

Implementation of Electronic Signatures on Notarial Deeds, to Reduce Disputes, to Create Legal Certainty

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Abstract

The process of transferring rights in notarial practice in Indonesia often experiences disputes, from all over disputed issues being handled Assembly Supervisor Notaries in West Java and Banten province in Indonesia, around 78% are related to the use of power of attorney in his actions, then for action, the good thing is done in a way directly by the authorized person with avoid implementation that uses power. To address the problem limitations, the deed can be done by adopting electronic signatures as an alternative solution. The implementation can be made with adjustments to the interpreted value from the applicable laws in Indonesia. The purpose of this article is to interpret the concept of adopting electronic signatures in notarial deeds. This article is legal research that uses a normative legal research method. Facing a Notary Public is a condition mandatory requirement that must be met holder's right to make an Authentic deed (Notary Deeds), in this situation, people who can't fulfill it often give power of attorney to people they trust for facing the notary, but it turns out matter this often become root problem, then done signing deed Notary Public with adopt electronic signature However with constant standardization ensure fulfillment condition formal facing. All Notary Publics must adopt the concept that is not explicitly mentioned in regulations, but must be translated clearly and concisely so that its purpose and objectives can be translated into concrete actions, making the adoption of technology an inevitability that can be implemented to make legal certainty.

Keywords: electronic signature, notary deeds, legal certainty

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Introduction

In Indonesia, notarial deeds must be signed by the parties in front of a notary. This rule is clearly stated in Article 16, paragraph (1), letter m of Law No. 2 of 2014 on the Position of Notary (Indonesia, 2014). However, in many cases, one of the parties is unable to appear in person. Usually, they give power of attorney to someone else to represent them. Unfortunately, this often leads to legal disputes and issues with the validity of the deed.

At the same time, technology is changing how legal services work. Electronic signatures (e-signatures) are widely used in many sectors. But in the current law, specifically Article 5 paragraph (4) of Law No. 1 of 2024 on the Electronic Information and Transactions (ITE) Law (Indonesia, 2024), notarial deeds are excluded from using e-signatures.

This study offers a possible solution: collaboration between two notaries. One is the primary notary, who creates the deed. The other is the local notary, who helps the party in another region sign the document electronically. This method still respects the notarial process and keeps the deed authentic.

The purpose of this article is to provide an alternative solution for implementing the use of electronic signatures in notarial deeds with the concept of multiple notaries in one deed where one notary acts as the primary notary who makes the minutes and one or more other notaries act as verifiers of the electronic signature where each party will face each notary to fill in their agreement in the deed made by the primary notary. This can be in line with the concept of making notarial deeds in Indonesia with a fairly high possibility of implementation. This concept was created from the understanding of the author, who also works as a notary.

Literature Review

The Nature of Notarial Deeds

A notary is a public official appointed by the government to perform various legal actions, including the making of authentic deeds. According to Law Number 2 of 2014 concerning the Position of Notary, a notary is “a public official who is given the authority to make authentic deeds and has the function of providing legal certainty.” In carrying out their duties, notaries must comply with the applicable code of ethics and regulations, as well as maintain their independence and integrity (Indonesia, 2014). Notarial deeds have perfect evidentiary power (Budiono, 2012). A notarial deed is an official document made by a notary and signed by the parties involved in an agreement or transaction. This deed has high legal force and can be used as perfect evidence in court. According to Article 1868 of the Civil Code (KUHPer) (Subekti, 2014), a notarial deed is considered an authentic deed, which means that the contents of the deed are considered true and cannot be disputed by a third party. The process of making a notarial deed begins with a consultation between the notary and the client. The notary will explain the requirements and assist the client in preparing the necessary documents. After all the requirements are met, the notary will make a deed containing important information regarding the transaction. After that, the deed will be signed by all parties involved and witnessed by the notary.

The main function of a notarial deed is to provide legal certainty and protect the rights of the parties. For example, in a transaction to buy and sell shares in a company, a notarial deed will

include all the terms and conditions agreed upon by the seller and buyer. With a notarial deed, both parties can feel safe because the ownership rights to the shares are legally guaranteed.

Essence of Acceptance

Contract law regulates the legal relationship between two or more parties, where one party (creditor) has the right to demand something from another party (debtor), and the debtor is obliged to fulfill the demand. Contracts can arise from agreements (contracts) or laws (for example, unlawful acts or non-obligatory payments).

Agreement (consensus/overeenstemming) is one of the requirements for the validity of a contract based on Article 1320 of the Civil Code (KUHPerdota). Without agreement, a contract can be canceled (Subekti, 2014).

Agreements are formed from the Offer and Acceptance process, where in this case one party and the other may accept, bargain or reject it so that the will of both parties (Meeting of Minds) is met, where they must understand each other about the Object of the agreement, Rights and obligations of each. In general, the Validity Requirements for an Agreement based on Article 1320 of the Civil Code, an agreement is valid if:

- The agreement is free from defects (no coercion/fraud).
- The competence of the parties (adult & sane).
- Certain objects (goods/services agreed upon are clear).
- A lawful cause (the purpose does not violate the law).

This agreement is in the form of: Oral (Valid as long as it can be proven), Written (More legally secure, like a notary deed and contract), and Electronic (recognized by the Electronic Information and Transaction Law) (Budiono, 2012).

The agreement (consensus) that is made can be implemented digitally, which can be formed through a digital platform, such as a website, application, email, or digital signature. This concept is legally recognized in Indonesia through the Electronic Information and Transactions Law (UU ITE) and the Civil Code (Indonesia, 2008), it turns out that notarial deeds are excluded from these regulations.

In 2024, changes were passed to the ITE Law in Indonesia, which began to open up opportunities for the application of electronic signatures in Indonesia for Notarial Deeds because the exceptions as previously stated were eliminated.

This study sees that the opportunity to apply electronic signatures to notarial deeds is increasingly open and increasingly possible to be applied so that this study will ensure that the process can be carried out while still ensuring that the doctrine and regulations applicable to notaries can still be implemented by minimizing friction in their regulations. So we offer a signing concept that adopts a digital signature in a notarial deed which at the same time changes the doctrine that makes digital deeds or minutes of deeds recognized as powerful.

Recognition of this digital notarial deed is very important because in addition to paving the way for the implementation of digitalization for notaries, it is also a solution to the problem of distance and time for an act that has a special situation that is more credible than the granting of power of attorney and the process that is gone through in electronic authentication in the use of electronic signatures will also increase security in the process of making deeds. Based on

the results of the study data that I conducted in my dissertation research, 78% of the existing problems are problems concerning the granting of power of attorney for a legal act and this should be anticipated immediately so that it does not happen again in the future.

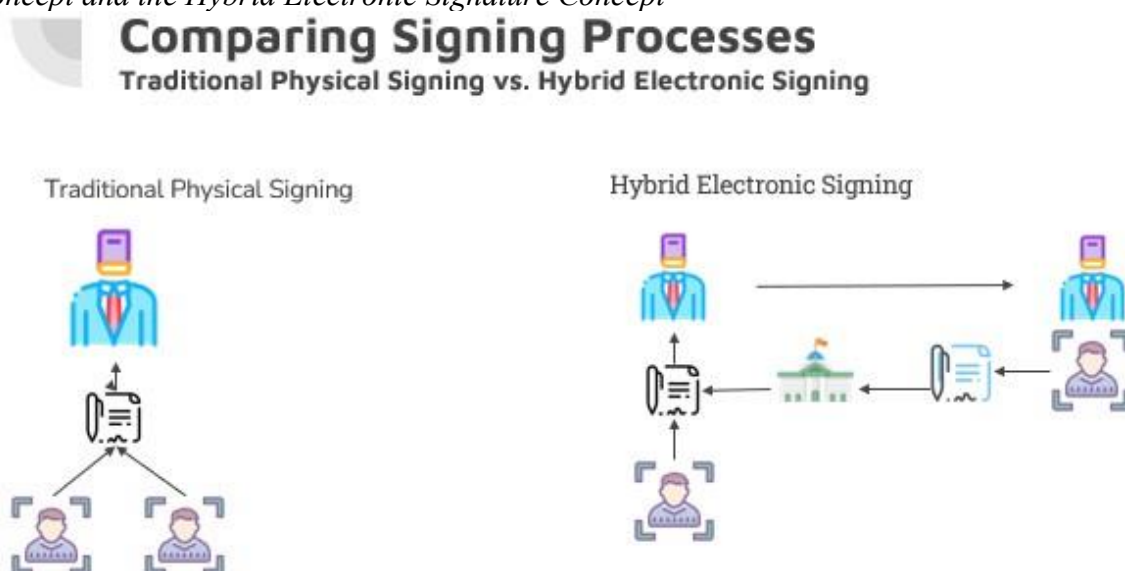
Methodologists

This study uses a normative legal method with a qualitative approach. Data were collected through an in-depth literature review of relevant laws and regulations, official documents, and academic literature related to notarial deeds. In addition, interviews with notary practitioners were also conducted to gain practical perspectives on the challenges and best practices in making notarial deeds.

Result and Discussion

Figure 1

Comparison Between the Use of Wet Signatures in the Traditional Physical Signature Concept and the Hybrid Electronic Signature Concept



The process that has changed in this case is that previously to make a deed, all parties had to appear before a notary and this was very inefficient because if the parties were scattered and lived in distant places, this would take a lot of time and energy as well as resources so that it was very inefficient in terms of time, economy and social so that the author based on the research conducted if electronic signatures can be applied in notarial deeds, then making deeds with a hybrid concept can be a superior solution.

Ensuring that legal acts are carried out perfectly is a task that must be carried out by a professional notary, but making it difficult for users of notary services is certainly not a good choice in carrying out this professionalism, so if electronic deeds can have the same power as conventional deeds (printed deeds) then this is a breakthrough that will make things very easy and still maintain the dignity and function of the notary's position perfectly.

So, as illustrated in the diagram, a person who wants to provide an agreement through an electronic signature only needs to come to appear before a notary where he is and no longer

needs to come to a notary who is far away from him, so in this case it will save time, travel accommodation costs and even minimize the risks that may arise from this act.

So we can simply describe this concept as follows: Traditionally, the notary drafts the deed and all parties must be physically present for reading and signing. If any party is absent or fails to read the deed, the document may be rendered invalid or downgraded to a private deed. In contrast, the collaborative model involves a primary notary who drafts the deed and a local notary who facilitates the party's appearance and electronic signing. The local notary verifies identity, ensures understanding of the document, and oversees the placement of the certified e-signature. Both notaries ensure all legal steps are fulfilled.

Table 1

Comparison Table to Show, the Traditional Deed Making Concept and the Digital Collaborative Concept (With More Than One Notary)

Step	Traditional (One Notary)	Collaborative Digital (Two Notaries)
Deed Preparation	Written by one notary	Written by primary notary
Party Appearance	All parties appear at the notary's office	Each party appears at a local notary office
Reading of Deed	Read aloud by the notary	Read remotely or waived with agreement
Signature	Wet ink signature	Certified electronic signature
Notary Legalization	Signed and sealed by primary notary	Signed by primary and/or local notary
Legal Status	Fully authentic deed	Still authentic under Notary Law

In this case there may be many questions that arise why this concept needs to be done?, this is because there is a problem that has been going on for a long time in the world of notaries in Indonesia where there is an obligation that must be carried out by notaries to be careful and precise, so that the concept of facing a notary becomes something very important and the author agrees not to eliminate this in the concept of cyber notaries which may be adopted in the notary system in Indonesia, therefore the concept of this hybrid electronic signature is something superior because it does not kill the doctrine that has long existed and lives in society but also ensures that the main concern remains in place, it's just that this will be able to be implemented if the laws and regulations have legitimized that digital deeds have the same power as printed deeds which have been a traditional concept (Sutaryo, 2017).

The equality of digital deeds has the same power as printed deeds is Legal Certainty. If the legal force of a digital deed cannot be the same as a printed deed, then it means that a notary cannot apply the concept of cybernotary because the gateway to cybernotary is by recognizing the existence of a digital deed, which of course, will result in creating legal uncertainty. According to the progressive Indonesian legal figure Prof. Satjipto Rahardjo, good law must be fair, useful, and certain (Raharjo, 2012).

Conclusion

The implementation of the signing of a deed collaboratively in the notary system allows a deed in digital form to be signed by the parties facing the notary, where this signing will ensure that every function of the notary's office is maintained properly, making every process perfect. Where a primary notary issues minutes, while other notaries act as digital signature verifiers who use the concept of legalization, namely, validating signatures in digital form.

This collaborative system allows people to sign notarial deeds electronically without losing the legal strength of the document. It also solves the problem of using a power of attorney, which is often abused.

For this model to work well, Indonesian law needs to be updated. Especially, the ITE Law must allow notarial deeds to use electronic signatures under certain conditions. If this happens, notaries can provide better, safer, and more modern legal services while still protecting the authenticity and legal certainty of each deed.

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