

## **Implementation of Cyber Notary in Electronic Deeds and Electronic Signatures Regarding Notary Positions**

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### **Abstract**

*Cyber notary is a concept that utilizes technological advances in carrying out the duties and authority of a notary. Document digitization is a challenge for notaries, especially related to document authentication and legalization, but Indonesia does not yet have specific rules regarding this matter, especially in the formation of electronic certificates and signatures. The purpose of this study was to determine and analyze the making of a notary deed electronically in terms of a cyber notary along with an electronic signature on the deed. This research is juridical-normative research with descriptive analysis. The result of this research is that the making of an electronic deed is legal and binding as a notary deed even though the making of an electronic deed is not specifically regulated. The use of digital signatures can be done with the agreement of the parties as a simplification of business practices in Indonesia, especially in the implementation of mortgage rights.*

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## **1. INTRODUCTION**

In this case, a notary is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to apartment units, while a notarial deed is a deed made by a notary as proof that certain legal acts regarding rights have been carried out. on land or on ownership rights to apartment units, a notarial deed is a tool to prove that a legal act has been carried out. Therefore, if the legal action is annulled or annulled, then the Notarial deed in question no longer functions as evidence of the legal action. Notaries are appointed and dismissed by the Minister of Agrarian Affairs to serve the public in making notarial deeds in certain areas, where over time, signatures in granting deeds, such as deeds granting mortgage rights, can be done electronically as a form of cyber notary implementation.

*Cyber notary* is a concept that utilizes technological advances in carrying out the duties and authority of a notary. Digitalization of documents is a challenge for notaries, especially related to document authentication and legalization, where notaries in their position as regulated in Law No. 2 of 2014 concerning the Position of Notaries have the authority to make deeds, but there are no specific regulations regarding the formation of deeds electronically, including signing them. electronic but only regulated generally in the Law on ITE.

Notaries, in their capacity as public officials authorized by the state, have the authority to formulate authentic deeds relating to certain legal acts, such as land rights or ownership of apartment units. The deed produced by a notary serves as legal evidence of the implementation of a legal action. However, when the legal action is deemed void or annulled, the notarial deed loses its validity as evidence of the action. Notaries are appointed and dismissed by the Minister of Agrarian Affairs, tasked with serving the

community in certain areas, whereas as technology develops, the signing of deeds, including mortgage deeds, can be carried out digitally through the concept of cyber notary.

*Cyber Notary* itself is an innovation that utilizes technological advances in carrying out the duties and authority of notaries. The document digitization process is a challenge in itself, especially in terms of document authentication and legalization. Even though notaries have full authority to make deeds in accordance with Law Number 2 of 2014 concerning the Position of Notaries, until now there are no specific regulations regarding making deeds electronically, including the use of digital signatures, which are only generally regulated in the Law Information and Electronic Transactions (ITE).

The main problems in implementing electronic signatures in the concept *cyber notary* is the lack of specific and detailed legal rules. Even though Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) has provided a legal basis for the use of electronic signatures, in the context of making authentic deeds by notaries, there are no regulations that explicitly regulate the use of digital signatures. This ambiguity raises various legal questions, such as to what extent electronic signatures can be considered equivalent to conventional signatures in deeds produced by notaries. In addition, issues related to authentication and security of electronic documents are a big challenge. Electronic signatures, even though their legality is generally recognized, still face obstacles in terms of proving the authenticity of documents and protecting against the risk of forgery or manipulation of digital data.

Notaries, as guardians of the validity of legal documents, must ensure that every deed made meets the authentication standards regulated by law. However, without clear technical guidelines regarding how to use electronic signatures in the process of creating authentic deeds, concerns have arisen about the vulnerability of documents to potential cyber security breaches. Apart from that, another challenge is the readiness of technological infrastructure in Indonesia, both from the notary side and from the wider community. Not all notaries have adopted adequate technology to support implementation of *cyber notary*, and not all parties involved in legal transactions feel comfortable using digital technology in this process.

Therefore, more comprehensive regulatory reform is needed regarding the use of electronic signatures in making authentic deeds by notaries. These regulations should include clear procedures for how electronic signatures are implemented, security standards that must be adhered to, as well as oversight and enforcement mechanisms to ensure that this process occurs securely and legally. This research was carried out with the aim of knowing and analyzing the making of electronic notarial deeds in terms of *cyber notary*. Apart from that, this research also has the aim of knowing and analyzing the implementation of *cyber notary* in deeds of mortgage rights. The problem formulation used in this research is from the explanation of the back layer above, namely how to make notarial deeds electronically in terms of *Cyber Notary*, and how is the *Cyber Notary* Implemented in Mortgage Rights Deeds?

## 2. RESEARCH METHOD

The research method used in this research is a qualitative method using a Normative Juridical approach. The normative juridical approach is an approach based on the main legal material by examining theories, concepts, legal principles and statutory regulations related to this research.

Apart from that, this research uses a Normative Juridical approach in research. This Some secondary data related to the literature review was also used. Data collection in this research method was carried out using a library approach, namely by studying books,

statutory regulations and other documents related to this research. *cyber notary* by using *statute approach* and *library research*.

### 3. RESEARCH RESULTS AND DISCUSSION

#### Making Notarial Deeds Electronically Viewed from Cyber Notary

Article 16 verse (1) letters c and n : "1. *Attaching letters and documents as well as fingerprints facing the Act Minutes; 2. Read the Deed in front of the presenter in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a private will, and signed at that time by the presenter, witness and notary.*" A notary is an official who is sworn in to guarantee certainty of legality so that there are no legal problems in the future, however, developments in society in terms of technology have made several rules regarding the position of a notary no longer relevant. The use of information technology in making notarial deeds electronically not only provides benefits, but also raises several problems. The advantages of making notarial deeds electronically include time and cost efficiency. However, several legal issues also arise. The rapid development of society is inversely proportional to the development of law in Indonesia which is always lagging behind.

That's based on sound This article refers to the type of deed made by a notary, currently it is not possible to apply information technology in making notarial deeds electronically. Especially in making a release deed. Here, the presence of a notary in the presence of the parties is a necessity so that an official report can be prepared containing a description of the notary that was seen and witnessed by the notary himself at the request of the parties.

In Article 5 paragraph (4) letters a and b of the ITE Law, it is known that documents made in the form of notarial deeds are not included in electronic information and/or electronic documents. So that notarial deeds made electronically do not have legal force as valid evidence according to the provisions of the ITE Law. With the restrictions on the meaning of electronic information/electronic documents regulated in Article 5 paragraph (4) letters a and b, authentic deeds made electronically by a notary are deemed unable to be valid evidence. So, the authenticity of the deed made by the notary in this case is not fulfilled.

Therefore, it can be concluded that these regulations are no longer relevant in today's developments for making Notarial Deeds online/electronically because the legal substance does not answer the legal needs of the Notary Position Law and the ITE Law, which means that making notarial deeds in electronic form is not yet possible due to the existence of legal in synchronization, where the ITE Law itself limits the authority of notaries in making deeds electronically. In fact, the need for short and fast service is an inevitability that is needed in modern society.

On the other hand, society needs legal certainty regarding legal actions carried out legally electronic where there is a notary's authority to make deeds electronically in the Law, so that there is a need for legal harmonization regarding the making of authentic deeds in order to create legal protection and certainty for the public and notaries in the authenticity of notarial acts made electronically, such as electronic Mortgage Rights, which have a role in registering Mortgage Rights by using a digital signature.

Indonesia already has regulations regarding "digital/electronic signatures" in Indonesia, according to Chapter 1 number 12 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions: "*Electronic Signature is a signature consisting of Electronic Information attached to, associated with or related to other Electronic Information which is used as a verification and authentication tool.*"

Electronic signatures consist of several types that must meet certain requirements, so that they can guarantee their authenticity and avoid signature forgery, especially for important deeds made at a notary, such as deeds granting mortgage rights, namely:

1. Fulfill the validity of the legal force and legal consequences of electronic signatures as intended in article 59 paragraph (3) PP PSTE
2. Use electronic certificates made by Indonesian electronic certification service providers; And
3. Created using a certified electronic signature creation device

So that a certified Electronic Signature must meet the validity of the legal force and legal consequences of the Electronic Signature, using an Electronic Certificate made by the Indonesian Electronic Certification Organizer (PSrE) service and made using a device Maker Certified Electronic Signature. The Ministry of Communication and Information also has a list of Indonesian PSrEs that are permitted to issue Electronic Certificates, namely PrivyID, Solusi Net, Peruri, Vida, BPPT, BSrE, and DTB.

Electronic signatures in accordance with Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions have been guaranteed to be valid so that they have legal responsibility and consequences for anyone who signs their electronic signature as long as:

1. Electronic signature creation data relates only to the signatory;
2. Electronic signature creation data during the electronic signing process is only in the control of the signer;
3. Any changes to the electronic signature that occur after the time of signing can be identified;
4. Any changes to electronic information related to the electronic signature after the time of signing can be known;
5. There are certain methods used to identify who the signer is; And
6. There are certain ways to demonstrate that the signatory has given consent to the relevant electronic information.

So that the legal basis can be used as a reference and legal protection for Notaries and parties who create documents and/or deeds by using an electronic system that is of course accompanied with electronic signing. With the PP PSTE, it provides legal protection from criminal acts of electronic signature forgery.

### **Implementation of Cyber Notary in Mortgage Rights Deeds**

Electronic mortgage services do not only serve to register mortgage rights. Transferring mortgage rights, changing creditor names, and eliminating mortgage rights (roya) can also be served through this system. The aim of holding an Electronic Mortgage is of course: the more make it easier for society to adapt to current conditions with digital developments. Apart from that, this online or electronic pattern will minimize interaction between service users and officers at the land office, which of course will reduce corrupt practices that were previously widely complained about by the public.

Electronic Mortgage Rights are outlined in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 9 of 2019, which can use this system, namely individuals and legal entities as creditors as well as State Civil Apparatus from the Ministry who have the authority to provide Electronic Mortgage Rights services, which in this case, namely the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. However, before entering the electronic mortgage guarantee process, users are required to register using the following stages.

1. Users of the Electronic Mortgage Rights System service consist of individuals/legal entities as creditors and Ministry of State Civil Apparatus tasked with servicing Mortgage Rights;
2. Individuals/legal entities as referred to previously must become Registered Users of the Electronic Mortgage Rights System, by fulfilling the following requirements:
  - a. Have an electronic domicile
  - b. Certificate of registration with the financial services authority (OJK)
  - c. Requirements for fulfilling the requirements and criteria and conditions as a Registered User; And
  - d. Other conditions are determined by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, in this case the Land Office verifies the registration and has the right to refuse the registration in question.
3. The Ministry verifies the registration and has the right to refuse the registration in question.

Then, based on Minister of Agrarian Regulation Number 9 of 2019, the guarantee mechanism for Mortgage Rights through the Electronic Mortgage Rights system must go through the following stages:

1. Registered users submit applications for Mortgage Rights services electronically through the Electronic Mortgage Rights System which has been provided by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency and complete the application requirements in accordance with statutory provisions;
2. The applicant must make a statement regarding responsibility for the validity and correctness of the Electronic Document data submitted. The application requirements along with the statement letter are made in the form of an Electronic Document
3. Specifically, regarding the requirements in the form of a Certificate of Land Rights or Ownership Rights for a Flat Unit, it must be in the name of the Debtor;
4. Service requests that have been received by the Electronic Mortgage System will be given proof of application registration issued by the system. Proof of application registration includes at least the application registration file number; date of application registration; applicant's name; and service fee payment code;
5. Applications are processed after the application data and application registration fees are confirmed by the electronic system. Based on Article 12 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 9 of 2019, mortgage rights services are subject to fees in accordance with the provisions of laws and regulations regarding Non-Tax State Revenue that apply to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency.
6. After obtaining proof of application registration, the applicant makes payment of fees through the perception bank no later than 3 (three) days after the application registration date.
7. Applications are processed after the application data and application registration fees are confirmed by the electronic system. In the event that payment of the registration fee by the applicant is not confirmed by the system, the applicant can confirm directly to the Land Office or Complaints Service. If the time period expires and the applicant does not make payment, the application is declared void.
8. The results of the Mortgage Rights service are published on the 7th (seventh) day after the application is confirmed.
9. The Electronic Mortgage Rights System will issue mortgage rights service results in the form of a Mortgage Rights Certificate; and mortgage rights records in the land book and Certificate of Land Rights or Ownership Rights for Flat Units.

10. Creditors can record mortgage rights on land rights certificates or apartment unit ownership rights by printing notes issued by the electronic mortgage system and attaching the printed notes to land rights certificates or apartment unit ownership rights.

After the mechanism flow has been carried out, the electronic document, namely the Mortgage Rights Certificate issued by the Electronic Mortgage Rights System, will be signed electronically. Electronic signatures are used as proof of verification or authentication related to electronic information attached to and associated with electronic information in accordance with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 3 of 2019 concerning the Implementation of Electronic Signatures. Electronic signatures are useful as a sign of approval as well as a form of validation in making land documents. <sup>8</sup> So with the creation of electronic certificates, legal certainty is needed regarding the regulations and authority of notaries in making deeds electronically.

#### 4. CONCLUSION

A notary is a state official who has the authority to issue deeds, one of which is a deed granting mortgage rights in accordance with the Law on the Position of Notaries. However, as time and technology develop, these deeds can be made online, the system has been integrated by the central government. In Electronic Mortgage Services, from registration to verification in the form of signing must be done online in an integrated system.

So, this right opens up opportunities and threats for fraud by forging electronic signatures. However, the government has provided legal protection for parties who create and publish documents online that contain an electronic signature, as long as the signature meets the provisions and requirements of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and Government Regulation Number 71 of 2019 concerning Implementation of Electronic Systems and Transactions.

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