

The Use of Electronic Signatures and Seals in Notarial Deeds According to the Principle of *Tabellionis Officium Fideliter Exercebo*

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ABSTRACT

The notary as the official authorized to make authentic deeds in carrying out his duties must work traditionally due to the principle of Tabellionis Officium Fideliter Exercebo. Technological developments and the needs of the community make making agreements today easier and more concise, namely by using electronic signatures and seals in an agreement. The question that arises from this background is whether the use of electronic signatures and seals is under the principle adopted by a notary, namely the Tabellionis Officium Fideliter Exercebo principle. The result of this research is that the use of electronic signatures cannot be applied because the legislation does not allow certified digital signature on notarial deeds so the use of digital signatures on notarial deeds is not following the principle of the Tabellionis Officium Fideliter Exercebo, while the use of electronic seals can be carried out and does not conflict with this principle because apart from the stamp duty, it is not a requirement for the validity of a deed, the use of an electronic seal in a notarial deed is also possible under the Stamp Duty Act.

ABSTRAK

Notaris sebagai pejabat yang berwenang dalam pembuatan akta otentik dalam melakukan tugasnya mengenal asas Tabellionis Officium Fideliter Exercebo yang berarti notaris harus bekerja secara tradisional. Perkembangan teknologi dan kebutuhan masyarakat membuat pembuatan perjanjian saat ini dapat dilakukan dengan lebih mudah dan ringkas yaitu dengan digunakannya tanda tangan dan meterai elektronik dalam suatu perjanjian. Berdasarkan latar belakang tersebut maka muncul suatu pertanyaan yaitu apakah penggunaan tanda tangan dan meterai elektronik sesuai dengan asas yang dianut oleh notaris yaitu asas Tabellionis Officium Fideliter Exercebo. Penelitian ini merupakan penelitian yuridis normatif dengan pendekatan statute approach dan conceptual approach. Hasil dari penelitian ini adalah penggunaan tanda tangan elektronik belum dapat diterapkan karena peraturan perundang-undangan belum memungkinkan dilakukannya tanda tangan digital pada akta notarial sehingga penggunaan tanda tangan digital pada akta notaris tidak sesuai dengan asas Tabellionis Officium Fideliter Exercebo sedangkan penggunaan meterai elektronik dapat dilakukan dan tidak bertentangan dengan asas tersebut karena selain meterai bukan merupakan suatu syarat keabsahan suatu akta penggunaan meterai elektronik dalam akta notaris juga dimungkinkan berdasarkan undang-undang Bea Meterai.

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I. INTRODUCTION

A notary is a general officer who has the authority to provide evidence in the form of an authentic deed. The notary in making the deed must act carefully and pay attention to the applicable provisions

so that the deed he makes still has perfect evidentiary power in accordance with the provisions in article 1868 of the Civil Code which states that a deed is considered authentic when the deed is formed in accordance with the provisions of the law and is made by the general officer at the place where the deed is made. The provisions in article 1868 of the Civil Code are based on a principle known in the notarial world, namely the principle of the *Tablelionis Officium Fideliter Exercebo* which means that notaries must work traditionally. (Sri Maulina; et.al, 2021) Working traditionally in question is that the notary must follow the provisions in the laws and customs justified by the regulations in the making of the deed. (Iqbal, 2022).

Provisions regarding the Notarial Deed are regulated in chapter VII of the Notary Position Law. The chapter regulates the composition of the contents of the deed produced by the notary, the provisions of the parties who can face the notary, the provisions regarding witnesses that can be used in the making of notarial deeds, the technical provisions for making notarial deeds and the provisions for signing by the parties. (Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, n.d.) The signing by the parties needs to be regulated in the making of a notarial deed because the notarial deed is a container of an agreement, in order for the agreement to be valid and the notarial deed can be used, it is necessary to have the approval of the parties regarding the matters that have been promised, the statement of approval of the parties in the deed can be symbolized by the affixing of signatures by the parties.

De Joncheere in Tan Thong Kie mentions that the affixing of the signature in the deed indicates the willingness of the sign maker that the writing he signed in law be regarded as his own writing. (Kie, 2011) Undang-undang tidak mengatur secara spesifik mengenai bentuk dari tanda tangan, berdasarkan Kamus Besar Bahasa Indonesia tanda tangan merupakan lambang nama yang dituliskan dengan tangan oleh orang itu sendiri sebagai penanda pribadi. According to *De Joncheere* in Tan Thong Kie a signature must have an individual nature therefore the signature needs to be written by hand from the signatory itself. (Kie, 2011) This notion of a signature is still believed today and gives rise to the assumption that a signature in an agreement must be a wet signature affixed directly by the signature owner's hand.

Along with the development of technology and the needs of society today the laws and regulations in Indonesia have recognized the form of electronic signatures, namely signatures consisting of electronic information that is attached, associated or related to other Electronic Information used as a means of verification and authentication. (Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, n.d.) Electronic signatures consist of two types, namely certified signatures, are electronic signatures that use cryptographic / encoding mechanisms and are issued by the Electronic Certificate Operator and uncertified signatures, namely electronic signatures made without using the services of the Indonesian Electronic Certification Provider. (Peraturan Pemerintah Nomor 71 Tahun 2019 Tentang Penyelenggaraan Sistem Dan Transaksi Elektronik, n.d.) Uncertified electronic signatures can be scanned signatures, QRcode and Barcode however, these signatures do not meet the requirements of a valid digital signature under the law. (*Rapat Pendahuluan Penerapan Sertifikat Elektronik Di Lingkungan Kementerian PPN/Bappenas*, n.d.)

The existence of electronic signatures is intended to facilitate transactions carried out by the public, with the use of electronic signatures, signing activities can be carried out anywhere as long as there is still a network that can connect the devices used to documents to be signed electronically. In addition to signatures, the seal is also a part that is closely related to a treaty. Article 3 of the Stamp Duty law states that Stamp Duty is imposed on documents made as a tool to explain an event

of a civil nature and that the document is used as evidence in court.(Undang-Undang Nomor 10 Tahun 2020 Tentang Bea Meterai, n.d.) The documents referred to in this article are as follows:(Undang-Undang Nomor 10 Tahun 2020 Tentang Bea Meterai, n.d.) Letter of agreement, statement and statement or other similar letter and its duplicate; Notarial deed along with *grosse*, copy and quotation of deed; Deed of Land Deed Making Officer along with copies and quotations; Securities with names and in any form; Securities transaction documents including futures contract transactions under any name and in any form; Auction documents in the form of quotations, minuta, copies and *grosse* of auction minutes; A document stating the amount of money with a nominal value of more than RP5,000,000 (five million rupiah) that mentions the receipt of money or contains an acknowledgment that all or part of it has been repaid or taken into account; and Other documents stipulated by Government Regulation.

Payment of Stamp Duty is made using a seal which currently consists of three types, namely postage meter, electronic seal or seal in another form set by the Minister, stamp duty payment can also be made using a tax deposit letter if payment using the seal is considered inefficient or impossible. From the description above, it can be seen that a notarial deed is a document in which there is always a signature and seal, the use of electronic signatures and seals can certainly facilitate the transactions of the parties who want their agreements to be stated in an authentic deed however, whether the use of electronic signatures and seals is in accordance with the principles adopted by the notary, namely is the principle of *Tabellionis Officium Fideliter Exercebo*?

II. RESEARCH METHODS

This research is a normative juridical research, namely research aimed at finding the truth of coherence between the rule of law and legal norms, norms with legal principles or actions of a person with legal norms or legal principles.(Marzuki, 2014) The approach used in this study is *a statute approach and conceptual approach*, namely legislation and views that develop in legal science (doctrine) to be the basis for thinking in research.(Marzuki, 2014).

This study is aimed at finding coherence between the laws and regulations regarding electronic signatures and seals with the principle of *the Tablelionis Officium Fideliter Exercebo* which applies to notaries in making deeds. The research was conducted by examining literature or secondary data.(Jonaedi Efendi; Johnny Ibrahim, 2018) The legal materials in this study are divided into three, namely primary legal materials in the form of laws and regulations, official records or minutes in making laws and regulations, secondary legal materials in the form of all publications about the law that are not official documents such as textbooks, legal journals and comments on laws and regulations and non-legal materials in the form of documents outside the legal science that still have a correlation with this research such as the Big Dictionary of Language Indonesian.

III. RESULT AND DISCUSSION

An electronic signature under the Electronic Information and Transactions Act is a signature consisting of an electronic information connected to other electronic information, used as a means of verification and authentication. electronic information in an electronic signature is likened to a public key and a private key that authenticates each other, the private key acts as a key that encrypts the data associated with the signature while the public key describes the data associated with the signature.(Eka Wahyuni; et.al, 2022) Edmon Makarim in his book mentions that technically the

existence of a signature represents the existence of a verification action from the signatory against what he signed. (Makarim, 2016)

The parties before agreeing to an agreement should ideally have studied in advance the content of the agreement to be signed, this is an attempt that the signatory can make to protect himself from clauses that he feels will incriminate him in the future. The parties can re-discuss the content of the agreement if there is a clause that is still not in accordance with the wishes because one of the valid conditions of the agreement under Article 1320 of the Civil Code is the agreement of the parties and the parties have the right to determine for themselves the content of an agreement as long as the agreement does not conflict with applicable laws or customs. (Kitab Undang-Undang Hukum Perdata, n.d.)

The affixing of the signature by the parties is a symbol that the parties have understood the consequences of making the agreement and the parties agree on the agreement so that with the signature it can be known that there is a conformity between the signed information and the identity of the legal subject because the signature is a sign that has a special characteristic that can identify a person's identity so that the signature attached to an information will link the information to the owner of the signature, besides the presence of the signature also indicates the certainty of the signatory's involvement in a deed and the signature may also indicate the intention of the signatory's approval of the agreement.

Verification of the identity of the party performing the signature in a conventional way can be done by matching the signature in the agreement with the signature listed in another document that has previously stored the signature such as the Identity Card. (Makarim, 2016) Identity verification of an electronic signature can be done in several ways, namely: (Makarim, 2016) Use of keywords or their combinations; Electronically scanned signatures or name typing; The use of the approval or acceptance button feature electronically supported by a secure communication channel; The use of unique markings on the limbs (biometric); and Digital signature based on encryption of a message.

Based on this explanation, it can be seen that although there are different forms from conventional signatures and electronic signatures, each signature has the same function so that basically the use of electronic signatures can be equated with the use of conventional signatures, however, it should be noted that electronic signatures that are recognized as valid under the Electronic Information and Transactions Act are electronic signatures. which is stated in an electronic information or an electronic document, this indicates that the process of signing the document is not carried out on a written document whereas the Electronic Information and Transactions law excludes the applicability of electronic documents to documents that under the law must be made in written form and documents in the form of notarized deeds or deeds made by the official certifier of title deeds. (Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, n.d.)

The notarial deed as a written evidence of perfect evidentiary power must be made based on the applicable provisions so that the electronic signature cannot be used in the signing of the parties to the deed because the use of electronic signatures on the notarial deed makes the making of the deed not in accordance with the provisions in the Notary Position Law juncto the Electronic Information and Transaction Law which stipulates that against the notarial deed cannot be made in the form of an electronic document but rather its creation must still refer to the Notary Office Act. Signings carried out using electronic signatures in notarial deeds in the form of electronic documents result in the deed not having perfect evidentiary power because it does not meet the principle of the

Tablelionis Officium Fideliter Exercebo which requires the notary in making the deed to refer to the applicable laws and customs.

A seal is a label or carik in the form of paste, electronic or other forms that have characteristics and contain elements of security issued by the Government of the Republic of Indonesia and function as proof of tax payment on documents. Law Number 10 of 2020 concerning Stamp Duty, n.d.) Tax on documents has a fixed rate of RP10,000 (ten thousand rupiah) and is paid when: (Law Number 10 of 2020 concerning Stamp Duty, n.d.) Documents in the form of a letter of agreement, notarial deed and deed of the Land Deed Making Officer along with grosse, copies and / or excerpts of the documents concerned are signed by the parties; Documents in the form of securities documents and securities transaction documents are completed; Documents in the form of affidavits, certificates, auction documents and documents stating that a certain amount of money was handed over to the recipient; Documents are submitted to the court as evidence; and These documents are used for purposes in Indonesia.

The stamp duty on the notarial deed is not regulated by its provisions in the Notary Position Law so that it can be known that the provisions used are those regulated in the Stamp Duty Law. The Stamp Duty Law in Article 12 expressly states that at this time there are three types of seals that can be used as payment of document taxes, namely the postage stamp, electronic seal and seal in other forms stipulated by the Minister. Electronic sealing can be done through the pos.e-meterai.co.id page. electronically after the party who will attach the seal has paid the necessary fee, after the seal is attached to the document, a menu will appear enter the PIN and the party who attaches the seal needs to enter the PIN that has been registered at the time of account registration. (*Cara Penggunaan Di Meterai Elektronik*, n.d.)

Unlike the electronic signature, the electronic seal can be attached to a document in the form of handwriting, printed or electronic. In addition, the affixing of the seal in a document does not affect the validity of the agreement contained in the document and does not affect the form of the document itself because the seal does not serve as a marker of the agreement by a particular individual but rather serves as a sign that the tax on the document has been paid. Based on this, it can be known that the process of making a notarial deed with the help of electronic technology can be carried out until the establishment of the electronic seal, the parties must still put a wet signature on the notarial deed. (Jenny Lourencia Rumpuin dan Antarin Prasanthi Sigit, 2022)

IV. CONCLUSION

The use of electronic signatures cannot be applied because electronic signatures can only be used on electronic documents while the Electronic Information and Transactions Act excludes Notarized Deeds as deeds that can be made in the form of electronic documents so that the use of digital signatures on notarial deeds will violate the provisions of the legislation and lead to non-fulfillment of the principle of the Table of *Officium Fideliter Exercebo* while the use of the seal electronics in a notarial deed can be done and does not conflict with that principle because in addition to the seal is not a condition of the validity of a deed, the electronic seal can be used on documents other than electronic documents.

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