

## **The Problem of the Validity of Verified Electronic Signatures on Party Deeds and the Challenges for the Performance of Land Deed Officials**

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### **Article Info**

#### **Article history:**

Received: 15 November 2025

Publish: 8 December 2025

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#### **Keywords:**

Deed or Instrument;

Notary;

Electronic Signature.

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### **Abstract**

*The emergence of cyber notary in Indonesia reflects an urgent response to society's growing demand for fast, secure, and accessible legal services. Within civil law, authentic deeds (akta autentik) created by notaries hold the highest evidentiary value, as regulated under Articles 1866–1868 of the Civil Code. One of the essential elements ensuring the authenticity of such deeds is the signature of both parties and the notary. The development of information technology has introduced electronic signatures as a legal alternative to handwritten signatures, recognized under the Electronic Information and Transactions Law (UU ITE). However, a normative conflict arises since Article 5(4) UU ITE excludes notarial deeds from electronic documents, while the Notary Law (UUJN) still requires physical signatures and presence. This regulatory disharmony has caused electronic-signed notarial deeds to risk being downgraded from authentic deeds to private deeds, reducing their evidentiary weight in civil procedure. The implications are significant: not only is legal certainty weakened, but notaries also face greater liability if disputes occur. Through a normative juridical approach, this study highlights the need for legal reform that explicitly accommodates cyber notary practices and electronic signatures, ensuring that digital transformation does not undermine the legal certainty and evidentiary strength of authentic deeds.*

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## **1. INTRODUCTION**

Indonesia is a country of law, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), so that government affairs and community life are firmly protected by law, which guarantees legal certainty, order, and legal protection for every citizen. The position of Notary has long been known in Indonesia since the Dutch government, when Indonesia was not yet independent, which was given special authority to make authentic deeds, especially in the field of trade. The development of information and communication technology in the current digital era has had a significant impact on almost all aspects of people's lives, including the legal and public service sectors. This is evident in the rapid development of the notary profession in line

with community needs, one of which was during the COVID-19 pandemic from 2020 to 2022, the implementation of the Large-Scale Social Restrictions (PSBB) policy, and the Enforcement of Community Activity Restrictions (PPKM), which resulted in reduced mobility, forcing people to work online, adapting to social media, or several other forms of communication *platform* as a supporting container for work such as *zoom meetings*, *Microsoft teams*, *google meet*, *skype* And *platform* other.

Technological innovation has brought demands for greater efficiency, speed, and accessibility in legal transactions. In Indonesia, the use of electronic instruments has begun to be accommodated through Law Number 11 of 2008 concerning Electronic Information and Transactions, as amended by Law Number 19 of 2016 (the ITE Law), which provides the legal basis for the recognition of electronic documents and electronic signatures. This marks a significant milestone in the transformation of public services and legal practice in the digital era.

One concrete example is the land sector, where the government, through Minister of ATR/BPN Regulation Number 1 of 2021, began implementing electronic land certificates. This policy marks a shift from physical documents to digital ones, to increase legal certainty, reduce the risk of forgery or loss, and simplify land administration processes. Beyond land, the use of electronic instruments is also beginning to be integrated into various other legal aspects, such as the implementation of electronic deeds, electronic banking documents, and electronic land registration systems, and *e-court* in the judicial environment. The presence of this innovation indicates a paradigm shift from conventional legal practices to a digital legal system that is more adaptive to the needs of modern society.

In the era of society 5.0, society lives alongside advanced technologies such as Artificial Intelligence (AI) and the Internet of Things (IoT) to address social, economic, and environmental issues with a focus on improving the quality of life. Notaries, as public officials serving the public, are constantly adapting and innovating to address emerging technological developments. Authority and technology are key factors in the implementation of ideas or concepts of *cyber notary*.

This condition gave rise to the idea of *cyber notaries*, a breakthrough that allows notaries to carry out some of their official powers by utilizing electronic media. *Cyber notaries become* relevant, considering the increasingly pressing public need for a simple, secure, and accessible deed-making process without being limited by geographical or physical barriers. Article 1868 of the Civil Code (KUHPperdata) stipulates that an authentic deed is a deed made in a form prescribed by law by or before an authorized public official. Thus, an authentic deed has perfect evidentiary force regarding the content, date, and identities of the parties listed therein.

One of the main elements that provides evidentiary power for an authentic deed is the signature, both from the parties and the notary as a public official. According to the Ministry of Education and Culture's Online Big Indonesian Dictionary (KBBI), a signature is a mark as a symbol of a name written by the person themselves as a personal sign (having received and so on). A signature is not only a symbol of approval, but also a legal instrument that confirms the existence of an agreement and responsibility for the contents of the deed.

As technology advances, the practice of using electronic signatures has begun to be introduced as an alternative to handwritten signatures. Within the Indonesian legal framework, electronic signatures are regulated in Article 1, number 12 of the ITE Law, which defines an electronic signature as a signature consisting of electronic information attached, associated, or linked to other electronic information used as a means of verification and authentication. Thus, electronic signatures serve a similar function to conventional signatures, namely, guaranteeing the authenticity, integrity, and identity of the signatory.

However, the application of electronic signatures in notarial deeds still raises legal issues. On the one hand, the Notary Law (UUJN) provides space for notaries to exercise additional authority as stipulated in Article 15 paragraph (3), including the possibility of certifying electronic transactions. On the other hand, Article 5 paragraph (4) of the ITE Law explicitly excludes the use of electronic information and electronic signatures in documents that, according to the law, must be in written form or deeds made by a deed-making official. This lack of synchronization creates legal uncertainty regarding whether electronically signed party deeds can be qualified as authentic deeds and have the same evidentiary force as conventional deeds.

In the context of Land Deed Making Officials (PPAT), digitalization has also begun to be applied in everyday life, such as checking certificates online, validation of Land and Building Acquisition Fee (BPHTB) to registration of rights through an electronic system managed by the National Land Agency (BPN), implementation of Electronic Mortgage Rights (HT-el) services based on the Regulation of the Minister of ATR/BPN Number 5 of 2020 which revokes Regulation of the Minister of ATR/BPN Number 9 of 2019 concerning Electronically Integrated Mortgage Rights Services and issuance of electronic certificates as regulated in Regulation of the Minister of ATR/Head of BPN No. 3 of 2023 concerning Issuance of Electronic Documents in Land Registration Activities. This development indicates a shift towards digital-based land administration that demands harmonization of regulations, not only in the land sector, but also in the realm of authenticity of deeds made by both Notaries and PPAT.

The issue of using verified electronic signatures in notarial deeds concerns not only formal aspects but also impacts legal protection for the parties involved. If such deeds are used as evidence in a dispute, the question arises as to whether judges will recognize them as having the same evidentiary power as authentic deeds in general. Furthermore, the notary's responsibility as a public official to guarantee legal certainty for the deeds they create also faces potential new challenges.

Notaries must ensure that the electronic signatures they use meet the verification requirements according to applicable legal standards to avoid harm to the parties. The urgency of reviewing the validity and evidentiary value of verified electronic signatures in notarial deeds lies in the importance of providing legal clarity and certainty for both the public and practitioners. Without clarity, the potential for disputes involving electronic deeds increases, potentially eroding public trust in the notarial profession and the function of authentic deeds themselves.

The existence of the UUJN, which still focuses on conventional practices, raises questions about its relevance in the digital age. The UUJN does not fully regulate the mechanism for using electronic signatures in notarial deeds, resulting in the regulation lagging behind other laws and regulations, particularly those related to electronic information and transactions. Therefore, regulatory updates in the UUJN are an urgent need to accommodate technological developments and support the implementation of the concept of *cyber notary* in Indonesia.

This research is expected to be able to contribute to the development of the concept of *cyber notary* in Indonesia, while also offering a normative analysis of the existing regulatory disharmony. Based on this background, the author deems it necessary to examine in more depth the problems arising from the innovative use of electronic signatures in notarial practice. The main issue concerns the evidentiary power of notarial deeds signed with electronic signatures, given that notarial deeds have perfect evidentiary power, which should provide legal certainty and protection for the parties. Furthermore, the urgency to update the UUJN to accommodate digital developments and support the implementation of the concept of *cyber notary* in Indonesia.

## 2. RESULT AND DISCUSSION

1. What is the evidentiary power of notarial deeds using electronic signatures in civil law practice?
2. How urgent is the renewal of the Notary Law (UUJN) to accommodate the development of digital technology and legal practices? *Cyber notary* in Indonesia?

### B.1 The evidentiary power of notarial deeds using electronic signatures in civil law practice

In the Indonesian civil law system, evidence plays a crucial role in determining the truth and justice of a case. Article 1866 of the Civil Code (KUHPerdara) stipulates that evidence consists of letters, witnesses, allegations, confessions, and oaths. Of the five types of evidence, written evidence has a central position, especially authentic deeds made by authorized public officials, namely notaries. An authentic deed provides a guarantee of legal certainty because it has perfect evidentiary power, both in terms of formal and material aspects. In its classification, documentary evidence is divided into authentic deeds, private deeds, and unilateral deeds. Authentic deeds, as referred to in Article 1868 of the Civil Code, have the highest evidentiary value because they are made by public officials in accordance with procedures determined by law. Conversely, private deeds only have evidentiary force as long as the signing party does not deny the contents or signature, while unilateral deeds are only valid to the extent of a unilateral acknowledgement from the maker. Thus, the status of a deed greatly determines the weight of its evidentiary power in civil proceedings.

Regarding the use of electronic signatures on notarial deeds, a legal debate has arisen regarding whether such deeds can still be considered authentic deeds or whether they lose their status. According to the Notary Law (UUJN), an authentic deed must be signed by the parties and the notary at the end of the deed as a formal

requirement that cannot be waived. However, Article 5 paragraph (4) of the Electronic Information and Transactions Law (UU ITE) actually excludes electronic documents as valid evidence when it relates to notarial deeds or documents that, according to the law, must be in written form. This raises the potential for the status of electronically signed notarial deeds to be downgraded from authentic deeds to private deeds.

The legal implications of this downgrade are significant. A deed that previously had full evidentiary force is now reduced to one with limited evidentiary force. In civil law, private deeds require additional evidence, such as witnesses, testimonies, or oaths to prove the formal and material truth of the deed's contents. In other words, electronic signatures, which are not yet explicitly accommodated in the UUJN, weaken the legal standing of notarial deeds, thereby diminishing the legal certainty that authentic deeds should provide.

Furthermore, this degradation of evidentiary value also poses risks for the parties bound by the deed. If one party denies the electronic signature used, the evidence presented in court will become more complex. Notaries also face potential challenges regarding their responsibilities, given that one of the primary functions of authentic deeds is to provide legal protection and certainty for the parties. Without a clear legal basis regarding the legality of electronic signatures in notarial deeds, the status of such deeds will always be disputed.

Thus, the evidentiary force of notarial deeds signed with electronic signatures is currently viewed as equal to private deeds. This means that while they can still be submitted as evidence in court, their probative value is no longer perfect. This highlights the urgent need for regulatory clarification to ensure that the use of technology does not diminish the essence and function of authentic deeds as strong evidence in civil law.

## **B.2 The Urgency of Updating the Notary Law (UUJN) to Accommodate Developments in Digital Technology and Practice *Cyber Notary* in Indonesia**

As a public official, a notary is given the authority to make authentic deeds and has legal responsibility for every action taken in carrying out his position, especially regarding the deeds he makes. The scope of a notary's responsibility is not only limited to the formal aspects of the deed, but also includes the material aspects of the truth of the deed he made. This is in line with the provisions in the UUJN as Article 15 paragraph (1) of the UUJN states that "*A notary is authorized to make authentic deeds regarding all acts, agreements, and provisions required by laws and regulations and/or desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosse, copies and excerpts of the deed, all as long as the making of the deed is not assigned or excluded to other officials or other persons stipulated by law.*" Furthermore, Article 16 paragraph (1) letter b of the UUJN requires notaries to keep minutes of deeds as part of the notarial protocol. This obligation is reinforced by Article 58 of the UUJN, which states that notarial protocols must be kept and maintained by notaries during their term of office. If the term of office ends, whether due to retirement, death,

dismissal, or other reasons, then, according to Article 59 of the UUJN, notaries are required to submit the protocol to the acting notary or appointed replacement notary.

Furthermore, Article 63 of the UUJN stipulates that submitted notarial protocols remain official documents associated with the notary's office and are not the notary's personal property. Failure to comply with this obligation, under Article 65 of the UUJN, may result in sanctions in accordance with statutory provisions.

In a system that still relies on paper media, storing notary protocols clearly presents its own challenges. Notaries must provide adequate space and undertake significant maintenance of documents to ensure their security. The risk of physical damage to documents is also very high, for example, from fire, pest infestation by rodents or insects, or natural disasters like floods.

Along with technological advancements, one alternative being considered is storing notarial protocols digitally, utilizing information technology. The legal basis for electronic documents is regulated in the ITE Law. Rapid technological advancements have also driven a transformation in notarial practice in Indonesia, moving from a conventional system to a digital one. *cyber notary*. Through this concept, notaries can utilize advances in digital technology in carrying out their daily tasks, such as document digitization, electronic signing of deeds, and other similar things.<sup>1</sup>

The implementation of digital signatures in notarial deeds raises its own issues. This is because the UUJN stipulates the requirement for the parties to be present in person before the notary and the notary's witnesses to sign. Therefore, physical presence is considered an absolute requirement. If the signature is made without a face-to-face meeting, but only through digital means or an electronic platform, the resulting deed cannot be considered legally valid as a notarial deed.

Within the scope of notary, some notaries also double as PPAT who are given special authority in making authentic deeds related to the transfer of land rights, granting mortgage rights and other legal acts as regulated in Government Regulation (PP) Number 24 of 2016 which is an amendment to PP Number 37 of 1998 concerning the Position of Land Deed Making Officials (PPAT). In practice, PPAT relies heavily on the electronic land administration system managed by the BPN, such as checking certificates online, validation of BPHTB payments, and registration of rights through electronic systems.

The transition to a digital system has created an urgent need to harmonize the Notary/PPAT's obligations to register authentic deeds (which require physical presence) with the electronic administrative mechanisms implemented by the National Land Agency (BPN). For example, mortgage registration is now done electronically, while PPAT deeds are still prepared conventionally with wet signatures. This situation creates a dual legal mechanism, where some stages are digital, but the basic deed, which is a formal requirement, remains bound by conventional provisions.

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<sup>1</sup> Irma Devita "Cyber Notary", accessed 27 Agustus 2020, <https://irmadevita.com/2010/cyber-notary/#>

The implementation of digital signatures in notarial deeds and PPAT deeds raises serious issues. The UUJN still emphasizes that the signing of a deed must be carried out in the physical presence of the parties before a notary and witnesses. Therefore, if the signature is carried out without a face-to-face meeting, but only through digital means or *electronically*, then the deed cannot be considered valid as an authentic deed.

Upon further examination, it is true that the existence of electronic signatures has been regulated in the ITE Law as long as it meets the requirements regarding the authenticity of identity, integrity of information, and connection to documents. However, a more in-depth study is needed regarding whether these regulations can be applied to deeds made before a notary. Based on Article 11 of the ITE Law, it recognizes the validity of electronic signatures as long as they meet the requirements, including those related to the authenticity of the signatory's identity, maintaining the integrity of information, and the connection between the signature and the substance of the document. However, Article 5 paragraph (4) of the ITE Law expressly states that electronic documents do not apply to deeds that, according to legal provisions, must be made in writing and accompanied by physical presence, including notarial deeds. Therefore, although electronic signatures are widely recognized, their use cannot be applied to the creation of notarial deeds.

Furthermore, the use of information technology in PPAT practices also raises unique issues regarding data security, the risk of digital identity misuse, and the limited availability of technological infrastructure that is not evenly distributed across Indonesia. This creates the potential for unequal access to law between residents in large cities connected to digital systems and those in remote areas without adequate access.

No explicit regulations permit the creation of authentic deeds through a fully digital system. Given technological developments and societal needs, amending the UUJN is urgent. This is a pressing need, given the increasingly rapid development of digital technology.

There are several key reasons behind this urgency. First, the UUJN needs to align with the provisions of the ITE Law and government regulations regarding electronic transaction systems to avoid regulatory disharmony, particularly regarding the digitization of electronic signatures and documents. Second, updating the UUJN is necessary to provide legal certainty for electronic deeds, as without a clear legal basis, digitally created deeds risk being deemed invalid and creating uncertainty for the parties. Third, this change will support the implementation cyber notary by opening legal space for notaries to utilize digital technology in deed preparation, protocol storage, and other notarial services. Fourth, reform of the UUJN is also crucial to increase the competitiveness of the notary profession, which is required to adapt to the digital era, thereby maintaining its relevance and credibility amidst global legal modernization.

### 3. CONCLUSION

Currently, notarial deeds signed using electronic signatures are not fully recognized as authentic deeds because the UUJN still requires the physical presence of the parties before a notary. As a result, such deeds have the potential to experience a degradation in legal status from authentic to private, thereby weakening the evidentiary power and legal certainty that notarial deeds are supposed to provide.

The change to UUJN is an urgent decision to accommodate the development of digital technology, particularly regarding electronic signatures, digital protocol storage, and practices of *cyber notary* and *cyber PPAT*. Without an update to the UUJN, there will continue to be regulatory disharmony between the UUJN, the ITE Law, and the electronic land administration system at the National Land Agency (BPN). This will result in the risk of reducing the function of authentic deeds, reducing legal certainty, and hampering the modernization of civil legal services in Indonesia.

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