

RECONSTRUCTION OF REGULATIONS FOR SIGNING AUTHENTIC DEEDS ELECTRONICALLY BY A NOTARY IN THE PRESENCE OF THE PARTIES BASED ON THE VALUE OF JUSTICE

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ABSTRACT

The existence of technological developments will certainly also have an impact on the notary world. Several advantages of making notarial deeds electronically, including time and cost efficiency. However, several legal issues need to be considered. This research was conducted to analyze and find regulations on electronic signing of authentic deeds by a Notary in the presence of the parties, find weaknesses in the regulation of signing of authentic deeds by a Notary in the presence of the present parties and reconstruct the regulations for signing authentic deeds by a Notary in before the parties based on the value of justice. In this study using constructivism paradigm. The type of research used in this research is non-doctrinal legal research which can also be called socio legal research. Based on the problems examined by researchers, the research approach used is the socio-legal research approach with the specifications of this research being explanatory. The results of research at this writing include: The regulations for electronic signing of authentic deeds are not fair because there is no single regulation that explicitly explains the authority of a Notary from the law in making Authentic Deeds electronically. This is of course not in accordance with the provisions of Article 1 number 7 of the Law on the Position of Notary Public, which provides a view regarding the Notary Deed. It is necessary to reconstruct regulations related to electronic signing of authentic deeds, including: Article 1 number 1 and Article 15 paragraph 1 of Law no. 2 of 2014, Article 5 Paragraph 4 of the Law on Information, Documents and Electronic Signatures and Article 61 paragraph (3) of Government Regulation Number 71 of 2019.

Keywords: Reconstruction, electronic authentic deed, Notary

INTRODUCTION

Notaries who are given the right and authority by law to draw up the deeds of the parties, are expected to be able to arbitrate on the interests of the parties to make agreements that are in harmony with legal principles. This fact is an important reason for how notaries reduce the principle of freedom of contract.¹

In practice, in carrying out their positions, notaries are constrained by problems of a technical nature, for example, in one credit contract package in banking, there are a large number of various types of deeds that must be read and signed at the same time, so that it becomes an obstacle in reading deed.² The reading of a deed by a notary is a requirement for the authenticity of a deed and is an obligation of a notary as stipulated in Article 16 paragraph (1) letter m of the Notary's Office Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary Public reads "reading the Deed before the appearers attended by at least 2 (two) witnesses, or 4 (four) special witnesses for the making of a will underhanded, and signed at the same time by the appearers, witnesses, and Notary". reading of the deed by a notary is a must in every making of an authentic deed. This provision is reaffirmed in Article 44 of the Notary Office Law which states that immediately after the deed is read, the deed is signed by every appearer, witness, and Notary, unless there are appearers who do not may affix signature by stating the reasons. The provisions for reading and signing are an integral part of the formalization of the deed.

The problem in practice that is often encountered is that apart from the technical problems above, in fact there is a notary who deliberately does not read the deed he made himself, but in the editorial document the notary has read it himself. the parties only face the notary's employee staff, do not meet face to face with the appearer but are written facing directly to him, the deed is only read by the notary's employee staff even though the written deed is read by the notary himself. The appearers are said to have signed the deed in front of them, while in fact the appearers did not sign it before the Notary. Such a Notary's behavior is clearly a criminal act because he not only violates his oath but deliberately makes a forged deed.³

Authentic deed, as the strongest and most complete means of evidence, plays an important role in every legal relationship in society. In various business relationships, banking, social activities and so on, the need for written evidence in the form of authentic deeds is increasing, along with the growing demand for legal certainty in various sectors. Authentic deeds also clearly define rights and obligations, guarantee legal certainty, which is expected to avoid disputes. If it is connected with the function of an authentic deed in proof, it can be seen that in fact in making a deed by a notary, an authentic deed must be read out in front of the parties. This is also to protect the parties involved in making the deed, including the Notary himself, if there is a dispute or lawsuit over the legal actions in the deed in the future.

The notary world is a combination of theory and practice at an ideal level, where theory and practice are in line or sometimes not in line with each other. Utilization of information technology in making notarial deeds electronically will certainly provide convenience and advantages, however, it is also necessary to pay attention to the shortcomings which do not rule out causing some problems.

¹ Herry Susanto, Peran Notaris Dalam Menciptakan Kepatutan Dalam Kontrak, Yogyakarta: UII Press .2010.

² Habib Adjie, Aspek pertanggungjawaban dalam pembuatan akta, Bandung: Mandar Maju, 2011. page 110

³ Tan Thong Kie, Studi Dan Serba-Serbi Praktek Notaris, Jakarta: Ichtar Baru Van Hoeve .2007.

The existence of technological developments will certainly also have an impact on the notary world. Several advantages of making notarial deeds electronically, including time and cost efficiency. However, several legal issues need to be considered.

RESEARCH METHODS

The research method in this is social legal research⁴. The types of data used in research are primary and secondary data. Primary data is data that is directly collected by the researcher from the source of the question.⁵ Data obtained directly from the community, subjects studied at institutions, or community groups, direct actors who can provide information to researchers who are known as respondents and informants. Secondary data⁶ is in the form of primary, secondary and tertiary legal materials.⁷ The analytical method used in this study uses a descriptive analysis method.⁸

DISCUSSION

The development of information technology has replaced classical (conventional) business thinking by growing models of interaction between producers and consumers in the electronic market. Entrepreneurs are able to start investing more easily and with smaller capital, but by accessing the Internet they are able to build a network of consumers around the world and generate trade that is worth hundreds of billions of dollars in the early twenty-first century. According to Article 1 number 7 of Law Number 2 of 2014 concerning the Office of a Notary Public, it states that: "Notary deeds, hereinafter referred to as Deeds, are authentic deeds drawn up by or before a Notary in the form and procedure stipulated in this Law."

Based on the definition of an authentic deed in Article 1868 of the Civil Code, a Notary Deed can be said to be an authentic deed when the deed meets the requirements set out in the legislation, especially Article 1868 of the Civil Code. then the 3 (three) requirements for the authentic deed are:

- 1) The deed must be drawn up in the form and procedure determined by law.
- 2) Deed made by (door) or before (ten overstaan) a public official.
- 3) Officials must have the authority to make the deed⁹

Problems that will occur in making authentic deeds that are carried out electronically are related to the obligations that must be fulfilled by a notary for the deed he makes, where this is regulated in article 16 paragraph (1) of the Law on Notary Office, especially article 16 paragraph (1) Law on the Position of Notary Public letters c, and m, namely: attaching letters and documents as well as the fingerprints of the appearer on the Minutes of the Deed, read the Deed before the appearer in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a will under the hand, and signed at that time also by the appearer, witness, and Notary.

In accordance with the elaboration of the two types of deed mentioned above, currently there is no electronic notarial deed made. Especially in making a *relaas* deed, because in this case the presence of a notary before the parties is an obligation that must be fulfilled, so that later a Minutes can be made which contains a description of the notary seen and witnessed by himself at the request of the parties present. What is meant by an authentic deed is that the deed must be made by or before a public official based on provisions regulated by law and has perfect strength, because an authentic deed includes all elements of evidence, this is also stated in Article 1867 of the Civil Code. regulates the authentic deed and the limits set forth in article 1868 of the Civil Code, namely: a. Writing; b. Witnesses; c. presumptions; d. Confession; e. Oath.¹⁰

If an authentic deed is connected with the implementation of Cyber Notary where the notary deed is made electronically (electronic deed), then the strength of proof of the authentic deed does not have perfect proof as a notary deed in general, because an authentic deed has an electronic form (electronic deed). does not cover the legal requirements for the validity of a deed, that is, the "confrontational" element is not fulfilled. In addition, Law Number 2 of 2014 and Law Number 11 of 2008 concerning Information and Electronic Transactions also do not accommodate this. At this time various reasons are still being questioned and sanctioned why the current authentic deed cannot be formed electronically, namely due to several things, namely:

- 1) Authentic deeds made by a notary are regulated by law and until now there are still no laws and regulations that regulate in detail and explicitly where the regulations state that authentic deeds are allowed to be made using an electronic system (electronic certificate).
- 2) Regarding the signature, a notary who makes an authentic deed requires parties, witnesses, and a notary to sign it, but until now there is no legislation that clearly states that a digital signature can be used in an authentic deed made made by a Notary.
- 3) In general, when making an authentic deed, the parties are required to be physically present facing and dealing with the notary and witnessed by the witnesses, and henceforth the notary reads it in front of the parties and witnesses, then the deed

⁴ Mukti Fajar ND dan Yulianto Achmad " *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta, 2010, p.156. see too Abdulkadir Muhammad, Law and Legal Research, (Bandung: Citra Aditya Bakti, 2004), p. 134. Supri Yono et al, Reconstruction of Separate-Creditor Positions in the Process Declaring Bankruptcy in Indonesia Based on Justice Value, Scholars International Journal of Law, Crime and Justice, Nov, 2020; 3(11):pp. 334-341

⁵ Suryo Subroto, School Education Management, (Jakarta: PN Rineka Cipta. 2003), p. 39.

⁶ Secondary data is data obtained from written materials. See Soerjono Soekanto, Introduction to Legal Research, (Jakarta: University of Indonesia, 1986), p. 11. See too Anis Mashdurohaturun, & Gunarto, Trademark Legal Protection against SMEs in Enhancing Global Competitiveness Based on the values of Pancasila, 2nd International Conference on Indonesian Legal Studies (ICILS 2019), Advances in Social Science, Education and Humanities Research, Atlantis Press. volume 363,2019. pp 93-99. See too *Irwansyah*, *Metode & Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media, 2020. pp.32-49. See too Anis Mashdurohaturun, Hukum Perlindungan Konsumen (Kajian Teori dan Praktik), UNISSULA Press, 2019. 1-137 see too Anis Mashdurohaturun, Transfer of Intellectual Property Rights (Studies on the Division of Joint Property (Gono-gini) Post-Divorce), International Conference on Law Reform (INCLAR 2019), Atlantis Press 2019, pp.70-75.

⁷ Suratman and H. Philips Dillah, Legal Research Methods, (Bandung: Alfabeta, 2013), p. 66.

⁸ Matthew B. Miles & A. Michael Huberman, *Analisis Data Kualitatif*, UI Press, Jakarta, 1992, p. 22

⁹ Habib Adjie, Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Public. cet. Ke-2, Bandung: Refika Aditama, 2009. page 5

¹⁰ Habib Adjie, Kebatalan dan Pembatalan Akta Notaris, Bandung: Pt Refika Aditama, 2011. Page 6.

is signed by the parties, witnesses, and by a notary. However, until now there is still no legislation that explains and regulates that the concept of dealing or dealing can be through teleconference media.¹¹

Obstacles experienced by Notaries in Making Notary Deeds carried out with the Electronic system, including:

- 1) Obstacles experienced by a Notary in Making a Notary Deed which is carried out with an electronic system related to the Aspect of Legal Substance;
- 2) Obstacles experienced by Notaries in Making Notary Deeds carried out with Electronic systems related to Legal Structure Aspects.
- 3) Obstacles experienced by Notaries in Making Notary Deeds carried out with Electronic systems related to Legal Culture Aspects.

The various obstacles that have been described above, have an explanation and understanding of how concrete procedures can be carried out to apply advances in information technology in the 4.0 revolution era when making authentic deed. Juridically, the steps taken are implementing changes to the Notary Office Law (Law on Notary Office) and ITE, which are then carried out to harmonize and synchronize the law between the several laws with the provisions stipulated in the Civil Law. Substantially there are various articles in the Notary Office Law (Law on Notary Office) which must be amended (revised). Therefore, the articles that become one of the reasons that become obstacles or obstacles for a notary when making deeds done electronically, include: Article 1 number 7, Article 1 number 8 and number 9, Article 16 paragraph (1), Article 38 paragraph (4), Article 48 paragraph (1), and Article 50. Article 5 paragraph (4) letter a UU-ITE explains that all types of letters are not only securities, but also letters used in upholding the law state, civil and criminal administration must be made in writing based on law.

In addition, in an Islamic perspective, as in the Qur'an Surah Al-Baqarah verse 282 which the scholars call the verse Al-Mudayanah (debt verse), in this case talking about civil matters regarding the recommendation to write down debts and testify before a trusted third party (in this case a notary), while emphasizing the need to write down the debt, even if it's a little, accompanied by the amount and timing. The person in charge of recording it should be a just person and it is also stated in this paragraph that there are conveniences for people who are lacking, both intellect and five senses as well as conditions for witnesses and guardians so that the authentic deed can be accepted by society and considered valid and cannot be contested by others¹²

There is a relationship with the provisions of something regulated in UU-ITE Article 5 paragraph (4) letter a and the provisions regulated in Article 8 paragraph (3) of the Information Technology Utilization Draft Law, which emphasizes documents made in electronic form, as well with digital signing is deemed invalid for:

- 1) Make and execute a will;
- 2) Engagement regarding a transaction of an immovable object;
- 3) Ownership rights stated in the documents;
- 4) Securities except for shares traded on the stock exchange;
- 5) Other documents in accordance with the provisions in the relevant legislation require ratification by officials who have the authority to certify documents or also to a notary.¹³

Based on the provisions of Article 5 paragraph (4) of Law Number 11 of 2008 concerning Information and Electronic Transactions, notarial deeds made electronically do not have the perfect evidentiary power as an authentic deed. Until now, deed made electronically is only seen as a private deed where it is likened to documents, letters, electronic certificates. thus, the electronic deed is not considered an authentic deed if we examine Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary. The provisions contained in Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public also explain that "In addition to the authority referred to in paragraph (1) and paragraph (2), the notary has other authorities as regulated in laws and regulations. The authority of a notary to certify that is done as a Cyber Notary or that is done with an electronic system is another authority that is regulated in these laws and regulations. However, the authority to certify here is not the same as an authentic deed which refers to the provisions of Article 1868 of the Civil Code. The deed made by a notary in the form of an authentic deed has perfect evidentiary power and can be determined regarding the parties bound in the deed, as long as it does not contain ambiguity or can be proven. evidence to the contrary according to a court decision that has permanent legal force. In the General Meeting of Shareholders of a Limited Liability Company where the deed is a type of relaas deed. This is because in the Law on Limited Liability Companies (UUPT), especially article 77 of Law Number 40 of 2007 concerning Limited Liability Companies, it is explained that the General Meeting of Shareholders (GMS) can be held via teleconference, video conference, or other electronic media means. allows all GMS participants to see and hear and directly participate in the meeting.¹⁴

In practice, it is unlikely that the Partij Deed can be made or difficult to do electronically. This is because a notary must see and hear directly in the reading and signing carried out by the parties, the documents and the notary himself, this is regulated in the Law on Notary Positions article 16 paragraph 1. However, it is necessary to make a party deed which is carried out electronically as was done in the GMS, then it must be followed by an explanation at the end of the Deed which is added to the clause reading the deed and signing it in more than one city according to the location of the parties involved by using electronic devices, this is intended to provide a clear explanation clear about the implementation of the deed. A notary who makes a deed in the implementation of the General Meeting of Shareholders by means of a teleconference in order to amend the Articles of Association of a Limited Liability Company can be carried out using two (2) methods such as a notary making a deed in the form of a Deed of Minutes or Deed of Relaas (ambtelijke akten) and Deed of Statement of Meeting Resolutions (partij account). Implementation of the General Meeting of Shareholders conducted by teleconference so that changes to the Articles of Association

¹¹ Kadek Setiadewi Dan I Made Hendra Wijaya, Legalitas Akta Notaris Berbasis Cyber Notary Sebagai Akta Autentik, *Jurnal Komunikasi Hukum (Jkh)* Universitas Pendidikan Ganesha, 6 (1):126

¹² Natasya Nuzulia Rahma, Keabsahan Akta Autentik Notaris Beserta Ketentuannya Dalam Al-Qur'an Surah Al-Baqarah Ayat 282, *Nihaiyyat: Journal of Islamic Interdisciplinary Studies* Vol. 2, No. 3, Desember 2023 page. 253

¹³ Aris Yulia, Profesi Notaris Di Era Industrialisasi Dalam Perspektif Transendensi Pancasila, *Jurnal Law And Justice*, 2019. 4 (1): 54.

¹⁴ Qisthi Fauziyyah Sugianto Dan Widhi Handoko, Peluang Dan Tantangan Calon Notaris Dalam Menghadapi Perkembangan Disrupsi Era Digital, *Jurnal Notarius*, 2019. 12(2):p.656.

of the Limited Liability Company are made into the Deed of Statement of Meeting Resolutions (partij akten), then the deed of Statement of Meeting Resolutions is carried out by giving power of attorney to someone present at the meeting to make and restate the minutes meeting before a Notary. Making the Deed of Statement of Meeting Resolutions (partij akten) does not contain future problems because the notary makes the deed done conventionally.¹⁵

The issue of making authentic deeds made by a notary electronically at the General Meeting of Shareholders as stipulated in Article 77 paragraph (1) of the Law on Limited Liability Companies is not in line with the juridical provisions regarding the presence of notaries, parties and witnesses where this is contained in Article 16 paragraph (9) of the Law on the Position of Notary Public. 11 of 2008 concerning Information and Electronic Transactions.¹⁶ Given the legal substance of the Law on Notary Office and the Civil Code which regulates the rules for making authentic deeds, and the requirements for the authenticity of deeds made by a notary, it tends to be seen that the implementation of deeds made electronically by a notary does not meet the requirements for the authenticity of authentic deeds. So referring to this explanation, the use of a deed made electronically by a notary is not in line with the function and purpose of making an authentic deed, namely to do the right thing, especially to provide legal certainty and have evidentiary value.

No.	Variable	Telecommunications Act 1999	ITE Law 2008	Reconstruction
1.	Evidence	Article 42 (2) Records of information sent and or received by telecommunications service providers and can provide information needed for criminal justice processes.	Article 5 Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence.	The court cannot reject a piece of evidence on the grounds that it is electronic evidence.
2.	Burden Proof	Article 15 (1) For errors and or negligence telecommunications operators causing losses, the aggrieved parties have the right to submit claims for compensation to the telecommunications operators.	Article 7 Everyone who declares rights, strengthens existing rights, or refuse the rights of others must ensure that Electronic Information and/or Documents Electronics comes from Electronic Systems and complies requirements based on statutory regulations.	That every person declares rights, strengthens existing rights, or rejects the rights of others must ensure that Electronic Information and/or Electronic Documents originate from Electronic Systems and meet the requirements based on laws and regulations.
3.	Investigator	Article 44 (1) Investigators from the State Police of the Republic of Indonesia, certain Civil Servant Officials within the Department whose scope of duties and responsibilities are in the field of telecommunications, are given special authority as investigators regulated in the Law on Criminal Procedure to carry out investigations of criminal acts in the field of telecommunications.	Article 43 (1) Investigators from the Police of the Republic of Indonesia, certain Civil Servant Officials within the Department whose scope of duties and responsibilities are in the field of information technology and electronic transactions are given special authority as investigators as referred to in the Law on Criminal Procedure Code to conduct investigations into ITE crimes.	
4.	Contract Validity Time	Article 50 (3) Government Regulation Number 82 2012 Contract agreements can be made by way of acceptance stating approval and acceptance and/or use of objects by users of electronic systems.	Article 20 Electronic transactions when the offer sent by the sender has been received and approved by the recipient by providing an electronic acceptance statement.	An electronic contract is stated to come into force since the contract has been sent and can be downloaded by the recipient via an electronic address.

An electronic signature is not a signature that is put on paper as is usually a signature or converts a signature using a scanner machine, an electronic signature is obtained by first creating a message digest or hast, namely a mathematical summary of

¹⁵ Herlien Budiono, Demikian Akta Ini : Tanya Jawab Mengenai Pembuatan Akta Notaris di dalam Praktik, Bandung : PT. Citrya Aditya Bakti,2018. page. 3

¹⁶ Irene Svinarky, Analisis Keabsahan Pendirian Akta Pt (Perseroan Terbatas) Terhadap Stempel Kementerian Hukum Dan Ham Yang Melalui Sistem Elektronik Yang Diprint Oleh Notaris, Jurnal Cahaya Keadilan .2015. 3.(2):p.79.

documents sent via cyberspace.¹⁷ Electronic signatures are different from digital signatures in that electronic signatures are legal terms as stipulated in Indonesian laws and regulations, while digital signatures are terms used to describe electronic signature methods using asymmetric cryptography methods with public key infrastructure.¹⁸

In principle, electronic signatures relate to guarantees for message integrity which guarantees that the sender of the message (sender) is truly the person who has the right and is responsible for it. This is different from an ordinary signature which functions as an acknowledgment and acceptance of the contents of a message or document. An electronic signature is a data item associated with an encoded digital message that is intended to provide assurance about the authenticity of the data and ensure that the data is not modified. The purpose of a signature in a document is to ensure the authenticity of the document. A Digital Signature is actually not a signature as we know it so far, it uses a different way to mark a document so that the document or data does not only identify the sender, but also ensures the integrity of the document does not change during the transmission process. A digital signature is based on the contents of the message itself. For this reason, it requires a secret key using cryptology techniques. According to article 11 paragraph (1) of Law Number 11 of 2008 jo Law Number 19 of 2016 concerning Information and Electronic Transactions explains that, Electronic Signatures are considered valid if they meet the following requirements:

- a. Electronic Signature creation data is related only to the Signatory;
- b. The data for making an Electronic Signature during the electronic signing process is only in the power of the Signer;
- c. All changes to the Electronic Signature that occur after the time of signing can be known;
- d. All changes to Electronic Information related to the Electronic Signature after the time of signing can be known;
- e. There are certain methods used to identify who the signatory is;
- f. There are certain ways to show that the Signatory has given consent to the relevant Electronic Information.

While the benefits of a Digital Signature are that a digital signature will cause electronic data sent through the open network to be guaranteed, so that the benefits of a digital signature are as follows:¹⁹

- a) Authenticity;
- b) Integrity;
- c) Non-Repudiation;
- d) Confidentiality.

Digital Signature has unique properties for each signed document, because it is taken from the document itself and some changes to the document will result in a different digital signature.²⁰ Electronic signatures in the civil procedural law system have not been regulated as evidence, as referred to in article 1866 of the Civil Code that there are only 5 (five) types of evidence, namely, written evidence, evidence with witnesses, evidence of suspicion, confessions and oaths. The rapid development of technology in Indonesia has changed people's behavior in making agreements, namely from conventional signature media to electronic signatures. Electronic signatures in Indonesia were then recognized by the birth of 2 (two) Regulations, namely Law Number 11 of 2008 concerning Electronic Information and Transactions, then updated in Law Number 19 of 2016 concerning Information and Electronic Transactions and Government Regulation Number 71 of 2019 regarding the Implementation of Electronic Systems and Transactions. A certified electronic signature must meet the criteria, namely having gone through the system test process to issue an electronic certificate. Meanwhile, an uncertified electronic signature is made without using the services of an electronic certification provider. The implication of these two types of electronic signatures is in relation to the technical standards applied.²¹

The existence of a Digital Signature is regulated in Article 1 number 22 of Law Number 11 of 2008 in conjunction with Article 1 number 19 of Law Number 19 of 2016 concerning Implementation of Systems and Electronic Transactions "Electronic Signature is a signature consisting of Electronic Information attached, associated with or related to other Electronic Information that is used as a means of verification and authentication". The existence of electronic evidence has also been acknowledged in Article 5 paragraph (1) "Electronic Information and/or Electronic Documents and/or printouts constitute valid legal evidence", and Article 5 paragraph (2) "Electronic Information and/or Documents Electronic and/or printed results as referred to in paragraph (1) are an extension of valid evidence in accordance with the applicable procedural law in Indonesia." Article 5 paragraph (3) of the Electronic Information and Transactions Law expressly stipulates that "Electronic Information and/or Electronic Documents are declared valid when using Electronic Systems in accordance with the provisions stipulated in this Law."

As with the understanding of electronic signatures that contain information, the creation of these signatures is in the form of unique data that refers only to the signer and can identify the signer, as referred to in Article 61 paragraph (3) of Government Regulation Number 71 of 2019 concerning Electronic System Operators, the data must meet the requirements, namely:

- a. The entire process of creating Electronic Signature Data is guaranteed for security and confidentiality by Electronic Signature Operators or Electronic Signature Service Supporters;
- b. If using a cryptographic code, Electronic Signature Creation Data must not be easily known from Electronic Signature verification data through certain calculations, within a certain time, and with reasonable tools;
- c. Electronic Signature Creation Data is stored in an electronic media that is under the control of the Signer; And,
- d. Data related to the Signer must be stored in a place or data storage facility, which uses a trusted system belonging to the Electronic Signature Operator or Sign Service Support. In making electronic signatures, the methods and techniques used are crucial, in order to create accurate and secure electronic information. The use of cryptographic techniques is a very safe use considering that it uses public key applications including key agreements, data encryption and digital signatures.

¹⁷ Soemarmo Partodihardjo, Tanya Jawab Sekitar Undang-Undang No. 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, Jakarta: PT Gramedia Pustaka Utama, 2009. page .99.

¹⁸ Thalys Noor Cahyadi, "Aspek Hukum Pemanfaatan Digital Signature Dalam Meningkatkan Efisiensi, Akses Dan Kualitas Fintech Syariah," Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional, 9,2 (2020), 219 (page 221).

¹⁹ Fakhriah Efa Laela. Bukti Elektronik dalam sistem Pembuktian, Cet. I (Bandung: Refika Aditama). 2017. page 50.

²⁰ Wahana Komputer, Memahami Model Enkripsi dan Security Data, Yogyakarta: Penerbit Andi, 2003, page. 122.

²¹ Affan Muhammad Andalán, "Kedudukan Tanda Tangan Elektronik dalam Transaksi Teknologi Finansial," Jurist-Diction, 2.6 (2019), 1931–50 (page 1939).

Proof is carried out in order to always establish the existence of a fact, or postulate an event. We can also look at Article 163 HIR (283 RGB) which regulates the matter of proof which reads "Every person who argues that he has a right, or in order to confirm his own rights or refute the rights of others, refers to an event that is required to prove the existence of said right or event." From this article it can be concluded that in proving not only the argument for events can be proven, but also the existence of a right. By providing evidence, a justification or denial of an argument put forward by the parties involved in the case can be carried out.

Within the judiciary in Indonesia, there is a procedural law whose function is to regulate matters that are held in the judicial process. This arrangement is regulated in Civil Law regulated in the HIR (Herzien Inlands Regulation) or the Civil Code (KUHPerdata). In proving the Civil Procedure Code or HIR (Herzien Inlands Reglement) there is a classification of the types of evidence presented at trial, based on Article 1866 of the Civil Code (KUHPerdata) or Article 164 HIR or Article 283 RGB there are 5 (five), namely:

1. Written evidence;
2. Evidence with witnesses;
3. Predictions;
4. Confession;
5. Oath.

Digital Signature as an electronic data in this case has problems when submitted as evidence in proceedings at the Indonesian Judicial Body. The Digital Signature used in e-commerce transactions as a whole is paperless, even scriptless transactions. In accordance with what is stipulated in article 1866 of the Civil Code, in this case it means that the evidence in the form of electronic data submitted will be considered as having no evidentiary legal force. There is also a big possibility that this matter will be rejected as evidence by the judge or the opposing party.

The strength of proof of electronic documents before the enactment of Law Number 11 Year 2008 on Electronic Information and Transactions only applies as private deeds, where the form of private deeds is made in a form without intermediaries or intermediaries or not before an authorized public official. Has the power of proof as long as the parties admit it or there is no denial from one of the parties. If one of the parties does not admit it, the burden of proof is left to the party who denies the deed, and the assessment of the denial of the evidence is left to the judge.

Electronic documents signed with an electronic signature in evidentiary law in Indonesia, are recognized for their essence after being regulated in Article 5 paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions that "electronic information and/or electronic documents and/or their printouts constitutes valid legal evidence, and is an extension of valid evidence in accordance with the procedural law in force in Indonesia". With the enactment of Law Number 11 of 2008 concerning Electronic Information and Transactions, based on Article 18 in conjunction with Article 7 in conjunction with Article 11 of Law Number 11 of 2008 concerning Electronic Information and Transactions, the strength of proof of electronic documents signed with digital signatures is the same with the power of proving an authentic deed made by an authorized public official.

This rule is contrary to the provisions stipulated in Article 1 number 7 of Law Number 30 of 2004 concerning the Office of a Notary, an amendment which states that "a notary deed, hereinafter referred to as a deed, is an authentic deed drawn up by or before a Notary according to the form and procedure stipulated in the this Act." As a result of a conflict of these rules, if one of the parties files a lawsuit with electronic document evidence signed with an electronic signature as evidence, then in resolving disputes in court, judges are required to have the courage to make legal breakthroughs, because the judge has the most authority. in deciding a case and because the judge is also the one who can give a van de rechter verdict (judge's decision), which indirectly can be based on a written or unwritten legal regulation.

Electronic signatures that use asymmetric cryptography technology, use two keys, namely the private key and the public key. In order for an electronic signature on an electronic document to have the power of proof in court, it must register the electronic signature with the Certification Authority (CA), then the Certification Authority (CA) can act as a general official, so that by utilizing the infrastructure provided by the Certification Authority (CA) in particular the ability to know when the electronic transaction was signed. A digital signature that has obtained a certificate from a Certification Authority (CA) institution will guarantee the authentication of a document, and digital signatures are very difficult to forge and are associated with a unique combination of documents and private keys, if you have carried out the provisions stipulated by the regulations. Relevant legislation.

Often the State Agency authorized to issue laws, between one law and another law contradicts one another, such as Law Number 11 of 2008, which contradicts Law Number 30 of 2004, then in cases where the rules If the law is contradictory to one another, the judge will rely on the principle of *lex specialis derogate lex generalis*, meaning that laws that are specific override laws that are general in nature. In this case Law Number 11 of 2008 overrides Law Number 30 of 2004. So the strength of proof of an electronic document signed with an electronic signature is the same as an authentic deed.

Electronic signatures in order to meet the minimum evidentiary limits must be supported by expert witnesses (either CA as a legal entity that makes or digital forensics experts) who understand and can guarantee that electronic information that is placed, associated or bound with other electronic information that is used as a verification tool and authentication is in accordance with the provisions of the Act. Then it must also be able to guarantee that the electronic document remains in the state it was when it was made without any changes when it is received by another party (integrity), that it is true that the signature comes from the person who made it (authenticity) and is guaranteed not to be denied by maker (non-repudiation).

The Dutch evidentiary law is currently regulated in the new *Burgerlijke Rechtsvordering* (Book of Civil Procedure Law, abbreviated as RV) which was updated on January 1, 2002, in Articles 149-207, which regulates evidence in civil cases, including evidence (*bewijslevering*), assessment of evidence (*bewijswaardering*), strength of proof (*bewijskracht*), burden of proof (*bewijslast*), offer of proof (*bewijsaanbod*), and evidence (*bewijsmiddel*).²²

Bewijslevering, namely how to do evidence, the parties who are obliged to do or provide evidence to the judge before the trial, while the one who evaluates the evidence submitted by the parties (*bewijswaardering*) is the judge unless the law

²² Fakhriah, Op.Cit.page 114.

determines otherwise, as stated in Article 152 paragraph (2) Rv which reads: "De waandering Van het bewijs is aan het oordeel van de rechter overgelaten, tenzij de wet anders bepaalt".²³

Proof can be carried out by using all forms of evidence, but the one who evaluates and determines the strength of the evidence submitted is the judge, unless the law determines otherwise. A piece of evidence can have binding evidence (bewijskracht) for the judge or have free evidentiary power (vrije bewijs) in the sense that the strength of the evidence is left entirely to the judge (as stated in Article 152 RV paragraph 2 above). Article 152 paragraph (1) Rv states that in principle all types of evidence can be used (submitted) in proving in court; unless the law determines otherwise. This means that civil evidentiary law in the Netherlands adheres to an open system, besides that evidence that is not listed in the law is allowed to be submitted.

Table Reconstruction of Regulations for Electronic Signing of Authentic Deeds by Notaries in the Presence of the Parties in the Perspective of Justice

No.	Before Reconstruction	Weaknesses	After Reconstruction
1.	Article 1 point 1 Law no. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws.	The authority of a notary is limited to making authentic deeds.	Article 1 point 1 UUJN Notary is a public official authorized to make authentic deeds and electronic authentic deeds and has other authorities as referred to in this Law or based on other laws.
2.	Article 15 paragraph 1 of Law no. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary The notary has the authority to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, save the deed, provide grosse, copies and quotations of the deed, all of that as long as the making of the Deed is not also assigned or excluded to other officials or other people determined by law.	Electronic deed making has not yet obtained a strong legal basis, so it has not provided a guarantee of legal certainty. Legal certainty can be achieved if there are no conflicting provisions between one law and another. So it cannot be implemented because there is no synchronization (contradictory) with the Law on Notary Office and the Law on Information and Electronic Transactions.	Article 15 paragraph 1 UUJN The notary has the authority to make authentic deeds and electronic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, save the deed, provide grosse, a copy and excerpts of the Deed, all of that as long as the making of the Deed is not also assigned or excluded to other officials or other people determined by law.
3.	Article 5 Paragraph 4 of the Law on Information, Documents and Electronic Signatures Provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) do not apply to: a. a letter according to the law must be made in written form; And b. letters and their documents which, according to the law, must be drawn up in the form of a notary deed or a deed drawn up by the official who made the deed.	1. provide limitations by excluding notarized deeds not included in the category of electronic information/documents; 2. because there is an obligation to read the deed before the appearer in the presence of witnesses and non-fulfillment of this condition will have an impact on the validity of the notarial deed in question	Article 5 Paragraph 4 of the Law on Information, Documents and Electronic Signatures Provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) apply to letters and documents drawn up in authentic deed or electronic deed or deed drawn up by the deed official.
4.	Article 61 paragraph (3) Regulations Government Number 71 Year 2019 concerning the Implementation of Systems and	The authorities for making authentic deeds and/or electronic certificates have not yet been regulated	Article 61 paragraph (3) Government Regulation Number 71 of 2019 concerning Implementation of Systems and Electronic Transactions for Electronic Signature Creation Data as

²³ Fakhriah, *Ibid.* page 115.

<p>Electronic Transactions for Making Electronic Signature Data as referred to in paragraph (1) and paragraph (2) must comply with the following provisions: If using a cryptographic code, Electronic Signature Creation Data must not be easily known from Electronic Signature verification data through certain calculations, within a certain time, and with reasonable tools; 1. Electronic Signature Making Data is stored in an electronic media that is under the control of the Signer; and data related to the Signatory must be stored in a place or data storage facility, which uses a trusted system belonging to the Electronic Certification Operator that can detect any changes and fulfills the following requirements: 1. only authorized persons can enter new data, modify, exchange or replace data; 2. the authenticity of the Signer's identity information can be checked; And 1. 3. other technical changes that violate security requirements can be detected or known by the organizers.</p>		<p>referred to in paragraph (1) and paragraph (2) must comply with the following provisions: a. if using a cryptographic code, Electronic Signature Creation Data must not be easily known from Electronic Signature verification data through certain calculations, within a certain time, and with reasonable tools; b. Electronic Signature Creation Data is stored in an electronic media that is under the control of the Signer; And c. data related to the Signatory must be stored in a place or data storage facility, which uses a proprietary trusted system Electronic Certification Operators which can also be accessed by officials who make authentic deeds so that they can detect changes and fulfill the requirements: 1. only authorized authentic deed and/or electronic deed can enter new data, modify, exchange, or replace data; 2. the authenticity of the Signer's identity information can be checked; And 1. 3. other technical changes that violate security requirements can be detected or known by the organizers.</p>
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It turns out that the rapid development of technology is inversely proportional to the development of law in Indonesia, which is always lagging behind. One of them is in the notary sector, especially in making authentic deeds, because there are no specific regulations that strictly and completely regulate electronic authentic certificates. Because until now, the legal substance in making electronic deeds has not been fully accommodated both in the UUJN and in the ITE Law. In fact, these two laws are the legal basis for notaries in seizing opportunities to make electronic deeds in accordance with the demands and developments of modern society that are currently happening.

In fact, even though under the UUJN, Civil Code, and UU ITE it is not yet possible to make electronic deeds by a notary, the opportunity for making electronic deeds remains open by regulating the electronic deed making. It's just that in practice it can't be implemented, considering the juridical constraints that are still being faced by notaries.

Nonetheless, the provisions of Article 77 of Law Number 40 of 2007 Concerning Limited Liability Companies (UUPD) is a legal sign that indicates opportunities for notaries to draw up deeds electronically, it's just that this provision is out of sync with the substance of the ITE Law which appeared later. In the ITE Law, it is precisely limiting the authority of a notary in making deeds electronically, even though the need for a short and fast service is an inevitability that is needed in modern society.²⁴

For this reason, in order to achieve legal certainty, legal justice and legal benefits for the community, it is necessary to harmonize laws and regulations related to the authority of a notary in making electronic deeds, namely between UUJN and UUJN and between UUPD and UUJN. So that the notary no longer experiences juridical problems regarding his authority in making deeds electronically. Thus, people who need guarantees for legal actions carried out electronically can only be achieved by accommodating the notary's authority in making electronic deeds in statutory regulations. With the regulation of all legal issues concerning the authority of a notary in making electronic deeds, as well as harmony between one law and another concerning the making of electronic deeds, the public no longer has doubts regarding the various electronic transactions that are carried out, in this case also including the existence of legal certainty regarding the authenticity of deeds made electronically.²⁵

In addition, the existence of electronic authentic deed wherever possible still maintains the dignity of a notary as a public official in carrying out his/her duties. In order to create the principle of legal certainty and legal justice, in the opinion of the author, the electronicization of making notarial deeds (authentic deeds) still requires the presence of the parties before a notary. This can be done in a way that the two parties do not have to be present at the same notary, but each can be present before the notary in his area of domicile and then the notaries act as parties facilitating the dissolution of the agreement via video conference.

²⁴ Rini Irianti Sundary, Sumber : Kompas, 20 April 2018, <https://www.unisba.ac.id/masalah-hukum-pembuatan-akta-notaris-secara-elektronik/>

²⁵ Ibid.

CONCLUSION

The regulation on the signature of an authentic deed by a Notary in the presence of the parties is not fair, because the Norms governing Cyber Notary in the Law on the Office of a Notary are not clear on their intent and purpose. Article 15 paragraph (1) of the Law on the Office of a Notary Public gives rise to various interpretations such as equating the word certifying with verifying, giving rise to interpretations regarding the form of certifying authority carried out by a notary, and interpreting the word certifying as making a certificate for transactions or legal actions carried out through the media electronically by a notary, so that in this case there is a blurring of legal norms. Weaknesses in the current regulation on signing authentic deeds by a Notary in front of the parties include weaknesses in terms of legal substance, including: . In terms of the legal structure, among others: There is no oversight mechanism for Notaries in making Electronic Deeds. In addition, the notary assembly with a notary organization must have supervisory capabilities and build an electronic supervision system by implementing a good information and communication management system that meets the standards set by law. Thus, increasing the human resources of prospective notaries is very important. , especially in the field of information science that is developing at this time. So that legal counseling regarding the making of notarial deeds electronically to the notary must always be carried out, in this case the socialization can be carried out by the notary supervisory board, be it the MPD, MPW, and MPP or the Notary Association Indonesia (INI). So that until now, there is no institution that can validate electronic deeds by a Notary. Meanwhile, in terms of legal culture, including the culture of making deeds by a notary until now, it is still written in nature. Apart from that, the use of electronic certificates is still not trusted by the public. In practice, it is unlikely that the Partij Deed can be made or difficult to do electronically. This is because a notary must see and hear directly in the reading and signing carried out by the parties, the documents and the notary himself, this is regulated in the Law on Notary Positions article 16 paragraph 1. However, it is necessary to make a party deed which is carried out electronically as was done in the GMS, then it must be followed by an explanation at the end of the Deed which is added to the clause reading the deed and signing it in more than one city according to the location of the parties involved by using electronic devices, this is intended to provide a clear explanation clear about the implementation of the deed. A notary who makes a deed in the implementation of the General Meeting of Shareholders by means of a teleconference in order to amend the Articles of Association of a Limited Liability Company can be carried out using two (2) methods such as a notary making a deed in the form of a Deed of Minutes or Deed of Relas (ambtelijke akten) and Deed of Statement of Meeting Resolutions (partij account). The issue of making authentic deeds made by a notary electronically at the General Meeting of Shareholders as stipulated in Article 77 paragraph (1) of the Law on Limited Liability Companies is not in line with the juridical provisions regarding the presence of notaries, parties and witnesses where this is contained in Article 16 paragraph (9) of the Law on the Position of Notary Public. 11 of 2008 concerning Information and Electronic Transactions. It is necessary to reconstruct several articles in laws and regulations relating to the electronic signing of authentic deeds, including: Article 1 point 1 Law no. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary; Article 15 paragraph (1) of Law no. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary; Article 5 Paragraph 4 of Law no. 11 of 2008 concerning ITE; Article 61 paragraph (3) Government Regulation Number 71 of 2019 concerning Implementation of Systems and Electronic Transactions for Making Electronic Signature Data.

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