of the deed must be carried out by an official who has the legal authority to do so, such as a notary or civil registration official; third, done at the place where the deed was made, meaning the official who made the deed must do so within the working area of his position.

Notaries also have other authorities regulated in Article 15 paragraph (3), namely the authority to certify transactions carried out electronically (cyber notary). The

concept of cyber notary aims to provide a legal framework so that the action of facing the parties or appearing before a Notary no longer requires a physical meeting (face to face) in a certain place. There are other laws and regulations that provide this opportunity. The law that provides the opportunity for a Notary to carry out electronic signing is Law Number 11 of 2008 concerning Information and Electronic Transactions which was later amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information, where Article 11 of the Law states that Electronic Signatures have legal force and valid legal consequences as long as they meet the following requirements:

1. Electronic Signature creation data is related only to the Signatory;
2. The data for creating an Electronic Signature during the electronic signing process is solely under the control of the Signatory;
3. Any changes to the Electronic Signature that occur after the time of signing can be identified;
4. Any changes to the Electronic Information related to the Electronic Signature after the time of signing can be known;
5. There are certain methods used to identify who the Signatory is; and
6. There are certain ways to show that the Signatory has given consent to the related Electronic Information.

Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Amendments

Law Number 30 of 2004 concerning the Position of Notary states that a Notary is required to read the Deed in front of the person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a Deed of Will under hand, and signed at that time by the person appearing, witnesses. Notaries seem to be an obstacle to the implementation of electronic signing, so that the problem that arises is that with the increasingly rapid development of technology in the future, new breakthroughs can be made possible by using electronic devices.

The purpose of this research is to study and analyze the use of electronic signatures in authentic deeds based on statutory regulations so that the deeds remain authentic.

## **2. Research Methods**

This study uses a normative juridical research method. The normative juridical research approach in this study is the statute approach. The type and source of data in this study are secondary data. Data collection is used by researchers to gather the data needed to solve the research problem. After the data is collected, it is analyzed and the results are described or presented in a systematic manner, prioritizing data quality.

### 3. Results and Discussion

#### 3.1. The Existence of Electronic Signatures in Authentic Deeds in Notarial Practice

Indonesia has taken part with the birth of Law Number 11 of 2008 concerning Electronic Information and Transactions which has been amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 and last amended by Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions, hereinafter written as the ITE Law. Electronic transactions have become part of human life in their daily lives, especially in terms of communication and transactions based on the internet. Likewise, in holding or making an agreement, in the development of technology, agreements can be made in electronic form or e-contract. In Article 1 number 17 of Law Number 19 of 2016 it states that "Electronic contracts are agreements between parties made through an electronic system". In general, it is said that Electronic Information and/or Electronic Documents and/or their printouts are valid legal evidence, which is an extension of valid evidence in accordance with the applicable Procedural Law in Indonesia. When viewed from its philosophy, electronic transactions are not something conventional in nature which can be done anywhere and does not rule out the possibility of being cross-border as in the explanation of Article 2 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, where in the article it is explained that the scope of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions does not recognize territorial boundaries considering that the use of Information Technology and Electronic Transactions can be cross-territorial or universal.<sup>1</sup>

Electronic signatures are divided into several classifications, including:<sup>2</sup>

##### 1. Electronic Signature (Regular)

A regular electronic signature, as defined above, is a signature intended to refer to the signer, executed electronically. The simplest example is a conventional (written) signature that is then scanned. The scan then becomes electronic information, usually an image file, which is pasted into an electronic document. This falls within the scope of a (regular) electronic signature.

##### 2. Secure or Reliable Electronic Signature

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<sup>1</sup>Dewa Ayu Widya Sari., et al, 2017, Notary's Authority in the Cyber Notary Field Based on Article 15 paragraph (3) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to the Republic of Indonesia Law Number 30 of 2004 concerning the Position of Notary, Scientific Journal of the Notary Masters Study Program, Volume 2 Number 2, Bali, p. 220.

<sup>2</sup>Amalia Purnamasari, 2024, Electronic Signatures with Verification Methods in Business Law Perspective, Integrated Multidisciplinary Research Journal, Vol 8 No. 7, Lambung Mangkurat University, pp. 352-353.

A secure electronic signature or Electronic Signature, is an electronic signature that must meet certain requirements, so that in the context of its similarity, it can be equated with a conventional signature. This secure electronic signature is intended to accommodate all types of technological advances that may develop in the field of security for secure electronic information intended not only to be able to refer to the signer, but also to maintain the integrity and security of the attached electronic information. Digital signatures are included in the category of secure electronic signatures.

According to Article 60 paragraph (2) of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, there are two types of electronic signatures, namely:

1. Certified Electronic Signature: using the services of an electronic certification provider and proven with an electronic certificate.
2. Uncertified Electronic Signature: can be created without using the services of an electronic certification provider.

Electronic signatures can generally be interpreted as security for digital data created with a private signature key, where the user depends on the public key, which is its partner.<sup>3</sup>

The use of electronic signatures is a technology that has been frequently used in Indonesia. In the Land sector, as stated in Article 2 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2019 concerning the Implementation of Electronic Signatures, that Electronic Signatures can be used to provide approval and/or validation of an Electronic Land Document in the implementation of the Ministry's duties and functions. In addition, Article 3 of the same Regulation states that electronic signatures function as an authentication and verification tool, electronic signatures have the same legal force and legal consequences as manual signatures. In addition, electronic signatures can be carried out in the implementation of the General Meeting of Shareholders (GMS). Electronic signatures can be said to be valid and recognized in the implementation of the General Meeting of Shareholders as referred to in Article 77 of Law Number 40 of 2007 concerning Limited Liability Companies, which explains that the GMS can be conducted using teleconference media, video conferences or other electronic media means that allow all GMS participants to see and hear each other directly and participate in the meeting.

In notarial work, especially in the preparation of deeds, notaries have indeed used computer systems, but the paradigm related to the authenticity of a deed is still seen from the final result, namely printed and signed and sealed by the notary, not in electronic form or using an electronic signature as is currently the

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<sup>3</sup>Dini Sukma Listyana, et. al, 2014, The Evidential Power of Electronic Signatures as Valid Evidence from the Perspective of Procedural Law in Indonesia and the Netherlands, *Verstek Journal*, Vol.2, No.2, pp.148-149.

case, however, seeing the development of the times, a change is needed, especially in notarial practice. The implementation of the cyber notary concept in the form of electronic service delivery in the notarial field is very necessary. With the increasingly rapid development of information and communication technology, everyone can access information and communicate easily without any limitations of space and time. Likewise, notaries with all kinds of responsibilities and consequences, notaries must carry out their work quickly and carefully in terms of serving the wishes of the parties.<sup>4</sup> It could also be said that, conceptually, cyber notary is defined as a notary's method/way of working that utilizes existing technological developments. This term represents a shift from conventional (face-to-face) notary work to a modern (non-face-to-face) method utilizing existing technology.<sup>5</sup>

In the context of e-notary, common law countries that allow their notaries to create deeds electronically mean not only using electronic signatures on the deeds, but also the form of the deeds themselves are created electronically. For example, in the United States, there are already regulations regarding e-notary, including the US Federal E-Sign Act 2000, the Model Notary Act 2002, and the US Model Notary Act 2010. Since 2017, electronic notary regulations have been accommodated by a separate model law, namely the US Model Notarization Act 2017 (US MENA). The US MENA establishes a model for law enforcement within the state or territory to compile provisions related to electronic notary into the existing paper-based notary regime to form a single, integrated system for both electronic and non- electronic notary acts. If the US Model Notary 2010 requires notaries to use electronic tools and certain techniques for fraud deterrence to ensure not only the authenticity but also the integrity of the notary's electronic records, in the US MENA the provisions regarding the use of electronic aspects have been updated and expanded as a reflection of developments and demands of technology, business actors, and the government.<sup>6</sup>

In Asia, Japan and Hong Kong have already implemented the cyber notary concept. Notaries in Japan, which adheres to the civil law system, are referred to as electronic notaries. Electronic notary is a system where notarial deeds are created electronically. Japan has regulated cyber notaries since January 15, 2000, and in the same year, Japan issued a law on electronic authentication. Japan has been implementing the electronic notary concept since 2002.<sup>7</sup> Edmon Makarim is of the opinion that cyber notary and cyber space have similarities, namely, one

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<sup>4</sup>Patricia Jessica, 2024, *Cyber Notary and Signature Digitalization*, CV BUDI UTAMA, Sleman, p. 37.

<sup>5</sup>Muhammad Farid Alwajdi, 2020, *The Urgency of Cyber Notary Regulation in Supporting Ease of Doing Business in Indonesia*, Jurnal Rechtsvinding, Volume 9 Number 2, National Legal Development Agency, Ministry of Law and Human Rights of the Republic of Indonesia, Yogyakarta, p. 206.

<sup>6</sup>Edmon Makarim, 2018, *Notaries and Electronic Transactions: Legal Study on Cyber Notary or Electronic Notary*, PT. Raja Grafindo Perkasa, Jakarta, p. 21.

<sup>7</sup>Ibid.



method for notaries is to use cyber space media, which is related to the duties and authorities in carrying out their duties.<sup>8</sup>

Until now, notaries in Indonesia have not been able to sign minutes of deeds using electronic signatures with the cyber notary concept because UUJN-P still adheres to the principles of *tabellionis officium fideliter exercebo*, which means that notaries still have to work traditionally, meaning that notaries have to make a real deed, not through electronic media such as the internet, audio visual, video conference or using electronic signature.<sup>9</sup>

Article 44 paragraph (1) of the UUJN-P states that: immediately after the deed is read, the deed is signed by each person appearing, witness and notary, except if the person appearing is unable to sign and states the reason. The affixing of the signature means that information and statements have been provided in writing in the deed above the signature.

### **3.2. Validity of Electronic Signatures on Authentic Deeds**

Article 1868 of the Civil Code states that an authentic deed is a deed made in the form determined by law by or before a public official authorized to do so at the place where the deed was made. The meaning of an authentic deed has perfect evidentiary power and can also be determined that anyone who is bound by the deed, as long as it cannot be proven otherwise based on a court decision that has permanent legal force.

In accordance with Article 16 paragraph 1 letter m of the UUJN-P, when executing the contract/signing of the minutes of the notarial deed, the parties, witnesses, and notary must still meet face-to-face within the notary's jurisdiction. The notary is also required to read and explain the deed directly to the parties in person. Signatures, initials, and fingerprints must still be taken physically.

Notarial deed minutes made with electronic signatures are contrary to the provisions of Article 16 paragraph (1) letter m of the UUJN-P so that the minutes of the deed are invalid because, although the discourse of cyber notary has been mentioned previously in the UUJN and UUJN-P, it is limited to electronic certification, not giving the notary the authority to use electronic signatures on the minutes of the deed. Notarial deeds as explained in UUJN-P Article 16 paragraph (1) letter m that the notary is obliged to read the deed before the appearer in the presence of at least 2 (two) witnesses and signed at that time by the appearer, witnesses, and Notary. The phrase "signed at that time" is an affirmation that a deed minute can be said to be authentic based on the UUJN-P, it must go through a signing process by the appearers at the time of the

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<sup>8</sup>Cyndiarnis Cahyaning Putri and Abdul Rachmad Budiono, 2019, Conceptualization and Opportunities of Cyber Notary in Law, Scientific Journal of Pancasila and Citizenship Education, Volume 4 Number 1, State University of Malang, Malang, p. 32.

<sup>9</sup>Bintang, at al, 2024, Cyber Notary Concept in Basic Perspective *Tabellionis Officium Fideliter Exercebo*, Journal of Education and Teaching Review, Vol. 7 No. 3, Kampar, p. 5.

implementation of the agreement. However, the power to certify the transaction is not the same as making an authentic deed which still adheres to the provisions of Article 1868 of the Civil Code.<sup>10</sup>

It is stated in Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 5 paragraph (4) that Electronic Information and/or Electronic Documents and/or printouts thereof constitute valid evidence, except:

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

This provision has been amended by Law Number 1 of 2024, which states that Electronic Information and/or Electronic Documents and/or printouts thereof constitute valid evidence, unless otherwise regulated by law.

In terms of notarial practice, notaries are given authority other than that regulated in Article 15 paragraph (1) and paragraph (2) UUJN-P, especially regarding electronic systems as stated in Article 15 paragraph (3) and its explanation that other authorities regulated in statutory regulations, include, among others, the authority to certify transactions carried out electronically (cyber notary), make deeds of endowment pledges, and airplane mortgages. This provides an opportunity for notaries to carry out their duties electronically/digitally. However, the authority of notaries in carrying out cyber notary practices is limited to what is mentioned in the explanation of the article, regarding more detailed and specific regulations have not been regulated in statutory regulations, so there is no legal umbrella that protects cyber notary practices. Therefore, to guarantee legal certainty, statutory regulations must explicitly regulate the implementation of cyber notary. According to A. Widya Arung Raya, SH., M.Kn, a notary who is domiciled in Kendari City and has served as a notary for 18 (eighteen) years, that:

"The notary's authority with the cyber notary concept conflicts with the notary's obligations as stated in Article 16 paragraph (1) letter m, which states that the notary is obliged to read the deed in front of the person appearing and 2 (two) witnesses and simultaneously sign the deed. This means that the person appearing and the witnesses immediately sign the deed in front of the notary after the notary reads the deed."

The provisions regarding the authority of a notary to create and sign deeds electronically are not explicitly and in detail regulated in the notary's office regulations, so notaries do not dare to do so. Regarding this matter, according to Fachrul Rozy Latuconsina, SH., M.Kn, a notary based in Serang Regency, who has served as a notary for 3 (three) years, stated that:

"If viewed from the aspect of effectiveness and efficiency of notarial services, it

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<sup>10</sup>Ranti Fauza Mayana, 2021, Legality of Electronic Signatures: Possibility and Signature Notary Digitalization in Indonesia, Journal of Notary Law, Faculty of Law, Unpad, Vol. 4, No. 24. Bandung, p. 254.



can be very beneficial to use electronic signatures on notarial deeds, but apart from the lack of legal basis, the procedures and systems are also not easy because they require several supporting devices, but if there is a legal basis that provides legal certainty, then electronic signing of deeds can be an additional option for notaries to carry out their duties and obligations in providing deed making services to the public."

Meanwhile, according to Sudirman, SH., M.Kn, a Notary based in Kendari City, who has served as a Notary for 20 (twenty) years, he explains that:

"Electronic signing of notarial deeds is not yet legally regulated, and therefore, it cannot be done. The authority, duties, and responsibilities of notaries are based on the Notary Law and its amendments. Therefore, notaries can now only sign deeds conventionally, not electronically."

Thus, electronic signatures on notarial deed minutes do not provide legal certainty. Legal certainty, as stated by Gustav Redbruch, is that normatively, when a regulation is created and promulgated, it is certain because it regulates clearly and logically. Clear in the sense of not giving rise to doubt (multiple interpretations) and logical in the sense that it becomes a system of norms with other norms so that it does not clash or give rise to normative conflicts.<sup>11</sup>

In the author's opinion, in the provisions of Article 16 paragraph (1) letter b UUJN-P it states that "Notaries are required to make deeds in the form of minutes and keep them as a protocol". Article 16 paragraph (1) letter m UUJN-P states that "Notaries are required to read the Deed in front of the person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a Deed of Will under hand, and signed at that time by the person appearing, witnesses, and Notary". Furthermore, in Article 16 paragraph (1) letter d UUJN-P it states that "Notaries are required to issue a Grosse Deed, a Copy of the Deed, or an Extract of the Deed based on the Minutes of the Deed".

The definition of a Copy of a Deed, an Excerpt of a Deed, and a Grosse Deed is stated in UUJN-P Article 1: Paragraph (9): a copy is a word for word copy of the entire Deed and at the bottom of the copy of the Deed is the phrase "given as a COPY which has the same text".

Article (10): A Quotation from a Deed is a word for word quotation from one or more parts of the Deed and at the bottom of the quotation from the Deed the phrase "given as a QUOTATION" is included.

Paragraph (11): Grosse Deed is a copy of the Deed for acknowledgment of debt with the head Deed "FOR JUSTICE BASED ON ALMIGHTY GOD", which has executorial force.

From these provisions, a notary can use a certified electronic signature on a copy of the deed issued by a notary, meaning that as long as the minutes of the deed are made in accordance with the provisions of Article 16 paragraph (1) letter m

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<sup>11</sup>Hardi Munte, 2017, Model for Administrative Dispute Resolution in Regional Elections, Puspantara, Medan, p. 27.

UUJN-P, then a copy of the deed as in Article 16 paragraph (1) letter d UUJN-P can be made using the notary's electronic signature. A copy of the deed in Article 1 paragraph (9) UUJN-P is a word-for-word copy of the entire deed and at the bottom of the copy of the deed is the phrase "given as a COPY that has the same text". So as long as the form and text of the copy of the deed are in accordance with the minutes of the deed that have been perfectly signed by the parties, witnesses, and the notary, then the form of the copy of the deed can be made using the notary's electronic signature. A copy of the deed is an authentic deed as long as its contents are exactly the same word for word as the minutes of the deed.

In addition, notaries in their authority based on UUJN and UUJN-P in carrying out their duties use electronic signatures such as legalizing / validating documents that have been made by the parties and signed before a notary, conducting *waarmaking* / registering documents that have been made and signed by the parties, therefore the application of cyber notary or the use of electronic signatures by notaries can be carried out except in the minutes of authentic notarial deeds.

If we examine and interpret the text of Article 16 paragraph (1) letter m UUJN-P and Article 1868 of the Civil Code, then the signing of the deed can be done virtually because Article 16 paragraph (1) letter m UUJN-P states that the Notary is obliged to read the deed before the Applicant in the presence of 2 (two) witnesses, meaning that it is not necessary or not required to be present before the Notary, the Applicant can meet the Notary virtually, for example via the zoom meeting application, in addition, the notary when reading the deed is accompanied by 2 (two) witnesses, while the explanation of the article only states it quite clearly. Then Article 1868 of the Civil Code, the elements of an authentic deed are firstly the form determined by law, meaning the deed must be made in a special format for example as determined in UUJN and UUJN-P, secondly made by or before a public official, meaning the deed is made by an authorized official for that, such as a Notary, PPAT, Auction Official, and others, thirdly made in an authorized place, meaning the deed is made at the official's domicile according to his/her area of office. Thus, electronic signing of the deed can be done and the deed does not violate the provisions of Article 1868 of the Civil Code.

#### **4. Conclusion**

Electronic signatures have been used by notaries on authentic deeds in various countries such as the United States and Japan. In Indonesia, the use of electronic signatures has been carried out by various government agencies such as the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency of the Republic of Indonesia and the Ministry of Law of the Republic of Indonesia, and in private agencies such as the General Meeting of Shareholders of Limited Liability Companies. Electronic signatures on authentic notarial deeds in Indonesia cannot be carried out because there is no legal basis that clearly

regulates the authority of notaries to be able to use electronic signatures on minutes of authentic deeds, while the use of electronic signatures on copies of notarial deeds should be possible because copies of notarial deeds as long as the content is in accordance with the minutes of the deed and have been signed perfectly by the appearing party, witnesses, and the notary. To improve optimal public services effectively and efficiently, the government must pay special attention by amending the notary law and clearly specifying the authority and obligations of notaries to use electronic signatures on authentic notarial minutes. Furthermore, synergy between notary organizations and the government is needed to provide greater attention to the implementation of notary duties and functions.

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