

Validity Of Notary Deeds And Land Deed Officials Made Electronically

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Abstract.

This study discusses Government Regulation Number 81 of 2021 which allows deeds to be made electronically which is linked to related laws and regulations in order to review whether electronic deeds are included in authentic deeds or not. This study aims to determine the legal basis for electronic deeds as authentic deeds and to determine the legal problems that will arise if notaries and PPATs make deeds electronically. This type of research is doctrinal normative research with a statutory approach using progressive legal theory. The findings of this study are that electronic deeds with the development of an advanced era like this can become authentic deeds with the note that there must be several regulations that must be changed to recognize electronic deeds as authentic deeds. The conclusion of this study is that electronic deeds produced by an Electronic Information system that has been legalized or guaranteed by authorized professionals in this case a notary and a land deed official are authentic deeds and there are still problems if electronic deeds are implemented, namely: Inconsistency with laws and regulations, There is no definite recognition of electronic deeds as authentic deeds, Validity and authenticity of electronic deeds, No digital evidence and forensics, Lack of infrastructure and readiness of implementers, No implementation guidelines.

Keywords: *Electronic Deeds; Authentic Deeds; Notaries and Land Deed Making Officials.*

I. INTRODUCITON

Nowadays, the use of technology is increasingly used by the general public, including individual professional workers such as doctors, lawyers, and notaries and land deed officials. The ease of access that everyone can have to electronic media makes it easier and encourages all groups to do everything electronically, including making transactions and agreements made electronically. The use of electronic transactions and agreements today has been widely used by individuals to make transactions in modern markets that use internet media such as Tokopedia, Shopee, etc., as well as between companies that exchange agreements and agreements via e-mail. The Civil Code in this case also does not limit how the agreement is stated whether in physical form in the form of hard copy or in the form of an electronic file in the form of soft copy. The agreements remain valid and applicable if they have met the requirements for a valid agreement based on Article 1320 of the Civil Code, namely: 1. Agree, 2. Capable, 3. A certain thing, 4. A lawful cause and the agreement is classified as a private agreement. Different from the provisions used in authentic deeds made before a notary or land deed official. Article 1868 of the Civil Code defines "an authentic deed is a deed made in a form determined by law by/or before a public official authorized for that purpose, at the place where the deed is made". An authentic deed must not only meet the requirements for the validity of an agreement based on Article 1320 of the Civil Code but must also meet the provisions in Article 1868 of the Civil Code which are cumulative in nature or must cover everything. Deeds made, even if signed by the parties, but do not meet the requirements of Article 1868 of the Civil Code, cannot be treated as authentic deeds, they only have the power as private deeds.

The provisions regarding the authority of a Notary to make authentic deeds are regulated in Law No. 30 of 2004 concerning the Position of Notary as amended by Law No. 2 of 2014 (hereinafter referred to as Undang- Undang Jabatan Notaris). Article 1 number 1 of Undang- Undang Jabatan Notaris states that a Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws. Meanwhile, the provisions regarding the authority of the Land Deed Making Officer to make authentic deeds are regulated in Government Regulation No. 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officer. Article 1 number 1 of PP No. 37 of 1998 as

amended by Government Regulation No. 24 of 2016 (hereinafter referred to as PJPPAT) states that the Land Deed Making Officer is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights over apartment units. In relation to Article 1868 of the Civil Code, the phrase "at the place where the deed is made" in Article 1868 of the Civil Code, relates to the domicile of the Notary, that the Notary has a domicile in the district or city area (Article 18 paragraph (1) Undang- Undang Jabatan Notaris). The Notary's area of office covers the entire province from his domicile (Article 18 paragraph (2) Undang- Undang Jabatan Notaris) and the PPAT also holds the position of Notary at the Notary's domicile.

Through a seminar on February 21, 2024 entitled "PPAT Policies and Regulations in Land Activities", the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency in 2024 uses Electronic Deeds made by PPAT in transactions that will be used. The use of the electronic deed raises doubts for the author regarding whether the deed is still considered an authentic deed or the electronic deed will be degraded to a private deed because an authentic deed must not only meet the requirements for the validity of an agreement but must also meet the requirements contained in Article 1868 of the Civil Code, especially where the deed is made because for Notaries and PPATs the deed cannot be signed outside the area of their domicile and work area, while in the electronic deed simulated by the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency is the making and signing of the deed carried out electronically using "video conference" facilities. The affixing of a signature on a deed carried out in the virtual world certainly raises doubts, whether the affixing of the signature was carried out at the person's location, at the location of the Ministry of Agrarian Affairs and Spatial Planning of the National Land Agency as the application organizer, or at the location of the Notary and Land Deed Making Officer. If all subjects are in the same area as the Notary and Land Deed Making Officer, this does not cause problems regarding the element of where the deed was made, but if the person is outside the area of the Notary and Land Deed Making Officer and signs the deed, it will potentially become a problem in the future, because in the world of Notaries and Land Deed Making Officers, the work area is something that must be considered very much by a Notary and Land Deed Making Officer. They may not bring the deed to be signed outside the area of the Notary and Land Deed Making Officer's work. Therefore, the author would like to discuss the validity of electronic deeds made by Notaries and PPATs, whether the electronic deeds can be categorized as authentic deeds or not and what are the legal consequences that will arise in the electronic deeds. Based on the author's description above, the author decided to conduct a study entitled "Validity Of Notary Deeds And Land Deed Officials Made Electronically".

II. METHODS

The type of research used by the author in writing this law is doctrinal or normative legal research which is conducted by researching library materials. According to Peter Mahmud Marzuki, doctrinal research is a process of finding legal rules, legal principles, and legal doctrines in order to answer the legal issues faced which is conducted by researching library materials (library based) which focuses on reading and studying primary and secondary legal materials so that legal writing will be able to produce new theoretical or conceptual arguments as prescriptions in solving the problems faced. This research is normative because according to Peter Mahmud Marzuki, returning to the function of research, legal research seeks to find the truth of coherence, namely whether the rule of law is in accordance with legal norms and whether the norms in the form of commands or prohibitions are in accordance with legal principles, and whether a person's actions (acts) are in accordance with legal norms (not only in accordance with legal rules) or legal principles.

III. RESULT AND DISCUSSION

From a progressive legal perspective, electronic deeds made by a notary or Land Deed Making Officer (PPAT) are not merely technical innovations, but are a reflection of legal efforts to present more substantive and responsive justice to the needs of the community. Progressive law, as stated by Prof. Satjipto Rahardjo, is a law that emphasizes the dynamics of social and technological change in order to create more

appropriate and relevant justice for the community. In this context, legal and legally recognized electronic deeds are an important step towards broader and more effective legal modernization and accessibility.

Electronic deeds have the potential to accelerate access to justice and efficiency of services (for example, accelerating land registration or the establishment of legal entities) which is in line with the purpose of law as a social instrument. The digitalization initiative of mortgage deeds and electronic registration are adaptive legal steps that can serve the interests of the wider community more practically and economically. However, the principle of substantive justice also demands fair treatment of all levels of society.

For example, regulations must guarantee the security and confidentiality of electronic data and access for those less technologically literate. Negatively, the affirmation of the electronic information and transaction law Article 5 (4) b which hinders electronic deeds can be seen as contradictory to the spirit of legal adaptation; according to Rahardjo, rules that are rigid and irrelevant to the social context can actually lead to injustice. Experts highlight that the absence of explicit rules on electronic notarial deeds currently makes it almost impossible for notaries to use technology in making deeds, because physical presence is a requirement in the notary law. In a progressive legal framework, policies of this kind are expected to be revised so that the law remains a means that benefits society, not a barrier to social progress. Reviewing the requirements for an authentic deed, Article 1868 of the Civil Code states, "An authentic deed is a deed in the form determined by law made by or before authorized public officials in the place where the deed is made." This article regulates the definition and requirements for a deed to be considered an authentic deed. According to R. Subekti, public officials include notaries, judges, bailiffs in a court, and civil registry officials.

The elements contained in Article 1868 of the Civil Code are as follows:

- a. The deed is made and formalized in a form according to law;
- b. The deed is made by or before an authorized public official;
- c. The deed is made at the place where the public official is located.

The authenticity of a notarial deed is also inseparable from the notary's obligations as stated in Article 16 Paragraph (1) letter m of the amendment to the notary law, namely that the notary is required to read the deed in front of the person appearing in the presence of at least 2 (two) witnesses or 4 (four) witnesses specifically for the making of a private will deed, and signed at that time by the person appearing, witnesses and the notary. This must not be forgotten or ignored by the notary because it is closely related to the authenticity of the deed, if the deed is not read then based on Article 16 paragraph (9) the deed only has the power of proof privately.. According to Article 1 number 7 of the Notary Law, "A Notarial Deed hereinafter referred to as a Deed is an authentic deed made by or before a Notary according to the form and procedures stipulated in this Law". The general understanding of before a notary and which is still the custom of notaries and PPAT is in the sense of having to be physically present and face to face with the notary according to their work area, but by utilizing the Electronic System, the function of the Electronic System is to prepare, collect, process and analyze, store, display, announce, send, and/or distribute Electronic Information, from the word "prepare", it can be seen that from the beginning of the making of the Deed, the form and procedures have been prepared by utilizing the Internet/Electronic Media which later in the Cyber Notary concept will produce an Electronic Document.

In this concept, that facing physically (directly face to face) is not necessary, but can be done by using audio-visual media (such as teleconference or skype), without regional boundaries (City/Province). The concept of Cyber Notary explains that a Notary in making a Deed for them (the parties) does not need to meet them physically, without having to come to the Notary's Office and can also serve (make Deeds) without territorial boundaries (Local, Regional, National, and between Countries). In relation to the making of deeds electronically, in terms of electronic proof of deeds, it is not yet known for certain whether their legal standing is included in the category of authentic deeds or is equated with private deeds. In this case, there is still controversy regarding the legal standing of electronic deeds in proof, whether electronic deeds are included in the form of authentic deeds or are equated with private deeds. Arsyad Sanusi is of the opinion: An electronic document, if it is produced by an Electronic Information system that has been legalized or guaranteed by authorized professionals for that purpose, then it is an authentic document, and if the

Electronic Information system can continue to run as it should, as long as it is not proven by the parties, the electronic document is accepted as an authentic deed or document, and not a private deed.

The position of electronic deeds in proving civil cases can be said not as an authentic deed that stands alone, because the authenticity of the authentic deed still needs to be proven. The process of proving the authenticity of the electronic deed requires expert testimony that is able to explain the authenticity of the deed. The law on information and electronic transactions regulates that electronic information/electronic documents and/or their printouts are valid legal evidence, and are an extension of valid evidence in accordance with the applicable procedural law in Indonesia. However, not all electronic information/electronic documents can be used as valid evidence. According to the Law On Information And Electronic Transactions, electronic information/electronic documents are declared valid as evidence if they use an electronic system that complies with the provisions stipulated in the Law On Information And Electronic Transactions, namely a reliable and secure electronic system, and meets the following minimum requirements:

1. Can re-display Electronic Information and/or Electronic Documents in their entirety in accordance with the retention period stipulated in the Laws and Regulations;
2. Can protect the availability, integrity, authenticity, confidentiality, and accessibility of Electronic Information in the Implementation of the Electronic System;
3. Can operate in accordance with the procedures or instructions in the Implementation of the Electronic System;
4. Equipped with procedures or instructions announced in language, information, or symbols that can be understood by the parties concerned with the Implementation of the Electronic System; and
5. Has a sustainable mechanism to maintain the novelty, clarity, and accountability of the procedures or instructions.

From the description above, it can be understood that before an electronic document can be used as valid evidence, it must first be tested to meet the minimum requirements stipulated by law, namely that the creation of the electronic document is carried out using an electronic system that is reliable, safe and operates properly. Before an electronic document can be used as valid evidence, it must first be tested for the minimum requirements stipulated by law, namely that the creation of the electronic document is carried out using a reliable, secure and properly operating electronic system. Article 1 point 4, Article 5 paragraph (3), Article 6 and Article 7 of the Electronic Information And Transactions Law can be categorized as the formal and material requirements of an electronic document so that it has evidentiary value, namely:

- a. In the form of electronic information that is created, forwarded, sent, received or stored, which can be seen, displayed and/or heard through a Computer or Electronic System, including writing, sound, images...and so on that have meaning or significance or can be understood by people who are able to understand them;
- b. Declared valid if it uses/comes from an Electronic System in accordance with the provisions stipulated in the law.
- c. Considered valid if the information contained therein can be accessed, displayed, its integrity is guaranteed, and can be accounted for so that it explains a situation.

The formal and material requirements can be said that electronic documents in order to meet the minimum limit of proof must be supported by expert witnesses who understand and can guarantee that the electronic system used to create, forward, send, receive or store electronic documents is in accordance with the provisions of the law and must also be able to guarantee that the electronic document remains in the same condition as when it was created without any changes when received by the other party (integrity), that the document is indeed from the person who created it (authenticity) and is guaranteed not to be denied by its creator (non-repudiation). An electronic document, if produced by an Electronic Information system that has been legalized or guaranteed by professionals who are authorized to do so, then it is an authentic document, the provisions of which are regulated in the law; The description above shows that an electronic deed produced by an Electronic Information system that has been legalized or guaranteed by authorized professionals in this case a notary and a Land Deed Making Officer is an authentic deed.

One of the various examples of the application of cybernotary as stipulated in this positive Indonesian law, is stated in Article 77 of the Limited Liability Company Law, stating that the implementation of this General Meeting of Shareholders can be carried out in several ways, including video conferences, teleconference media, or other electronic media, which allows participants in the General Meeting of Shareholders to directly hear, see and even participate in the General Meeting of Shareholders where the meeting participants are concerned with carrying out the General Meeting of Shareholders through teleconference. Thus, it can be said that the preparation of minutes of the meeting made by a notary can be done electronically if there is certainty that it takes place online and in real time where the parties can directly participate or can be said to see and hear the course of the meeting.

Based on the results of an interview conducted by Praptika Nurul Tsany Salsabila with Helce Naue Notary in Gorontalo Province, he said that based on the facts, cybernotary still cannot be done because in the process of making a deed, it must be guided by or in accordance with the Notary Law, while the Notary Law does not regulate the making of deeds by cybernotary or can be said electronically and in practice in the field this is not possible because one of the authorities of a notary is to make an authentic deed which in making the deed must be in accordance with the Notary Law where the parties must be present before the notary to make the deed, but he also said that it should be possible because the person appearing and the notary still face each other even through media such as zoom meetings. In this era of globalization, electronic media which is already very sophisticated today can make it easier for clients and provide time efficiency for clients and notaries. The problem regarding the infrastructure for making deeds electronically with technology that is already quite advanced as it is today is not impossible, for example referring to the electronic deed making model presented by the Ministry of ATR/BPN as a service provider that can accommodate the requirements for signatures, presence/facing a notary/PPAT, and fingerprints attached to the deed.

Electronic deeds also have several advantages, namely;

1. Increasing Access to Legal Services (Access to Justice)

According to progressive legal theory, the law must be present as a means to help the community, not just to enforce the text of the rules. Digitalization of deeds brings notary and PPAT services closer to the community, especially in remote areas or during limited conditions (for example: the COVID-19 pandemic).

2. Time and Cost Efficiency

Electronic deeds reduce the need for physical meetings, paper documents, and shipping and archiving costs. This makes legal services faster and cheaper.

3. Adaptive to Technological Developments and Social Needs

Progressive law encourages the law not to be static and must be responsive to social and technological changes. Electronic deeds are a form of legal modernization according to the needs of the digital community.

4. Supporting Accountability and Security Through Technology

Electronic deeds equipped with certified digital signatures and good cybersecurity systems actually increase data security and audit trails. This is in line with the principles of progressive law which seek to balance rights and legal protection proportionally.

5. Encouraging More Responsive Legal Reform

The implementation of electronic deeds urges regulatory reform to be more contextual and progressive. This is a manifestation of the progressive legal agenda that seeks to improve the legal structure to be relevant to the conditions of modern society..

The progressive legal view allows for changes in legal rules if the current law is no longer in line with or even hinders human development. As explained by the author, the alignment of regulations and laws is very important and must be urgent for the government and regulators so that electronic deeds can become electronic deeds and be truly effective as evidence. Ultimately, the law must flow with the needs of the times; thus regulators and practitioners are expected to collaborate to form an electronic deed system that is fair, safe, and beneficial to all parties. Therefore, the author is of the opinion that electronic deeds can be categorized as authentic deeds, although for the current situation, there needs to be a change in regulations, both from laws to implementing regulations.

IV. CONCLUSION

Electronic deeds produced by an Electronic Information system that has been legalized or guaranteed by authorized professionals in this case a notary and a land deed official, then it is an authentic deed. Although with the current legal situation, several changes must be made to the Notary Office Law, the regulations on the office of land deed official and the law on information and electronic transactions.

REFERENCES

- [1] Faisal Maulana, "Legal Consequences of Notarial Deeds Made Electronically According to the Indonesian Legal System," *Crucial Issues in Family Law - Pamulang University*, N.D.
- [2] Adjie, *Indonesian Notary Law: Thematic Interpretation of Law No. 30 of 2004 Concerning the Position of Notary*. Pg. 92.
- [3] Dyastuti Rusidik Novi, "Norms Requiring Notaries to be Physically Present in Relation to Presidential Decree Number 11 of 2020 Concerning the Determination of a State of Emergency in Handling the Covid-19 Outbreak," *Journal of Law and Notary* 6, No. 2 (2022): 1035.
- [4] Fathurrahman, F., Irawan, A. ., & Fridayanti, sri . (2023). Effectiveness Of Regional Regulation Number 20 Of 2001 Regarding Regulation Of Street Traders And Seasonal Street Traders In Tarakan City. *International Journal of Educational Research & Social Sciences*, 4(3), 429–434.
- [5] Sulaiman, S., Halim Soebahar, A. ., & Mundir, M. (2023). Madrasa Diniyah Curriculum Transformation In Pesantren: A Study Of Wali Songo Mimbaan And Salafiyah Syafi'iyah Sukorejo Pesantren In Situbondo. *International Journal of Educational Research & Social Sciences*, 4(3), 444–453.
- [6] Mutiara Cipta, D. ., & Alvin, S. (2023). Safeguarding Personal Information: Communication Privacy Management By Gen-Z Influencers. *International Journal of Educational Research & Social Sciences*, 4(3), 465–471. <https://doi.org/10.51601/ijersc.v4i3.653>.
- [7] Mohammad Solekhan, Kunarto, & Mahmuda Pancawisma Febriharini. (2022). Forest And Land Fire Management Strategies : Prevention And Law Enforcement. *International Journal of Educational Research & Social Sciences*, 3(2), 567–580. <https://doi.org/10.51601/ijersc.v3i2.306>.
- [8] D. Yuliana Sinaga. (2022). The Effect Of Ralistic Mathematics Learning Model And Project-Based Learning Model On Problem Solving Ability And Motivation Of Students In Class V Private Sd Markus Medan Helvetia. *International Journal of Educational Research & Social Sciences*, 3(2), 590–600.
- [9] Nugroho, A. . (2022). Principle of Balance of Relationship Between Banks and Customers in Mudharabah Agreements. *International Journal of Educational Research & Social Sciences*, 3(2), 645–652.
- [10] Nugraha, B., Sianturi, I., & Aini Rakhman, R. (2023). The Effect Of Supply Chain Management And Corporate Communication Skills On Production Performance At PT. Berlian Manyar Sejahtera. *International Journal of Science, Technology & Management*, 4(6), 1477-1485. <https://doi.org/10.46729/ijstm.v4i6.966>.
- [11] Parulian Simanjuntak, G., & Sensi W, L. (2023). Evaluation Of The Implementation Of The Internal Audit Capability Model (IACM) Level 3 In The Supervision System Of The Inspectorate General Of The Ministry Of Agriculture. *International Journal of Science, Technology & Management*, 4(6), 1581-1602.
- [12] Hanif Triyana, M., & Indah Fianty, M. (2023). Optimizing Educational Institutions: Web-Based Document Management . *International Journal of Science, Technology & Management*, 4(6), 1653-1659.
- [13] Praptika Nurul Tsany Salsabila And Graciella Patras, "Legality of Using Digital Signatures in Notarial Deeds Based on Positive Law in Indonesia," *Salam: Jurnal Sosial Dan Budaya Syar-I* 9, No. 6 (2022): 1947–58,
- [14] Y. A. Kusuma, "Digital Transformation of the Notary Profession and Legal Protection for Service Users," *Jurnal Rechts Vinding* 10, No. 3 (2021): 491.
- [15] Y. Lubis, "The Existence of Electronic Deeds in the Perspective of Progressive Legal Theory," *Responsive Law Journal* 9, No. 1 (2021): 22–23.
- [16] Prayudicia Tantra Atmaja, "The Validity of Electronic Notarial Deeds in E-Commerce" (2019).
- [17] Yuliandri, "Digital Law and the Legal Profession in the 5.0 Era," *Law Journal*, 2022. Affirming that Digital Transformation in the Legal Field Reflects the Demands for Legal Adaptation to the Industrial Revolution 4.0 and Society 5.0.
- [18] Lubis, "The Existence of Electronic Deeds in the Perspective of Progressive Legal Theory." Mentioning that the Use of Public Key Infrastructure (PKI) and Digital Signature in Electronic Deeds Can Guarantee the Validity and Authenticity of Documents.
- [19] R. Harahap, "The Need for Updating Electronic Notarial Deed Regulations in the Digital Era," *Indonesian Legislation Journal* 17, No. 1 (2020): 34.