

Legal Aspects Regarding the Validity of Electronic Signatures (DIGITAL SIGNATURE) as Evidence of Electronic

Sigit Ardiansyah¹, Abdul Hakim², Maya Jannah³, Risdalina Siregar⁴

^{1,2,3,4}Faculty of Law, Labuhanbatu University, Indonesia

sigitardiansyah1809@gmail.com, abdulhakim1846@gmail.com, mayaeriadihsb@gmail.com,

risdalinasiregar@gmail.com

Abstract

The purpose of this research is as a tool for developing a law that is accompanied by technological advances and causes the switch from the use of conventional signatures to electronic signatures (Digital Signature) and can find out how the position or validity of an electronic signature as evidence of electronic transactions before the law. By using normative juridical research methods, or research based on a legal norm, it can be concluded that the legal power of proving electronic documents signed with electronic signatures and used by legal subjects in making an agreement, it can be stated that electronic signatures can be used as proof of transactions electronically and obtain a legal position before the law, as stated in article 5 paragraph 1 of Law Number 11 of 2008 As amended by Law Number 19 of 2016 concerning Electronic Information and Transactions, it is explained that an Electronic Information or Document and its printout is legal evidence before the law. As long as the signature has 3 conditions, namely the existence of identity, integrity and no denial

Keywords

Legitimacy; electronic signatures; evidence; electronic transactions



I. Introduction

In the New Normal transition period, business people are required to migrate from conventional to digital operations. Low touch economy is a concept as well as a new breakthrough for the business world that leads to 'little touch' or 'no touch' in interacting and transacting. Along with the development of the times and the rapid role of the digital economy, electronic signatures have changed from conventional signatures to Electronic Signatures. Technology such as electronic signatures is a solution that makes it easier for business people to carry out their trading activities. Electronic signatures adhere to the principle of digital interaction and transactions without having to meet face-to-face and can be done anywhere, especially Indonesia is facing the Covid-19 virus pandemic which (Anto, 2016)

Electronic signature is a signature that includes aspects of electronic information that is attached, linked, or related to other electronic information that functions as a means of verification and authentication. With its use, the process of registering, identifying, and verifying potential users of financial technology services can be carried out effectively and efficiently. In addition, electronic signatures can also be applied to various transactions and electronic agreement approvals. In addition to not having to incur administrative, storage, or courier costs, the presence of an electronic signature encourages the disbursement of funds that can occur as soon as possible. There are various benefits obtained in using electronic transactions (E-Commerce) that are felt by many people, one of which is business actors and consumers. (Usman, 2020)

Electronic signatures can be used in all electronic transactions that have legal force as well as wet signatures. As stated in UU ITE No. 11 of 2008, article 11 and referring to Government Regulation (PP) Number 82 of 2012 concerning the implementation of electronic systems and transactions in digital financial services that digital signatures provide guarantees of confidentiality, guarantees of integrity, as well as non-denial guarantees for electronic documents and transactions.

Electronic signatures are widely used as a way of conducting online transactions and are in great demand by economic businesses. Because this method is more profitable between the two parties in conducting transactions without having to meet face to face and can be done without any time and place obstacles. PC (Computer) as a tool for human aids supported by technological growth has helped access to technology on public networks (Public network) in carrying out a transfer of data and information. With the expertise of a PC (Computer) and access that continues to change, so that trade transactions can be carried out on the network. Public networks have advantages over private networks with the efficiency of payment and time, this makes trading with electronic transactions (Electronic Commerce) the right option for business actors to expedite their sales transactions. Technically and functionally the data system is a system integration between humans and machines, which includes components of hardware features, software features, procedures, human energy sources, as well as data substance which in its utilization includes for input, process, output, and communication.

E-commerce is a legal act carried out using computers, computer networks, and or other electronic media tools. According to the outline, transactions using this technology can create a new discovery (revenue stream) for business actors that may not be provided for in conventional trading practices. With technology like this, it can increase buyer attractiveness (market exposure),

reduce operating costs (operation costs) shorten time (product cycle), increase material supply (supplier management), expand global market reach (global reach) and increase buyer loyalty (customer loyalty) and increase selling value (Value chain) by prioritizing business practices (Business practice) by coordinating with related parties.

With the issuance of Law Number 11 of 2008 concerning "Electronic Information and Transactions" as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions or what is often called the ITE Law. Electronic transactions are legal actions that are carried out using computers, computer networks, and other electronic media and are explained as the executor in charge of the policy, the Government issued Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (PSTE). , making the power of electronic documents signed with an electronic signature (Digital signature) equal to the strength of proof of authentic deeds issued by authorized public officials (Government Regulation of the Republic of Indonesia, 2012).

Electronic transactions can be carried out without being face-to-face (non-faced) without using an original signature (Non Sign) and can be carried out without being hindered by a regional boundary, therefore a person can conduct Electronic Transactions with other parties even though they are in a different country. These activities can be carried out by means of these electronic transactions. This raises a new problem. The question for business actors is whether electronic documents signed with an electronic signature (Digital Signature) are legal before the law. (Bayu, 2017)

Electronic signatures have a function as an agreement or agreement to carry out a transaction and is the identity of the person making the engagement. The next impact comes from the security of the contents of the agreement that has been agreed upon

because these activities are carried out without face-to-face contact between the two parties. Furthermore, there is still a lack of electronic signature data that can identify who the owner of the signature is. This is because the meaning of an electronic signature (Digital Signature) in Law No. 11 of 2008 gives rise to an ambiguous (double) meaning. Is an electronic signature the same as a signature on a sheet of paper then digitized by scanning or electronic signatures carried out in other ways, as well as how to protect a consumer who uses the services of an electronic sign operator or what we often call a Certificate Authority.

For this reason, if there is a lawsuit filed by one of the parties whose evidence uses electronic documents and is handled electronically, then in resolving a case the judge is required to make new legal discoveries. Because the judge is the controller in deciding a case until the verdict de rechter is based on a written or unwritten legal case. Electronic documents that are digitally can be classified as written evidence. However, there are differences in legal principles that make it difficult to develop the use of electronic documents or digital signatures, namely the requirement that a document must be viewable, sent, and archived in paper form.

Therefore, on the basis of this background, the author is motivated to write an article entitled: Legal Aspects about Electronic Signatures (Digital Signature) as Evidence of Electronic Transactions.

II. Research Method

The research method used in writing this article is the normative juridical research method or better known as the legal norm research which is carried out by studying the laws and regulations relating to the problems discussed in this article.

III. Results and Discussion

The Legal Position of Electronic Signatures as Evidence of Electronic Transactions

The internet is widely used and chosen by business actors and consumers in order to get aspects of convenience in conducting transactions through the internet network. One of them makes it easier to do work in order to implement an effective and efficient system in the process. (Usman, 2020). In conducting an electronic transaction, it is very important to review how and when a binding agreement occurs between the parties in an agreement to conduct an electronic transaction (Andalan, 2019). In general, a signature is a form of activity that is used as a form of data validation made in an agreement or engagement. Along with the development of the era, signatures that were previously made manually or conventionally are now turning to electronic signatures whose systems and ways of working use computer technology as the main element. Electronic signatures are an alternative way to implement a form of agreement that applies effective and efficient aspects in its manufacture. Signature basically has a fairly broad meaning, namely the form of a code or sign whose function is as a means of legalizing a document to be signed. While electronic signature, while electronic signature (Digital Signature) has a very specific meaning, namely an application of a collection of computer techniques to an information document that functions as a document security system.

Electronic signatures or better known as Digital Signatures are widely used for business people in running their business. Electronic signature serves as a tool to legalize a document to be signed with a digital signature (Lyta et al., nd). With the existence of an electronic signature through an electronic document, it can be legalized by the agreement

makers themselves. The authenticity of electronically signed documents can be guaranteed authenticity and security because they have been verified by the system that regulates them. And related to changing the contents of the document also cannot be done because it can be detected through the system itself. Regarding electronic signatures in electronic transactions, there is a law that regulates this problem, namely in Article 1338 BW which states that:

"All agreements made in accordance with the law apply as law for those who make them. The agreement cannot be withdrawn other than with the agreement of both parties " (Mahardika, 2021)

The principle of freedom of contract above has emphasized that the parties or a legal entity can determine the contents of the agreement in any form or media as long as it does not violate the legal terms and conditions. an agreement contained in Article 1320 of the Criminal Code which states that:

1. The agreement of the two parties that have bound it
2. The ability to carry out a legal action
3. The existence of the object that was agreed upon
4. A lawful or (not forbidden) cause (Mahardika, 2021)

The terms of agreement and skills are subjective elements that must be in an agreement and if there is a violation that occurs the agreement can be canceled. Furthermore, the objective conditions that refer to the object or object that have been agreed upon must not be missed and if it is not fulfilled then the agreement that has been made is considered null and void by law. By making an agreement, it is possible that there will be a breach of promise (default) from one of the parties whose case settlement must use evidence from the existence of the transaction which was carried out electronically, with that proof it is still difficult because Indonesia has not fully regulated electronic evidence in procedural law. civil and criminal procedural law. But in other sources of law, the government has issued laws and regulations that have been regulated therein.

In the study of a material law in Indonesia which makes the facilities and infrastructure for electronic signatures to be regulated in Law Number 11 of 2008 concerning "Electronic Information and Transactions" as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions which states:

"Electronic document is any electronic information created, forwarded, sent, received or stored in analog, digital, electromagnetic, optical or similar forms, which can be seen, displayed and or heard through a computer. or Electronic systems, including but not limited to writing, sound, images, maps, designs, photographs or the like. Letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who understand them "(Government Regulation of the Republic of Indonesia, 2008)

Electronic Certificate Operators (PSE) also play a role in carrying out an electronic transaction processing activity, which aims to provide a sense of security and trust to partners in cooperation to carry out an electronic transaction and to obtain legal certainty in the agreement (Sasmita & Dwi Mayasari, 2021). Electronic Certificate Operators are institutions created by the government to deal with technological advances which are also developing rapidly.

Can be grouped into a form of electronic signature that is recognized or licensed and legal in Indonesia are as follows:

1. Using a Password (Password).
2. Electronically scanned signatures or written names on information (ryped names).

3. Can use the approval button supported by secure communication.
4. Using Biometric Marks.
5. By using signatures based on encryption or message technology (Ariadi, 2016).

Furthermore, the legal basis regarding the position of electronic evidence as regulated in Article 5 and Article 6 of Law Number 11 of 2008 concerning Electronic Information and Transactions states that: Article 5

1. Electronic Information and/or Electronic Documents and/or their printed results are instruments valid legal evidence
2. Electronic Information and/or electronic Documents and/or their printed results as referred to in paragraph (1) is an extension of valid evidence in accordance with the applicable procedural law in Indonesia
3. Electronic Information and/or Electronic Documents are declared valid if using the Electronic system in accordance with the provisions stipulated in this Law.
4. Provisions regarding Electronic Information and/or Documents as referred to in paragraph (1) do not apply to a Letters which according to the law must be in written form and b. The letter and its documents which according to the law must be made by the official making the deed.

Article 6

“In the event that there are provisions other than those regulated in Article 5 paragraph (4) which requires that an information must be in written form, or in original. Electronic Information and/or Electronic Documents and/or documents are considered valid as long as the information contained therein can be accessed, displayed, its integrity is guaranteed, and can be accounted for so as to explain a situation ”

According to the order of the Prevailing Laws above according to articles 5 and 6 of the Law No. 11 of 2008 concerning Information and Electronic Transactions reaffirms that Electronic Documents are valid and recognized evidence as long as the document is not a letter made in written form and ratified before a public official or in the form of a notary deed. Furthermore, when viewed in terms of the legal strength of electronic signatures, referring to Article 1 paragraph (12) of Law Number 11 of 2008 concerning Electronic Information and Transactions states that

"Electronic Signatures are signatures consisting of Electronic information that is attached, associated or related to other Electronic information used as a means of verification and authentication "

Along with the development of the era, electronic evidence has emerged in the community, for example, recordings of hidden cameras (CCTV), electronic information, email, electronic tickets, electronic data/documents and electronic materials as tools used to store data. Electronic signature is an aspect or tool used to determine whether or not an electronic document has been created. Electronic signatures have a function as a tool to prove the authenticity of a document in an electronic transaction and can guarantee that the contents of the document do not change when the document is sent. (Titi S. Slamet, Marianne Masako Paliling, 2020) The validity of an electronic signature as one of the legal evidence is contained in Article 11 paragraph (1) and Paragraph (2) of Law No. 11 of 2008 concerning Information and Electronic Transactions states that:

1. Electronic signatures have legal force and legal consequences as long as they meet the following requirements.
 - a. The related Electronic Signature creation data only to the Signer;
 - b. The Electronic Signature creation data at the time of the electronic signing process is only in the power of the Signatories.

- c. Any changes to the Electronic Signature that occur after the time of signing can be known;
 - d. Any changes to the electronic information related to the Electronic Signature after the signing time can be known;
 - e. There are certain methods used to identify who the signatories are; and
 - f. There are certain ways to show that the Signer has given his/her consent to the associated electronic information.
2. Further provisions on Electronic Signatures as referred to in paragraph (1) shall be regulated by a Government Regulation.

The Ministry of Communication and Informatics has issued a regulation concerning the standard for the validity of electronic signatures in accordance with the law if it has the following 3 requirements:

1. Identity The data for making electronic signatures is related only to the Signer. Such data must be contained in the electronic signature at the time of the electronic signing and is only in the control of the signer.

2. Integrity

All changes to the information contained in the electronic signature that occur after signing can be known.

3. Undeniable

There are certain methods used to identify who the owner of the signature is. And there is a certain way to show that the signer has given approval to the electronic information related to it. (Kemenkominfo, 2020)

So according to the explanation of the law above and the requirements issued by the Ministry of Communication and Information (Kemenkominfo) it can be concluded that Electronic Signatures are legal in Indonesia. before the law as evidence of electronic transactions, as long as the signature meets the requirements stated in Law Number 11 of 2008 concerning Information and Electronic Transactions and Regulations issued by the Ministry of Communication and Information.

IV. Conclusion

The validity of a law regarding proof of electronic documents that are used as evidence to enter into an agreement / engagement that is carried out using an electronic signature according to Law Number 11 of 2008 concerning Information and Electronic Transactions that an electronic document and/or which is a printed result is legal evidence and is a development of evidence according to the Indonesian Civil Procedure Code related to the legal validity of Electronic Signatures, which are stated in Article 5 of Law Number 11 of 2008 concerning Information and Electronic Transactions, confirming that Electronic Signatures have legal force and legal consequences as long as it fulfills the requirements contained in Law Number 11 of 2008 to be precise article 5 and the provisions issued by the Ministry of Communication and Information (Kemenkominfo).

References

- Mainstay, AM (2019). Position of Electronic Signature in Financial Technology Transactions. *Jurisdiction*, 2(6). <https://doi.org/10.20473/jd.v2i6.15921>
- Anto, K. (2016). *The Importance of Electronic Signatures in E Commerce Transactions*. Sindonews.Com. <https://ekbis.sindonews.com/berita/1161694/34/importance-sign-digital-di-transaksi-e>

commerce accessed 17 April 2022

- Ariadi, IW (2016). FORMS OF DIGITAL SIGNATURE THAT ARE LEGITABLE IN ELECTRONIC TRANSACTIONS IN INDONESIA. *Udayana Master Law Journal (Udayana Master Law Journal)*, 5(1).
<https://doi.org/10.24843/jmhu.2016.v05.i01.p16>
- Bayu, A. (2017). *The legitimacy of the use of electronic signatures as evidence according to Law Number 11 of 2008 concerning Information and Electronic Transactions*. v(7), 7.
- Kemkominfo. (2020). *What is an Electronic Signature?* Kominfo.Com. <https://tte.kominfo.go.id/> accessed 17 April 2022
- Lyta, O. :, Sihombing, B., & Notary, M. (nd). *VALIDITY OF ELECTRONIC SIGNATURES IN NOTARIES*.
- Mahardika, P. (2021). *Civil Law Code*. Mahardika Library.
- Government Regulation of the Republic of Indonesia. (2008). *Law No. 11 of 2008 concerning Information and Electronic Transactions* (p. 38).
- Government Regulation of the Republic of Indonesia. (2012). *Government Regulation of the Republic of Indonesia Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions*.
- Sasmita, NNN, & Dwi Mayasari, IDA (2021). The validity of the deed made by a notary with a digital signature. *Acta Comitas*, 6(02).
<https://doi.org/10.24843/ac.2021.v06.i02.p06>
- Titi S. Slamet , Marianne Masako Paliling. (2020). LEGAL POWER OF TRANSACTIONS AND ELECTRONIC SIGNATURES IN AGREEMENTS. *Paul Law Journal*, 1(1). <https://doi.org/10.51342/plj.v1i1.43>
- Usman, T. (2020). VALIDITY OF ELECTRONIC SIGNATURES ON AGREEMENTS OF SELLING OF GOODS FROM CIVIL LAW PERSPECTIVE. *Indonesian Private Law Review*, 1(2).
<https://doi.org/10.25041/iplr.v1i2.2058>