



## The positive law of electronic signatures in Indonesia and their validity in notarial deeds

Firda Annisa<sup>1</sup>, Mohamad Fajri Mekka Putra<sup>2</sup>

<sup>1</sup> Student of Master Program of Notary University Indonesia, Depok, Indonesia

<sup>2</sup> Lecture Master Program of Notary University Indonesia, Depok, Indonesia

### Abstract

The development of information and electronic technology is growing more rapidly in various fields, one of which is the change of conventional signatures to electronic signatures, especially in notary deeds. Notary deeds attached to conventional signatures have been recognized as valid in the eyes of the law but electronic signatures have not been fully recognized, in relaas deeds based on the PT Law, it is possible to affix electronic signatures, but for relaas deeds it is not possible because it will change the validity of the deed from an authentic deed to an underhand deed because it is not in line with the UUJN and Article 77 of the ITE Law. The purpose of this writing is expected to be input and the basis for changes to related regulations to be in line with technological developments. The method used is a normative juridical research method. Related regulations, especially the Notary Position Law, should be able to provide space for notaries to be able to sign notarial deeds electronically by fulfilling related provisions.

**Keywords:** Electronic signature, notarial deed, law

### Introduction

The development of science and technology has affected various aspects of people's lives. The development of the times causes humans to want to continuously create innovations in the field of technology, increasingly sophisticated technology makes everything easy. As in the case of long-distance communication that used to have to send messages through the post office mail and had to wait for days to get the message, but now with the development of increasingly sophisticated technology using only smartphones, communication is like sending electronic mail. Can be done in just seconds, even with a smartphone, users can make voice calls as well as face to face clearly.

The advancement of information technology both globally and in Indonesia grows in tandem with the progress of *industry 4.0* and *society 5.0*, where the development evolves very rapidly and cannot be controlled without a legal umbrella as protection for people who feel the impact both from a positive and negative point of view. In this regard, in response to problems that may occur in the future in 2008, a law was formed, namely "Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions (ITE), which was then amended in 2016.

Many Indonesian people have used information technology products and telecommunications services in their lives, but the Indonesian nation in general is still groping in seeking public policies in building a reliable infrastructure (*National information infrastructure*) in the face of global information infrastructure (*Global information infrastructure*)<sup>[1]</sup>. Advances in technology and information that are growing rapidly and their potential utilization open opportunities for accessing, managing and utilizing information quickly and accurately. The use of technology and information in government processes (*e-government*) will increase efficiency, effectiveness, transparency and accountability of government administration. The development of *e-government* is one of the efforts to develop electronic-based governance to improve the quality of public services

efficiently. The development of *e-government* can be carried out in structuring management systems and work processes within the government by optimizing the use of information technology, one of which is the use of electronic signatures. the electronic E signature (*E-Signature*) is a conventional signature that is converted, initially in the form of a conventional signature then turned into a *barcode*, where the barcode has stored a number of information related to the ownership of the person's signature so that if the *barcode* is in *Scan*, then information will appear related to the signature of the owner so that it can be used as an authentication tool. The development of technology in Electronic signatures also affects the legal profession, especially Notaries as third parties who are authorized to legalize/authenticate in making Notary Deeds.

In general, the agreement made by the parties and formulated by the notary is no longer written using handwriting but is typed and printed by the notary from the beginning to the end of the deed according to the wishes of the facers which is then read by the notary and ends with the signing by all parties present including notaries using conventional signatures. The signing of the deed is the identity of the agreement of the confronters and the parties present, in other words they have agreed to the content of the agreement on the deed.

Conventional signatures are wet signatures that are done directly on a paper or anything while Electronic signatures are signatures that use electronic media. The conventional process of making and signing applied by notaries must change with the times. Usually one would see that a 'signature' is the conventional method of determining the authenticity of paper-based information. Furthermore, legally, the existence of the signature will be used as original evidence of the information so it is not strange if every use of the word signature means representing the authenticity and originality of a document or information, not only paper but also electronic<sup>[2]</sup>.

The change of documents from print to digital also changed the method of public signatures from manual to digital-based signatures or Electronic Signatures (TTE), as well as notarial deeds that initially used conventional signatures changed slowly. Referring to Article 77 of the PT Law relating to the implementation of the General Meeting of Shareholders (GMS) which can be held by utilizing technological developments, namely through teleconferencing, video conferences or other means of print media, indirectly notaries as makers of minutes at the GMS also take advantage of technological media developments by making electronic documents and signing.

In connection with the notary's obligations in addition to carrying out his position in making the deed, the notary is also obliged to read the deed he has made before signing. In the case of the implementation of the GMS through electronic media, it is possible to read it first and be followed by the signatory, but if other deeds are made face-to-face face to face (face to face) then most likely the electronic signing is done first and this is certainly not in line with the notary's obligations in terms of deed reading.

Departing from the background description above, there is an important problem, namely related to the validity of electronic signatures on notary deeds related to the reading of deeds, based on this, the question arises how to regulate the use of electronic signatures based on positive law in Indonesia and how the validity of signs electronic hand on notarial deed.

### Research Methods

This research is in the form of normative juridical analysis, which is research focused on examining the application of rules or norms in positive law, and doctrinal legal approaches, namely legal theories and opinions of legal scientists, especially those related to the problems discussed. This method is carried out by examining library materials or secondary data containing rules of a literary nature, consisting of primary legal materials, secondary legal materials, and tertiary legal materials, relating to the Indonesian Electronic Certification Operator and Electronic Signatures on Notary Deeds.

### Discussion

#### 1. Regulation of the use of Electronic Signatures based on positive law in Indonesia

As is known that before the enactment of the ITE Law and the PT Law which discussed the use of electronic media as a means to conduct transactions and enter into contracts with other parties, transactions were good General as well as in the case of entering into a contract is always made in a written document, which is attended in person and signed at that time by the parties concerned with The transaction and the document then become written evidence.

"Engagement" (*verbinten*) in civil law in the subject's view has a broader meaning than the engagement "agreement". An engagement is an abstract sense, while a treaty is a concrete legal event<sup>[3]</sup>. An engagement according to the provisions of civil law in this case the Civil Code can be said to be valid if it has fulfilled certain conditions, the provisions regarding this are regulated in Article 1320 Civil Code, namely an agreement is considered valid if it meets its conditions, The conditions are:

1. Agree those who bind in their ri;
2. The ability to make an engagement;

3. A certain thing;
4. A lawful cause<sup>[4]</sup>.

On the basis of the above provisions, it can be argued that an agreement that satisfies the above provisions is declared legally valid as long as there is no element of coercion in it and does not conflict with Related laws and regulations and because the development of electronic media has only occurred in the past few centuries, provisions regarding the use of electronic media have not been formulated long ago.

Prior to the enactment of the ITE Law, regulations related to Electronic Signatures were contained in Article 10 paragraph (6) of Law Number 40 of 2007 concerning Limited Liability Companies, the enactment of electronic signatures by the Minister of Law and Human Rights on the ratification of the company's legal entity. Based on the related article in paragraph (6), it is explained that what is meant by "electronic signature" is a signature attached or included in electronic data by an authorized official to prove the authenticity of data in the form of an electronic image of the signature of an authorized official and made through computer media.

What is meant by attachment is the unification of documents carried out by embedding the document as a whole with the deed of establishment. Article 77 paragraph (1) of the PT Law concerning the holding of the General Meeting of Shareholders (GMS) which can be carried out through teleconference, video conference or other electronic media means has to do with Electronic Signatures carried out by meeting participants and notaries requested by the Company to carry out their positions related to making GMS Minutes. With the passing and enactment of the ITE Law on April 21, 2008, the view on conventional systematics has certainly changed, as well as concerns and doubts about the validity of documents which is carried out by means of electronic media, especially in Electronic Signatures as a form of agreement between the parties. Materially the regulations regarding information, documents and electronic signatures are regulated in Article 5 of the ITE Law which specifies that:

1. Electronic Inform and/ or electronic Documents and/or printouts thereof constitute valid legal evidence.
2. Electronic Information and/or Electronic Information and/or printouts as referred to in paragraph (1) are extensions of valid evidence in accordance with the applicable Procedural Law in Indonesia.
3. Electronic Information and/or Electronic Documents are declared valid when using Electronic Systems in accordance with the provisions stipulated in this Law.
4. The provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) do not apply to:
  - a. A letter according to the Undang-Law must be made in written form; and
  - 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 officer.

This explains that as long as it does not violate and comply with the applicable provisions in the Law, electronic documents are valid in the eyes of the law, but if there are related regulations that determine the preparation in written form and must be made in the form of a notarial deed that Made by a notary as a deed making official, it is excluded and will have an impact on the legality of a document / deed.

Article 11 of the ITE Law concerning Electronic Signatures, states:

1. Electronic Signatures have legal force and legal effect as long as they meet the following requirements:
  - a. Electronic Signature generation data relates only to the Signatory;
  - b. The data that creates the Electronic Signature during the electronic signing process is only in the power of the Signatory;
  - c. Any changes to the Electronic Signature that occur after the time of signing can be noticed;
  - d. Any changes to Electronic Information related to such Electronic Signatures after the time of signing may be noticed;
  - e. There are certain means used to identify who the Signatories are; and
  - f. There are certain ways to indicate that the Signer has given consent to the relevant Electronic Information.
2. Further provisions on Electronic Signatures as referred to in paragraph (1) are regulated by Government Regulations.

Based on article *a quo* relating to further provisions on Electronic Signatures regulated in Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP STE), more precisely stipulated in Articles 59 to 64. In this PP STE it is stated that this electronic signature is classified into two forms, including:<sup>[5]</sup>

1. "Certified electronic signatures are regulated in Article 60 paragraphs (2) and (3) of PP STE. In Article *a quo* certified signatures have several requirements that must be possessed, namely:
  - a. Fulfill the validity of the legal force and legal consequences of electronic signatures as referred to in Article 59 paragraph (3);
  - b. Using electronic certificates made by Indonesian electronic certification providers;
  - c. Created using certified electronic signature generation devices.
2. Uncertified electronic signatures are regulated in Article 60 paragraph (4) PP STE. In Article *a quo* uncertified signatures can be made without using the services of Indonesian electronic certification providers."

Both certified and uncertified electronic signatures serve as a means of authenticating and verifying the identity of the Signer and the integrity and authenticity of the Information Electronically, this is stated in Article 60 paragraph (1) PP STE.

The certified intent here is issued by the Indonesian Electronic Certification Operator (PSrE Indonesia) which has received recognition and this Indonesian PSrE has passed an audit that refers to standards issued by the Ministry of Communication and Information (Kominfo) so that it is legally recognized by the state. Certified in Electronic Signatures are created using Electronic Certificates issued by PSrE Indonesia. In the ITE Law, it is stated that an Electronic Certificate is an electronic certificate containing an Electronic Signature and identity that shows the status of the legal subjects of the parties to the Electronic Transaction issued by PSrE Indonesia<sup>[6]</sup>.

Certified Electronic Signatures that use Electronic Certificates provide three guarantees of trust for the owner, namely in the form of data authenticity, by showing the identity of the certificate owner in electronic documents, data integrity so that activities in signed electronic documents can be monitored, and guaranteeing the existence of non-denial, namely proof of truth so that signatories cannot deny having made electronic transactions. In addition, Electronic Certificates have a *public* key attached to an electronic document that has been encrypted using a private key. The public key serves to allow the recipient of an electronic document to validate a person's Electronic Signature. If there is a change in an electronic document that has been signed electronically, the Electronic Signature automatically becomes invalid.

### Validity of Notary Deed using Electronic Signature

There are 2 (two) types of authentic deeds *prod uk* notary, namely deed *partij* (*partij -acte*) or deed made before (*ten overstaan*) notary, and deed *relaas* (*ambtelijke akte*) or deed made by a notary<sup>[7]</sup>.

### Deed of Relaas

A *relaas* deed is a deed made by a notary based on events witnessed directly by the notary and then afterwards a minutes are made, the notary is also fully responsible to the truth of the contents of the deed he made. The truth in the contents of this *relaas* deed is absolute or inviolable, otherwise if the deed is proven to be false, thus the truth can be sued<sup>[8]</sup>. The deed of *relaas* is evidence of the actions of all claimants which is described in full and detail by the notary on all events and decisions taken by the notaries. The face is seen directly as long as the notary carries out his position where the deed is an authentic deed, then after completion the notary pours into the form of a deed. The notary reads it and asks for a signatory as a unification of perceptions of the deed made by the notary. One example of a *relaas* deed is the minutes of the general meeting of shareholders (GMS) held by a Limited Liability Company including shareholders, members of the board of directors, board of commissioners and employees of the company. The Minutes of the GMS are one of the deed of *relaas* which must be read before the signing first.

### Deed of Partij

A *partij* deed is a deed made before a notary that contains a description of what is explained or told by the parties facing the notary<sup>[9]</sup>. Deed *partij* is a deed that contains information / wishes of the faces based on things submitted and explained by the faces to the notary to be stated in The document is in the form of a Notary Deed, then after the Notary makes a deed in accordance with the will of the parties, it is closed with the reading of the deed and the signing of the deed by the parties, witnesses and notaries as evidence of agreement.

Referring to Article 15 of UUJN paragraph (3), namely in addition to the authority as referred to in paragraph (1) and paragraph (2), Notaries have other authorities regulated in laws and regulations and refer to in Article 3 of the Notary Code of Ethics paragraph (5) related to the notary's obligation to improve knowledge and professional expertise that has been owned is not limited to legal and notary science. Based on the Article in the UUJN and the Notary Code of Ethics above, notaries have the opportunity to use

Electronic Signatures in carrying out their duties and positions (*cyber notary*). One example of the use of Electronic Signatures in notarial deeds which is a deed of *relaas* is the minutes of the general meeting of shareholders (GMS) held by a Limited Liability Company attended and signed by shareholders, members of the board of directors, board of commissioners and employees of the company.

Based on Article 1 paragraph 12 of Law Number 19 of 2016 concerning Amendments to Undang-Undang Law Number "Year 2008 concerning Electronic Information and Transactions states that "Electronic Signature is a signature consisting of Electronic Information embedded, associated or related to other Electronic Information used as a means of verification and authentication".

Electronic hand on the notarial deed is expressly regulated in Article 5 of the ITE Law paragraph (4) which states "the provisions regarding Electronic information as referred to in paragraph (1) do not apply to:

- a. A letter according to the Undang-Law must be made in written form; and
- 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 officer.

In this regard, what is problematic in the provisions in the notary code of ethics is that notaries are required to read notarial deeds to the face before signing both by the notary and the facers. Where if a notarial deed affixes an electronic signature, the signing is carried out first rather than the reading of the deed so that the purpose of reading the deed is to unify related understandings. The agreement with the confronters is not reached and if there is an error, changes / *renvoi* can be made first before finally signing as a closing as well as a sign that the confronters agree.

If viewed from the Civil Code there are no significant problems, electronic signatures on an agreement are possible as long as they meet the applicable provisions, as for the legal conditions of an agreement, namely agreements, capabilities, certain things and halal causes. As for one of the principles in the agreement, namely the principle of freedom of contract adopted by the Civil Code, the parties are free to enter into agreements in accordance with their will as long as they do not violate the relevant regulations, laws and do not disturb public order. Justified freedom relates to the determination of the content of the agreement, the subject of the agreement, and related matters. An electronic signature will show at least a few things, namely:<sup>[10]</sup>

1. The symbolic function of one's authority in which by affixing the identity of a legal subject is responsible, that what is conveyed, in addition to presenting the identity characteristics of a person and also its authority;
2. The authentication function is that what he signs has been read and known to him and locked with the presence of his name;
3. Consent function that the act of signing is the embodiment of an Act of approval or acceptance of the content therein;
4. The function of proof that subsequently the content of the information will be legal evidence of the parties who use it.

According to Habib Adjie, authentic deeds made by notaries, as long as their security is protected by using *barcodes*, can be used on deed *minutas* and copies of notary

deeds that have The legal weight and economic value are high so that it is balanced with the high cost of technology contained in the *barcode*. Initially, the use of *barcodes* was only on goods that were traded, but along with the development of *barcode* technology can be used on various things, one of which is electronic signatures and currently it can be applied to notarial deeds<sup>[11]</sup>.

Huddhan and Budhivaya in the journal of legal communication wrote that the function of *barcodes* for notaries is as an identity to find out that the deed is really a deed made by the Notary concerned. If at any time the deed is needed, then the parties or other Notaries who use the deed can certainly check to ensure that it is indeed a deed made by a Notary partner. The barcode system can be attached to the *minuta* and a copy of the deed as a security. Its purpose is as a marker of the authenticity of the *minuta* and a copy of the deed, and also as a safeguard that the legal product is indeed a product made by and / or before the Notary concerned and contains certain data that has been stored in the system. The purpose of making a notarial deed is to create legal certainty and legal protection for the interests of the parties as stated in the notarial deed<sup>[12]</sup>. In relation to one of the notary's obligations in reading the deed, it is possible for the notary to prepare a draft deed in advance and before the draft deed is printed it can be read before the confronters and witnesses by displaying the same display as the *Pole Display* at the cashier so as to give the face a sense of trust in the notary. Then after the reading is done and the faces approve it, it can be signed by a notary and printed to be followed by the signing by the faces and witnesses. However, this absolutely cannot be done through electronic media such as the implementation of the GMS where the notary and the facers do not face to face directly in one location the same.

The potential to do electronic signing is not only at notaries, it is possible that in the future electronic signing is implemented by all levels of society up to Currently using conventional signatures, given their effectiveness and security so that signatories to notarial deeds are no longer a problem that is debated, especially related to validity notarial deed.

### Conclusions and Advice

The provisions governing electronic signatures in Indonesia are contained in Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) which was later amended in the year 2016. The background of the need for the ITE Law as a legal umbrella so that there is legal certainty for users of transactions and electronic signatures, thus with the birth of The Electronic Information and Transaction Law is the answer to the concerns and doubts of the wider community, especially users of electronic transactions. In relation to the provisions regarding Electronic Transactions, it is further regulated in Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions which explains related to Application of private electronic transactions in more detail. Then, the use of electronic signatures in notarial deeds on *relaas* deeds is possible by paying attention to essential matters such as the implementation of the General Meeting of Holders Shares held by video conference method as stipulated in Article 77 of the Law on PT. And vice versa in the *partij* deed is not possible considering the absence of recommendations or

related regulations because there are still several problems, especially in Law on Notary Offices Article 16 paragraph (1) letter m that the notarial deed must be signed at that time by the face, witnesses and notaries and there are There is also an exception to Article 5 paragraph (4) letter a and b of the ITE Law which confirms that documents made in the form of notarial deeds are not included in electronic documents. According to the ITE Law, a notarial deed made electronically does not obtain valid legal force, so the deed cannot be categorized again as an authentic deed but changes its validity became a deed under hand.

The suggestion to the government is to revise the JN Law, the ITE Law and related Government Regulations in order to synchronize the needs of the community regarding Electronic Signatures on authentic deeds fulfilled and implemented as expected.

### Acknowledgments

Praise be to God SWT for the presence of God SWT who has given health and thought so that he can finish writing this journal well. In this writing there are still many shortcomings both in terms of grammar, presentation and material therefore with humility apologize. Many parties provide support for the completion of this journal, especially families, supervisors and editorial teams who publish this journal.

### Brief author bio

Firda Annisa, is one of the Master of Notarial Affairs Students at the University of Indonesia, Depok. Previously completed S1 Law Education in 2020 at Syiah Kuala University, Banda Aceh.

Mohamad Fajri Mekka Putra is a lecturer at the Master of Notarial Affairs, Faculty of Law, University of Indonesia. In addition, he is a Notary / PPAT in South Jakarta.

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