

International Journal of Social Science Exceptional Research

Principles of legal certainty power of evidence electronic signatures in notary deeds

Finda Romadhona ^{1*}, Aries Harianto ², Moh. Ali ³

¹⁻³ Master of Notary, Faculty of Law, University of Jember, Indonesia

* Corresponding Author: **Finda Romadhona**

Article Info

ISSN (online): 2583-8261

Volume: 03

Issue: 04

July-August 2024

Received: 02-05-2024;

Accepted: 05-06-2024

Page No: 29-33

Abstract

Digital signatures can also be submitted as evidence in the Civil Procedure Law. Submission of an authentic deed that uses a digital signature as evidence is different from the evidence regulated in Article 1866 of the Civil Code. Printed results, electronic documents and/or electronic information are determined to be valid evidence in accordance with Article 5 paragraph 1 of the ITE Law. In addition, Indonesian procedural law recognizes printed results as intended as well as electronic data or electronic archives as an extension of valid evidence in Article 5 paragraph 2 of the ITE Law. It can be understood that there is a conflict of norms in the ITE Law and UUJN regarding the regulation of electronic signatures. Clarification of Article 15 paragraph (3) UUJN provides the meaning that Notaries have other powers, namely carrying out electronic signatures. However, there are still conflicting standards between the two guidelines. Specifically, Article 5 paragraph 4 of the ITE Law states that notarial deeds cannot be used as electronic reports so that if the document is used as evidence then the strength of the evidence is still at issue. The aim of this research is to examine legal certainty and the regulation of electronic signatures in notarial deeds of Notaries in order to have legal certainty as evidence in civil cases. This study uses juridical-normative legal research, namely research on statutory provisions that apply as positive law in Indonesia. The results of the study show that regulation of electronic signatures in notarial deeds of Notaries so that they have legal certainty to be used as evidence in civil procedural law can be done in a way, namely, Indonesia acts to implement UUJN updates and clearly regulates digital signatures contained in notarial deeds such as the application of law in the United States, the Netherlands and Malaysia.

Keywords: notary, legal certainty, evidence

1. Introduction

Along with significant technological developments in the 5.0 era, the world of notarial practice is experiencing increasingly advanced changes and developments. Various electronic-based administrations are starting to emerge. The development of data innovation must be balanced with progress in guidelines and related laws and regulations and must be implemented in the life of Indonesian society as a rule of law. Discussions about electronic commerce have resurfaced since the existence of Law Number 19 of 2016 concerning Electronic Information and Transactions which was amended by Law Number 11 of 2008 concerning Electronic Information and Transactions, hereinafter referred to as the ITE Law. One application of the development of electronic transactions is that notaries can sign authentic deeds digitally. The signature contained in the authentic deed issued by the Notary previously used a wet signature or what is called a conventional sign, in accordance with Article 44 of Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of Notaries hereinafter referred to as UUJN as follows, "After the Deed is read, the Deed is signed by all presenters, witnesses and the Notary." ^[1].

¹ Mengenai Jabatan Notaris lihat Pasal 44 UU No 30 Tahun 2004 sebagaimana telah diubah dengan UU No 2 Tahun 2014.

This article explains that parties who have an interest in making a deed with a Notary are required to appear directly in front of the Notary, after which the presenters are encouraged to directly sign the authentic deed and then the Notary has the obligation to read it in front of the parties and witnesses. Apart from that, Article 1866 of the Civil Code also states that an authentic notarial deed is a deed made based on the law, namely that the form and procedures are regulated in the law, and made by a public official who already has the authority to make an authentic deed. However, with advances in information technology, many Notaries are putting digital or electronic marks on their deeds to make them electronic documents. Therefore, the legal principle that a document must be viewable, transmittable, and stored in paper form conflicts with the concept of an electronic signature^[2].

According to Article 1 point 12 of the ITE Law, it states that, an electronic signature is a signature consisting of electronic information that is used for confirmation or validation purposes and is combined, associated, or connected with other electronic data. However, even though the ITE Law and a number of other statutory regulations already exist, it cannot be said that electronic evidence has been regulated in Indonesian procedural law because the regulation of digital and electronic signatures only applies to substantive law^[3]. Regarding the use of digital signatures in authentic deeds as evidence in the Civil Procedure Law, there are still differences of opinion. The legal strength of electronic signatures has caused debate in the notarial world. In applying digital signatures, Notaries can be guided by the UUJN as stated in Article 15 paragraph (3) UUJN which reads:

"In addition to the authority as intended in paragraphs (1) and (2), the Notary has other authorities which are regulated by statutory regulations."

Regarding the explanation of this article, what is meant by "other authority in statutory regulations" can be interpreted as applying a digital signature in an authentic deed. Currently there are no clear and specific regulations governing electronic transactions in authentic deeds, so notaries are still hesitant to use this innovation. This is a challenge faced by the notary profession in meeting the needs of society^[4]. Digital signatures can also be submitted as evidence in the Civil Procedure Law. Submission of an authentic deed that uses a digital signature as evidence is different from the evidence regulated in Article 1866 of the Civil Code. Printed results, electronic documents and/or electronic information are determined to be valid evidence in accordance with Article 5 paragraph 1 of the ITE Law. In addition, Indonesian procedural law recognizes printed results as intended as well as electronic data or electronic archives as an extension of valid evidence in Article 5 paragraph 2 of the ITE Law. Based on the description outlined above, it can be understood that there is a conflict of norms in the ITE Law and UUJN regarding the regulation of electronic signatures.

² Dini Sukma Listyana et.al, *Efektivitas penggunaan tanda tangan elektronik sebagai alat bukti yang sah di Indonesia dan Belanda dari sudut pandang hukum acara*, Jurnal Verstek, Vol 2, No.2, 2014, h.147.

³ Junaidi Tarigan, *Implikasi Hukum Tanda Tangan Elektronik Dokumen Digital pada Alat Bukti Perdata*, Jurnal Rechten, Vol.3, No.3, 2021, h.43.

Clarification of Article 15 paragraph (3) UUJN provides the meaning that Notaries have other powers, namely carrying out electronic signatures. However, there are still conflicting standards between the two guidelines. Specifically, Article 5 paragraph 4 of the ITE Law states that notarial deeds cannot be used as electronic reports so that if the document is used as evidence then the strength of the evidence is still at issue.

2. Methods

This research is juridical-normative legal research, namely research on the provisions of statutory regulations that apply as positive law in Indonesia. This research requires several approaches, namely, a statutory approach, a conceptual approach and a comparative approach. The main sources for this research are primary legal materials, secondary legal materials and non-legal materials. The legal material analysis method used in this research is deductive-inductive analysis.

3. Discussion

Appropriate Arrangements and Legal Certainty of Electronic Signatures in Notarial Deeds

The development of technology and information has changed a system in people's lives, which initially used a conventional system, switched to a digital system. Developments and innovations in the field of information technology certainly influence the way public officials, namely Notaries, work. With the advent of electronic transactions, notaries can electronically sign authentic deeds they make. A notary is a public official and has the authority as stated in the UUJN. Article 15 paragraph (3) UUJN which reads:

"In addition to the authority as intended in paragraphs (1) and (2), the Notary has other authority as regulated in statutory regulations."^[5]

The explanation regarding Article 15 paragraph (3) UUJN above, which is meant by "other authorities regulated in the provisions of statutory regulations", can be interpreted as applying electronic signatures. Article 1 Number 7 of the new UUJN states that a Notarial Deed is an authentic Deed made by or before a Notary in accordance with the form and procedures stipulated in the Notary Position Law. This article has a juridical meaning in the use of the words "facing", "facing", "facing", and "facing" in Article 1 Number 7 of the new UUJN, namely the real presence of the parties not through any media. Based on this article, until now the implementation of information technology when processing authentic deeds electronically is not possible. For example, when executing a deed of release which requires the presence of a notary in the presence of the parties which is an obligation, so that the Minutes contain a description of the notary who is a witness to the event and be seen by a notary at the request of the parties.

An authentic deed can clearly ensure the rights and obligations of the parties involved in it, guarantee legal certainty regarding existing legal facts, and at the same time it is hoped that it will avoid disputes between the parties. If a

⁴ Denny Fernaldy Chastra, "Keamanan Hukum Cybernotary dalam Hukum Notaris Mengenai Pembuatan Akta Otentik Notaris," Notary Indonesian Vol.3, No.2, 2021, h. 251.

⁵ Lihat Pasal 15 Undang-Undang Nomor 30 Tahun 2004 sebagaimana telah diubah dengan Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris.

dispute occurs, the authentic deed can be presented in court as evidence and has legal certainty. Normatively, the meaning of legal certainty is that there are regulations that are made and promulgated with certainty. This legal certainty must lead to a method of law that is permanent, clear, consistent and consistent which cannot be controlled by subjective conditions in its implementation ^[6].

Legal certainty is for protection for seekers of justice or justice for arbitrary actions, so that someone can get what they want in certain cases. Apart from that, the aim of legal certainty is to obtain justice. The real form is due to the enforcement or application of law for an action without paying attention to who has carried it out. The existence of legal certainty is to be able to realize the principle of equality before the law so that there is no discrimination ^[7].

An electronic document that has used a digital signature in proving civil procedural law in Indonesia, its existence can be recognized after being regulated in state regulations, namely the ITE Law ^[8]. A digital signature in an electronic document can have perfect evidentiary power in court by being required to register the party's digital signature with the CA (Certification Authority), then the CA is referred to as a public official so that by making good use of the infrastructure provided by the CA, especially its capabilities To find out when the signed electronic transaction was carried out, the signed electronic transaction is equated with an authentic deed made before an official who has the authority to make the deed. Specifically for minutes and copies or quotations, the Notary must make them on paper as has been done so far, they cannot be made in electronic media (as Electronic Documents), this is related to the provisions of Article 5 paragraphs (1) and (4) of the ITE Law, that:

1. Electronic Information and/or Electronic Documents and/their printouts are valid legal evidence.
2. Provisions regarding Electronic Information and/or Electronic Documents as intended in paragraph (1) do not apply to:
 - a. Letters which according to the law must be made in written form; And
 - b. Letters and documents which according to the law must be made in a notarial deed or a deed made by a deed-making official.

Based on the previous provisions, a deed made by a notary is a type of notarial deed, meaning that the notarial deed cannot be made in the form of an electronic document. The ITE Law does not legalize the creation of authentic deeds electronically. Apart from that, the UUJN and the ITE Law are laws that do not meet legal certainty because there is a conflict of norms between the two regulations. Not only between these two legal regulations, but also the Civil Code which requires notarial deeds to be made in the presence of an authorized public official (notary). So this situation causes incompatibility with the purpose and function of executing an authentic deed which must convey and function for legal

certainty and hold evidentiary value. Based on the statement regarding legal certainty above, legal certainty is because there are rules with a general character that result in an individual understanding what behavior they can and cannot do. However, based on the grammatical meaning regarding the application of electronic signatures as written in UUJN Article 15 paragraph (3), it is not known that the actions listed may or may not be carried out, because of the conflict of norms with Article 5 paragraph (4) of the ITE Law, because in UUJN the meaning is becomes limited and becomes just a matter of certifying electronic transactions. So there is no legal certainty regarding authentic deeds that use electronic signatures.

In connection with the making of an authentic notarial deed which has one of the functions of being used as evidence in civil cases, the strength of the evidence does not yet have good evidentiary strength. Proof, is the presentation of evidence that already exists and is related resaim of strengthening the truth of the arguments regarding legal facts that already exist and are the subject of the dispute, with With the presentation of evidence by the parties, the judge obtains a basis for certainty in order to make a decision ^[9]. Evidence when viewed from the perspective of the court handling a case, evidence is something that is used by the judge to make a decision and decide the case/resolve the case. More concisely, the judge uses evidence to decide the case or resolve it.

Article 164 and Article 1866 of the Civil Code determine that there are 5 (five) pieces of evidence consisting of written evidence, witness evidence, allegations, confessions and oaths. Referring to these provisions, whether digital signatures in authentic deeds and digital certificates can be equated with electronic documents in general so that they are analogous to written evidence or whether digital signatures and digital certificates are analogous to authentic/private deeds. In the author's opinion, the government needs to update the UUJN regarding clearer rules for electronic signatures in authentic deeds ^[10]. Regulations regarding the use of electronic signatures in authentic notarial deeds must also pay attention to the legal aspects of proof because one of the functions of an authentic deed is as proof of the rights and obligations of the party concerned.

An authentic deed itself has perfect evidentiary power and binding evidentiary power. The binding power of the authentic deed is if the conditions regarding the making of the authentic deed are in accordance. However, if one of these combinations cannot be fulfilled, it can cause the authentic deed to not have perfect evidentiary value and binding evidentiary value. The provisions of Article 1 paragraph (4) of the ITE Law state that electronic documents are any electronic information created, forwarded, sent, received, stored in analog, digital, electromagnetic, optical or similar form, which can be seen, displayed and/or heard via a computer ^[11]. or electronic systems, including but not limited to writing, sound, images, maps, plans, photographs, or the

⁶ Christine S.T. Kansil, Engeline R Palandeng, Godlieb N Mamahit, *Kamus Istilah Aneka Hukum*, (Jakarta : Jala Permata Aksara, 2009), h. 385.

⁷ Sudikno Mertokusumo, *Sudikno Mertokusumo, Teori Hukum*, (Yogyakarta: Cahaya Atma Pusaka, 2012) h.160.

⁸ Dendik Surya Wardana, Iswi Hariyani, & Dodik Prihatin AN, *Pertanggung Jawaban Notaris Terhadap Keabsahan Akta Outentik Yang Dilakukan Secara Electronic Dalam Pembuktian Di Pengadilan*, *Jurnal Ilmu Kenotariatan*, Vol. 2, No. 2, (2021), h. 14-26.

⁹ Bachtiar Effendie, Masdari Tasmin, dan A. Chodari, *Surat Gugat dan Hukum Pembuktian Dalam Perkara Perdata*, (Bandung: PT. Citra Aditya Bakti, 1999), h. 50

¹⁰ Ahmad Farich Sultoni, *Batas Pertanggungjawaban Notaris atas Pembuatan Akta Otentik*, *Jurnal Ilmu Kenotariatan*, Vol. 2, No. 1, ((2021)), h. 69-90.

¹¹ Lintang Cahyani Andira & Iswi Hariyani, *Keabsahan Kontrak Elektronik Dalam Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi*, *Jurnal Ilmu Kenotariatan*, Vol. 1, No. 2, (2020), h. 34-54.

like, letters, signs, numbers, access codes, symbols, or perforations that have meaning or can be understood by people who are able to understand them. When related to the evidentiary strength of an electronic document, an authentic notarial deed that uses a digital signature is only a private deed without any intermediary or not made before an authorized official. If the deed is to be submitted as evidence in a civil procedural law trial to have evidentiary value, the requirements regarding an authentic deed must be met ^[12].

If the authentic deed uses an electronic signature, and if it is connected with the provisions of Article 5 Paragraph (4) of the ITE Law which states that the provisions regarding electronic information and/or electronic documents as intended in paragraph (1) do not apply to letters which according to the Law must be made in written form and letters and documents which according to the law must be made in the form of a notarial deed or deed made by the official who made the deed. Based on the formulation in Article 5 Paragraph (4) of the ITE Law, it can be said that the ITE Law provides limitations in terms of an electronic document not being permitted to apply to documents or Deeds made by a Notary or Deeds made by PPAT, meaning that if the Notary makes an authentic Deed If done electronically, the deed does not have legal force as valid evidence in civil law in accordance with the provisions of the ITE Law. Due to the restrictions on the meaning of electronic information and/or electronic documents as regulated in Article 5 Paragraph (4) of the ITE Law, an authentic deed executed electronically by a Notary means that it cannot be used as valid evidence in civil procedural law. So if the deed is still submitted as evidence, the authenticity of the authentic Deed made by the Notary cannot be fully fulfilled. There are several reasons why authentic deeds made by notaries cannot be in electronic form, because: ^[13].

- a. There are no regulations regarding authentic deeds that can be executed electronically (electronic deeds).
- b. There are no legal regulations regarding electronic signatures that can be used in authentic deeds;
- c. There are no legal regulations related to the concept of face to face via teleconference or video conference and other electronic media.

Even now, if a notarial deed is made electronically, then the deed is simply suspected to be a private deed which is then equated with a letter, electronic certificate or document. So even though it has been ratified in the UUJN, it still cannot make an authentic deed into an electronic deed ^[14]. This has the reason that UUJN requires authentic deeds to be signed directly by the parties, witnesses and notaries. If these conditions are not met, then the words made by the notary are only valid as a private deed. So, if the deed is used as evidence, the strength of the proof becomes a private deed. The private deed is formulated in Article 1874 of the Civil Code as follows:

"What is considered private writing are deeds signed privately, letters, lists, household documents and other writings made without the mediation of a public official"

The evidentiary power of a private deed has perfect

evidentiary power if the contents contained in the deed and the signature are recognized as true by the parties involved. If the contents and signatures are not acknowledged then the parties submitting evidence must supplement the evidence with other evidence, such as witnesses. The power of proof of a deed under hand is the power of formal proof and the power of material proof. What includes the strength of formal proof is the truth of the identity of the signatory, which concerns the truth of the identity of the person giving the statement. Meanwhile, what is included as material proof is the content of the information contained in the private deed. The conflict of norms that occurs between the UUJN and the ITE Law can cause uncertainty which ultimately gives rise to multiple interpretations and interpretations. In providing interpretations, if we sort them based on the ranking of interpretations, then the first ranking interpretation is teleological interpretation, then the second ranking is historical interpretation, followed by grammatical interpretation and the final one is systematic interpretation. Based on the theory of legal certainty, it can contain several meanings, namely clarity, not giving rise to multiple interpretations, not giving rise to contradictions, and it can be said that making an authentic deed using an electronic signature does not have legal certainty so that this can reduce the evidentiary strength of the authentic deed. Thus, based on this explanation, there is a conflict of norms between the UUJN and the ITE Law which need to be harmonized regarding the regulation of the use of electronic signatures in authentic deeds. With the reform of the regulations, notaries will no longer have problems regarding legal certainty in the use of electronic signatures in the deeds they make. To ensure that notarial deeds that use electronic signatures have legal certainty in civil evidence, it is necessary to update the regulations in the UUJN by clearly regulating the use of electronic signatures. Likewise, the United States, the Netherlands and Malaysia have recognized the existence of electronic signatures in notarial deeds. Carrying out updates in the UUJN by means of;

1. Changing the substance of Article 1 number 7 UUJN from facing to facing, and adding facing can be done via teleconference or videoconference.
2. Change the substance of Article 16 paragraph (1) letter m UUJN which was originally read face to face to be read via teleconference or videoconference.
3. Change the substance of Article 38 UUJN, which was originally only an authentic deed to add an electronic notarial deed or electronic authentic deed. Thus, the use of electronic signatures in notarial deeds has been recognized and clearly regulated.

Apart from making updates to the UUJN, it is also important to make updates to the ITE Law which prohibits the use of signatures in Notarial deeds, such as removing Article 5 Paragraph (4) letter b of the ITE Law. This is intended so that electronic notarial deeds can be made and have legal certainty as evidence in civil procedural law and have perfect evidentiary power and binding evidentiary power, because one of the factors inhibiting the use of electronic signatures

¹² Khafid Setiawan, Bhim Prakoso, & Moh. Ali, *Notaris Dalam Pembuatan Akta Kontrak Yang Berlandaskan Prinsip Kehati-hatian*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 2, (2021), h. 43-52.

¹³ Habib Adjie, *Hukum Notaris Indonesia; Tafsir Tematik Terhadap Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*, Cetakan Keempat, (Bandung: Refika Aditama, 2014),, h.214.

¹⁴ *Ibid*, h.133.

in notarial deeds has been removed.

So, in future arrangements so that the making of notarial deeds by Notaries using the Cyber Notary concept provides legal certainty, it is necessary to harmonize the regulations related to the authority of Notaries in making Deeds electronically as mentioned in the new UUJN and the ITE Law. This can be done by adjusting the contents of the articles related to the authority of notaries in making deeds electronically, one of which is Article 5 and Article 6 of the ITE Law with the new UUJN. With legal updates and harmonization, the use of electronic signatures in Notarial deeds can be done because UUJN and UU ITE have legalized the use of electronic signatures. Legal certainty regarding this deed is guaranteed as with authentic deeds in general.

4. Conclusion

Regulation of electronic signatures in notarial deeds of Notaries so that they have legal certainty to be used as evidence in civil procedural law can be done in a way, namely, Indonesia acts to implement UUJN updates and clearly regulates digital signatures contained in notarial deeds such as the application of the law in the United States, the Netherlands and Malaysia. This is because an authentic deed can clearly determine the rights and obligations of the parties involved in it, can guarantee legal certainty, and can minimize the occurrence of disputes. If a dispute occurs, the authentic deed can be presented in court as evidence and has legal certainty. So, if the electronic signature arrangements in a notarial deed are clear and have been specifically regulated, it means that the position of the authentic deed will have perfect evidentiary power and binding evidentiary power.

5. References

1. Adjie Habib. Hukum Notaris Indonesia; Tafsir Tematik Terhadap Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris. Cetakan Keempat. Bandung: Refika Aditama; 2014.
2. Ahmad Farich Sultoni, *Batas Pertanggungjawaban Notaris atas Pembuatan Akta Otentik*, Jurnal Ilmu Kenotariatan; 2021;2(1).
3. Chastra, Denny Fernaldy, *Kepastian Hukum Cyber Notary Dalam Kaidah Pembuatan Akta Autentik Oleh Notaris Berdasarkan Undang-Undang Jabatan Notaris*. Notary Indonesian. 2021; 3(2):248-267.
4. Dendik Surya Wardana, Iswi Hariyani, & Dodik Prihatin AN, *Pertanggung Jawaban Notaris Terhadap Keabsahan Akta Outentik Yang Dilakukan Secara Electronic Dalam Pembuktian Di Pengadilan*, Jurnal Ilmu Kenotariatan; 2021;2(2).
5. Effendi Bahtiar dkk. *Surat Gugat Dan Hukum Pembuktian Dalam Perkara Perdata*, Bandung: PT.Citra Aditya Bakti; 1999.
6. Kansil Christine ST. Engeline R Palandeng, Godlieb N Mamahit. *Kamus Istilah Aneka Hukum*. Jakarta: Jala Permata Aksara; 2009.
7. Khafid Setiawan, Bhim Prakoso, Moh. Ali, *Notaris Dalam Pembuatan Akta Kontrak Yang Berlandaskan Prinsip Kehati-hatian*, Jurnal Ilmu Kenotariatan; 2021; 2(2).
8. Lintang Cahyani Andira, Iswi Hariyani. *Keabsahan Kontrak Elektronik Dalam Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi*, Jurnal Ilmu Kenotariatan; 2020; 1(2).

9. Listyana, Dini Sukma *et al.*, *Kekuatan Pembuktian Tanda Tangan Elektronik Sebagai Alat Bukti Yang Sah Dalam Perspektif Hukum Acara Di Indonesia Dan Belanda*, Jurnal Verstek. 2014; 2(2):146-154.
10. Mertokusumo Sudikno. *Teori Hukum*. Yogyakarta: Cahaya Atma Pusaka; 2012.
11. Tarigan Junaidi. *Akibat Hukum Tanda Tangan Elektronik Dokumen Digital Dalam Pembuktian Perdata*, Jurnal Rechten. 2021; 3(3):41-46.