

## Enhancing Efficiency: The Use Of Electronic Signatures In Notarial Deed

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### Abstract

The use of electronic signatures for the parties in the notarial deed is still a matter of debate as to whether its validity is recognized or not. In practice, there are still many notaries who in signing a deed by the parties do not use electronic signatures because there is no clear arrangement regarding electronic signatures in notarial deeds. Therefore, the article will focus on the problem of the concept of electronic signatures that are in accordance with the laws and regulations and the validity of the use of electronic signatures in the *partij akta*. The research method is normative juridical with a statute approach and a conceptual approach. The results of this research are that basically electronic signatures have legal force and legal consequences as long as they meet the requirements regulated in the Electronic Information & Electronic Law 2008 (Amendment 2016). However notarial deeds are not allowed to use electronic signatures according to Article 5 of the EIT Law 2008 (Amendment 2016). Notary as state officials must also create efficient public services by following existing technological developments by using electronic signatures to support e-government to create efficient public services. Therefore, the Government must also provide clear legal protection related to electronic signing for the parties in the notarial deed, mainly in the Notary Law and EIT Law.

**Keywords:** validity, electronic signature, notarial deed.

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### Introduction

The development of technology and information, especially in the aftermath of the pandemic, has been on the rise all over the world. Technology and information will continue to drive competitive advantage and agility through digital transformation in the post-pandemic era, as well as drive sustainability.<sup>1</sup> The introduction of new technologies can create opportunities for additional advancements in technology.<sup>2</sup> This rapid advancement in technology and information affects social conditions in current and future life. For example, technology has changed the workplace. Remote or even hybrid working, once the exception, is now the norm. According to research, an increasing number of

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<sup>1</sup> Tal Ben-Zvi & Jerry Luftman, "Post-Pandemic IT: Digital Transformation and Sustainability" (2022) Sustainability (Switzerland).

<sup>2</sup> Xiaojuan Jiang, "Digital economy in the post-pandemic era" (2020) Journal of Chinese Economic and Business Studies.

companies are launching new products and platforms that utilize digital technologies.<sup>3</sup>

The advancement of technology and information must be balanced with the digital capabilities of the general public and the protection of the public in using this technology and information. The general public's lack of digital capabilities can result in the misuse of technology and information on computers and smart mobile devices. Consequently, it is imperative to ensure the constant protection and enhancement of digital capabilities.<sup>4</sup> Indonesia has taken the initiative to optimize the potential use and protection of information and technology through the enactment of the Electronic Information and Transaction Law (EIT Law). This law was initially introduced in 2011 and has been amended twice: first in 2016 and then in 2024. One of the main arrangements in the law is the utilization of electronic signatures.

The use of electronic signatures provides convenience in various aspects, one of which is in public services. It is a verifiable fact that the development of electronic signatures that are of great benefit to human beings.<sup>5</sup> Now, various government officials running the government administration bureaucracy have also started using electronic signatures to realize e-government.<sup>6</sup> One of the professions that also provides public services to the community is notary, therefore of course notaries must keep up with existing technological developments, moreover, the use of electronic signatures provides convenience and all processes can run effectively and efficiently. The use of this technology is a form of improving public services for the community.<sup>7</sup>

The implementation of information technology-based notary authority is related to the concept of cyber notary. The concept of cyber notary is a concept popularized by jurists who inherit the tradition of common law.<sup>8</sup> The definition of the cyber notary in the opinion of law experts is a Notary who can certify an electronic document.<sup>9</sup> Cyber Notary is not a new concept because it has been regulated in Act of Republic Indonesia Number 30 of 2004 which has been amended by Act of Republic Indonesia Number 2 of 2014 concerning the Position of Notary (Notary Law). In the explanation of Article number 15 paragraph (3) of the Notary Law explained that other authorities regulated in laws and regulations,

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<sup>3</sup> Abdul Karim Feroz, Hangjung Zo & Ananth Chiravuri, "Digital transformation and environmental sustainability: A review and research agenda" (2021) *Sustainability* (Switzerland).

<sup>4</sup> Barbora Kotkova & Martin Hromada, *Cyber Security and Social Engineering* (2021).

<sup>5</sup> Chao Feng, Zhongyuan Ji & Jin Zhang, "Comparative Analysis of Dynamic Characteristics between Electronic Signature and Conventional Signature Based on Computer Vision Technology" (2022) *Computational Intelligence and Neuroscience*.

<sup>6</sup> Ruli Margianto et al, "Tanda Tangan Elektronik Untuk Efisiensi dan Efektivitas Birokrasi" (2022) *Jurnal Lex Specialis*.

<sup>7</sup> Lintang Ario Pambudi, Weda Kupita & Dwiki Oktobrian, "Comparison of Settlement Public Service Compensation Disputes at The Administrative Court and Ombudsman Republic Indonesia" in (2023).

<sup>8</sup> I Putu Suwantara & Putu Angga Pratama Sukma, "Konsep Cyber Notary Dalam Menjamin Keautentikan Terhadap Transaksi Elektronik" (2021) *Acta Comitas*.

<sup>9</sup> Syamsul Bahri, Annalisa Yahanan & Agus Trisaka, "Kewenangan Notaris Dalam Mensertifikasi Transaksi Elektronik Dalam Rangka Cyber Notary" (2019) 8:2 *Repertorium* 142-157, online: <<http://journal.fh.unsri.ac.id/index.php/repertorium/article/view/356>>.

one of which is the authority to certify transactions carried out electronically (cyber notary).

The understanding of cyber notary itself is still widely debated by law experts. According to some law experts, the concept of a cyber notary is the use of electronic media like teleconference, but some argue that there is a misconception about cyber notary. There are law experts who state that the concept of cyber notary is not much different from notaries in the real world, that is, the parties still come and face the notary directly. The difference is that after reading the draft deed, the parties sign the deed electronically at the notary's office.<sup>10</sup>

In practice around the notary world, the actual use of electronic signatures has been used in a Decree issued by the Directorate General of Online General Legal Administration (called AHU) of the Ministry of Law and Human Rights. The legal basic for the use of electronic signatures by the Ministry of Law and Human Rights is based on Article 10 paragraph (6) of Act of Republic Indonesia Number 40 of 2007 concerning Limited Liability Companies (LLC Law). The Decree issued in the AHU already uses electronic signatures, for example in the Decree of Establishment of a Limited Liability Company, Commanditaire Vennootschap (CV), and so on. The Decree is still recognized for its authenticity even though it is submitted online or electronically and the Decree issued also uses an electronic signature. The online procedure is regulated in Article 10 paragraphs (1) to (6) of the LLC Law.

Not only the Ministry of Law and Human Rights has implemented electronic signatures, but many ministries have issued decrees or certificates by using electronic signatures. This is an opportunity for Notaries, because in the future with such rapid technological developments, the development of electronic signatures in Notarial deeds is also not impossible. The existing developments certainly need to be balanced with regulations that strictly and in detail regulate electronic signatures in notarial deeds, especially in the Notary Law and also the EIT Law so that the application of electronic signatures can be carried out. Looking at the development of existing technology, in the future the need for notaries using electronic signatures will become increasingly visible.

This research will focus on electronic signatures on notarial deeds, especially *partij akta* (deeds made in the presence of a notary). There are several similar studies regarding electronic signatures on notarial deeds but none specifically discuss electronic signatures on *Partij Akta*. Previous research has also discussed the initial concept of cyber notary in the validity of deeds in electronic form, which suggests cyber notary is contrary to the principle of *tabellionis officium fideliter exercebo*.<sup>11</sup> Next Research conducted by Divia and Azheri discusses the validity of signatures on notarial deeds in general even though there are 2 types of deeds that

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<sup>10</sup> Suwantara & Pratama Sukma, *supra* note 8.

<sup>11</sup> Willi Wijaya Andes, "Konsep Dasar Cyber Notary : Keabsahan Akta dalam Bentuk Elektronik" 29 November 2018 (2018).

can be made before a notary.<sup>12</sup> Next, there is research on electronic notarial deeds in the field of e-commerce, the discussion of this research focuses more on deeds that are electronically signed as evidence in court<sup>13</sup>. There is also research that discusses the potential for digitizing electronic signatures in notarial deeds as authentic evidence.<sup>14</sup>

The contribution that can be made to further researchers as reference material regarding the potential and legal basis for signing with electronic signatures, especially in *partij akta*. In addition, it is expected to contribute to the development of the notary profession so that in carrying out its duties and authorities notaries can be more efficient, especially the signing of *partij akta*. With the existence of electronic signatures, not only notaries are facilitated but the parties will also be facilitated in signing anywhere and anytime. Therefore, it becomes interesting to study more deeply the validity of the electronic signatures of the parties in the notarial deed in order to improve efficient service.

## Research Problems

Based on the introduction, the problems in this study are formulated, first, how the concept of electronic signatures is related to existing laws and regulations in Indonesia, and second, how is the validity of electronic signatures on *partij akta*?

## Research Methods

The research method used in this research is normative juridical to test a norm or provision that applies by examining library materials or secondary data<sup>15</sup>. This research examines legislation and literature related to the concept of electronic signatures on notarial deeds. The approach used in this research is a statute approach and conceptual approach that analyzes and examines existing laws and legal norms<sup>16</sup>. The legal materials used are primary legal materials in the form of the Electronic Information and Transaction Law of 2008 (Amendment 2016), the Notary Office Law of 2004 (Amendment 2014), and Government Regulation No. 71 of 2019 concerning the implementation of electronic systems and transactions which can be found in the JDIH Website. Other legal materials used are secondary legal materials and tertiary legal materials that support the application of legal rules or principles in this writing. The data is presented using narrative text and analyzed qualitatively using content analysis.

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<sup>12</sup> Jenny Divia Fitcanisa & Busyra Azheri, "Keabsahan Tanda Tangan Elektronik Pada Akta Notaris" (2023) *Sibatik Journal: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, dan Pendidikan*.

<sup>13</sup> Anisa Ribut Septihana & Ana Silviana, "Tinjauan Yuridis Akta Notaris Secara Elektronik Dalam Bidang E-commerce" (2023) *Notarius*.

<sup>14</sup> Selva Omiyani, Suprpto Suprpto & Saprudin Saprudin, "Digitalisasi Tandatangan secara Elektronik dengan menggunakan Akta Notaris" (2024) *Notary Law Journal*.

<sup>15</sup> Irwansah, *Penelitian Hukum pilihan metode & Praktik Penulisan Artikel*, cetakan 5 ed, Ahsan Yunus, ed (Yogyakarta: Mirra Buana Media, 2022).

<sup>16</sup> Jonaedi Efendi dan Johnny Ibrahim, "Metode penelitian hukum: normatif dan empiris / Jonaedi Efendi, Johnny Ibrahim" (2018) *Kencana*.

## Discussion

### The Concept of Electronic Signature in associated with Existing Indonesia Laws and Regulations

The regulation regarding the definition of an electronic signature is regulated in Article 1 number 12 of the UU ITE and Article 1 number 22 of the Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (Government Regulation No. 71 of 2019) which basically explains that an electronic signature is a signature consisting of electronic information that is attached, associated or related to other electronic information used as a means of verification and authentication. Based on this definition, it can be concluded that an electronic signature is an electronic identity that serves as a sign of approval of the obligations and rights attached to an electronic deed. This electronic signature itself serves as a security on digital data created with a Private Signature whose use depends on the Public Key.

The system of electronic signatures uses a security guarantee called a "public key cryptography system". The general definition of electronic signature security assurance is "a data value generated by a public key algorithm based on the contents of a lock data and a private key, yielding so individualized crypto checksum"<sup>17</sup>. Although electronic signatures are made with a high level of security, there is still the potential for deficiencies or possibilities of information being leaked due to the use of information technology. Therefore, a third party is still needed as the organizer of electronic signature certification (Certification Service Provider) as the trustee (Trusted Third Party). A trusted Third Party or can be called a Certification Authority (CA) party is a trusted third party whose job is to certify and identify that the public key belongs to the person who affixed the electronic signature<sup>18</sup>.

An electronic signature is not a signature affixed to paper like a regular signature but there is a certain mechanism that was done in the past to create a message digest or hash, which is a mathematical summary of a document sent through cyberspace<sup>19</sup>. So there is a guarantee that the signatory is the person who is entitled and responsible for it. Electronic signatures are connected with digital message encoding aimed at providing certainty about the authenticity of the data and ensuring that there are no changes to the signed documents. In contrast to signatures in general which only function as an acceptance and recognition of the contents of a document.

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<sup>17</sup> Praptika Nurul Tsany Salsabila & Graciella Patras, "Legalitas Penggunaan Tanda Tangan Digital Dalam Akta Notaris Berdasarkan Hukum Positif di Indonesia" (2022) SALAM: Jurnal Sosial dan Budaya Syar-i.

<sup>18</sup> Emma Raden Ayu Nurita, *Cyber notary pemahaman awal dalam konsep pemikiran* (Bandung: Refika Aditama, 2012).

<sup>19</sup> Soemarno Partodihardjo, *Tanya jawab sekitar undang-undang no. 11 tahun 2008 tentang informasi dan transaksi elektronik* (Jakarta: Gramedia pustaka utama, 2009).

The existence of a signature conventionally will usually show at least a few things, namely <sup>20</sup>:

1. The symbolic function of a person's authorization is that by affixing a signature, the person is responsible for the content of what is written or conveyed because although there is a similarity of people or people's names, the characteristics of each person's signature must be different;
2. The function of authentication is that by affixing the Signature, the person has read and knows from what he signed and is locked with the presence of his name;
3. The function of consent that by affixing a signature is a form of act of approval or acceptance of what it signs;
4. The evidentiary function is that the content of what it signs will be legal evidence for the parties.

Electronic information and/or electronic documents are valid legal evidence that is an extension of valid evidence in accordance with the applicable procedural law in Indonesia in accordance with Article 5 paragraphs (1) and (2) of the EIT Law. However, there are exceptions to the provisions regarding electronic information and/or electronic documents as referred to as stated in Article 5 paragraph (4) letters a and b, which do not apply to letters that according to the Act must be made in written form, and letters and their documents which according to the Act must be made in the form of notarized deed or deed made by the deed-making officer.

The requirement for an electronic signature to have legal force and legal consequences is stated in Article 11 of the EIT Law and Article 59 paragraph (3) of the Government Regulation No. 71 of 2019, there are several conditions that must be compulsively fulfilled such as:

- a. The data on the creation of the relevant Electronic Signature is only to the Signatory;
- b. The data on the creation of an Electronic Signature at the time of the electronic signing process is only within the power of the Signatory;
- c. Any changes to your Electronic Hand that occur after the time of signing may be noticed;
- d. Any changes to the Electronic Information associated with such Electronic Signature after the time of signing may be noticed;
- e. There are certain ways in which Signatories are identified; and
- f. There are certain ways to indicate that the Signatory has given consent to the relevant Electronic information.

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<sup>20</sup> Edmon Makarim, *Notaris dan transaksi elektronik : kajian hukum tentang cybernotary atau electronic notary* (Depok: Rajawali Pers, 2020).

The requirements in Article 11 of the EIT Law and Article 59 paragraph (3) of the Government Regulation No. 71 of 2019 accommodate the electronic signature arrangements listed in the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce (MLEC) and UNCITRAL Model Law on electronic Signature (MLES). Based on the rules listed in the UNCITRAL MLEC and UNVITRAL MLES the standards that must be met for electronic signatures are:

1. Authenticity;

It can be shown where the electronic data comes from.

2. Integrity;

The use of electronic signatures applied to transmitted messages or electronic data may guarantee that the message or electronic data is not subject to any alteration or modification by unauthorized parties.

3. Non-Repudiation (Undeniably existing);

Electronic signatures use asymmetric encryption that involves the presence of both the private key and the public key. A message that has been encrypted using the private key is opened/described using the sender's public key, so if there is a message that has been encrypted by the sender using the private key, then he cannot deny the existence of the message.

4. Confidentiality.

Messages in the form of electronic data sent are confidential or confident, so not everyone can know the contents of electronic data that has been signed and entered in the digital envelope.

The provisions regarding the validity of electronic signatures in Article 11 of the EIT Law are inseparable from the provisions in Article 12 of the EIT Law, which states that everyone involved in the electronic signature is obliged to provide security for the electronic signature used. The security of electronic signatures referred to in accordance with Article 12 of the EIT Law at least includes:

- a. The system cannot be accessed by others who are not entitled;
- b. Apply the precautionary principle to avoid unauthorized use of data related to the creation of electronic signatures;
- c. The signatory shall immediately notify the person whom the signatory deems to trust the electronic signature or the supporting party of the electronic signature service if he or she becomes aware that the electronic signature creation data has been breached, or circumstances that may pose a significant risk resulting from the breach of the electronic signature creation data;

- d. In the event that an electronic certificate is used to support an electronic signature, the signatory must ensure the correctness and integrity of all information related to the electronic certificate.

Electronic signatures technically have different levels of evidentiary power depending on the secured communication used in electronic signatures. Electronic signatures by utilizing technological developments can use several modes of technology, including <sup>21</sup>:

1. Using passwords and their combinations (hybrid methods);
2. Scanned signatures or typed names;
3. The use of approval buttons or electronic receipts such as OK or Accept Button) which is supported by a secure socket layer;
4. The use of unique marks on the limbs (biometric);
5. The use of digital signatures based on encryption of a message (digital signatures).

Electronic signature security is contained in Article 60 paragraphs (2), (3), and (4) of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions including certified electronic signatures and uncertified electronic signatures. A certified electronic signature must meet the following requirements: meet the validity of the legal force and legal effect of the electronic signature; use electronic certificates created by Indonesian electronic certification providers; and be made using a certified electronic signature-making device. Meanwhile, uncertified electronic signatures are made without using the services of an Indonesian Electronic Certification provider.

The validity of an electronic signature essentially has legal force and legal effect. There is no distinction between certified electronic signatures and uncertified electronic signatures. However, there are differences in terms of proving the validity of such electronic signatures. If the electronic signature is certified, then the service provider of the Indonesian Electronic Certification as the guarantor of the authentication and integrity of a document and electronic signature. The Indonesian Electronic Certification service provider also guarantees that the electronic signature does not meet the requirements in Article 11 of the EIT Law and Article 59 paragraph (3) of the Government Regulation No. 71 of 2019. Meanwhile, uncertified electronic signatures must be proven independently by the signatory of the electronic signature with certain mechanisms that are in accordance with Article 11 of the EIT Law and Article 59 paragraph (3) of the Government Regulation No. 71 of 2019.

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<sup>21</sup> *Ibid.*



## Validity of Electronic Signatures of Parties in Notarial Deed

Notaries have several authorities in carrying out the duties and functions of their positions following those regulated in the Notary Law. Article 1 paragraph (1) of the Notary Law gives the definition of a Notary as a general official who is authorized to make authentic deeds and has other authorities as stipulated in the laws and regulations. The use of electronic signatures in notarial deeds relates to the discussion of the cyber notary. The idea of a cyber notary can make it easier for a notary to do their obligations, and it is now being used in Indonesia.<sup>22</sup> Cyber Notary serves as a safety measure in electronic transactions. It can do this in two ways: the traditional notary function, which verifies important documents, or the electronic notary function, which uses public infrastructure and electronic signatures.<sup>23</sup>

Cyber notary in Indonesia itself is mentioned in the explanation of Article 15 paragraph (3) of the Notary Law. Article 15 paragraph (3) of the Notary Law states that in addition to the authority as referred to in paragraphs (1) and (2), the Notary has other powers regulated in the laws and regulations. Cyber Notary is mentioned in the explanation of Article 15 paragraph (3) of the Notary Law which reads: "What is meant by "other authorities regulated in laws and regulations", among others, the authority to certify transactions carried out electronically (cyber notary), make a deed of wakaf pledges, and mortgages on aircraft". However, the definition of Cyber notary is not expressly stated in the Notary Law or in other regulations. The cyber notary also has no arrangements regarding how it is implemented and the conditions for implementing it. Therefore, the notion of a Cyber Notary is still a matter of debate among law experts.

Differences of opinion regarding cyber notaries can be seen from how law experts view and define cyber notary itself. According to Surya Jaya, a Cyber Notary is defined as an effort to utilize and use information technology, for example in the use of computer devices or electronic devices such as video conferencing or teleconferences in carrying out the duties and authority of notaries<sup>24</sup>. The concept of cyber notary according to Luthvi Febryka Nola is a concept that utilizes technology for notaries such as digitizing documents, signing deeds electronically, conducting the General Meeting of Shareholders (GMS) by teleconference, and other things that use electronic media<sup>25</sup>. However, some argue that there is a misconception about cyber notaries. Some law experts argue that the concept of a cyber notary is not much different from notaries in the real world, that is, the parties still come and face the notary directly. The difference is that after reading

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<sup>22</sup> Ikhsan Lubis et al, "Cyber Notary as A Mean of Indonesian Economic Law Development" (2023) 7:1 Sriwijaya Law Review 62.

<sup>23</sup> Devi Alincia & Tundjung Herning Sitabuana, "Urgency of Law Amendment as Foundation of The Implementation of Cyber Notary" (2021) Law Reform: Jurnal Pembaharuan Hukum.

<sup>24</sup> Salsabila & Patras, *supra* note 17.

<sup>25</sup> Luthvi Febryka Nola, "Peluang Penerapan Cyber Notary Dalam Peraturan Perundang-Undangan Di Indonesia" (2011) 2:1 Negara Hukum 75-102.

the draft deed, the parties sign the deed in an electronic way at the notary's office.  
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Notarial Deed itself is divided into 2 (two) types, namely *Partij Akta* and *Relaas Akta / Ambtelijk Akta*. The 2 (two) types of deed are contained in Article 1868 of the Civil Code which states that an authentic deed is a deed made in the form prescribed by law by (*Ambtelijk Akta*) or in the presence of (*Partij Akta*) the general officer authorized to do so at the place where the deed was made. *Partij Akta* is a deed made before a Notary containing a description in accordance with what is explained and told by the parties facing the Notary, which is then signed by the confrontants. While the Deed of *Relaas / Ambtelijke* deed is a deed made by a notary containing the minutes of the event n witnessed by the Notary directly so that the Notary is responsible for the correctness of the contents of the deed <sup>27</sup>.

Legal procedures that utilize electronic devices related to the scope of notaries, one example is in the case of the establishment of a Limited Liability Company which is regulated in Article 10 paragraphs (1) to (6) of the LLC Law. The establishment of a Limited Liability Company is submitted online or electronically and the output of the application for the establishment of a Limited Liability Company is the issuance of a Decree issued also using an electronic signature.<sup>28</sup> As for electronic signatures in Indonesia before being regulated in the EIT Law, it has also been regulated in Article 10 paragraph (6) of the LLC Law which reads: "If all the requirements referred to in paragraph (5) have been fulfilled completely, no later than 14 (fourteen) days, the Minister issues a decision on the ratification of the Company's legal entity signed electronically". The definition of electronic signatures is regulated in the explanation of Article 10 paragraph (6) of the LLC Law which reads:

"What is meant by "electronic signature" is a signature attached or included to electronic data by an authorized official that proves the authenticity of the data that an electronic image of the authorized official's signature made through a computer medium".

Before entering the issue of electronic signatures in a notarial deed, it must first be understood that the Notarial Deed itself is divided into 2 (two) types, namely the *Partij Akta* or deed made before the Notary and the *Relaas / Ambtelijk* Deed, which is a deed made by a Notary. *Partij Akta* is a deed made before a Notary containing a description in accordance with what is explained and told by the parties facing the Notary, which is then signed by the confronters. While the Deed of *Relaas / Ambtelijke* deed is a deed made by a notary containing the minutes of events witnessed by the Notary directly so that the Notary is responsible for the correctness of the contents of the deed <sup>29</sup>.

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<sup>26</sup> Suwantara & Pratama Sukma, *supra* note 8.

<sup>27</sup> Salsabila & Patras, *supra* note 17.

<sup>28</sup> Fauzan Salim, "Peran Notaris Dalam Pengesahan Pendirian Perseroan Terbatas Melalui Sistem Administrasi Badan Hukum (SABH)" (2020) 2:2 Recital Review 140–156.

<sup>29</sup> Salsabila & Patras, *supra* note 17.

One example of a deed of *relaas / ambtelijk* deed made by a Notary is the minutes in the General Meeting of Shareholders (GMS) which is attended directly by the Notary Notes, and then the minutes are made by the notary based on what the notary witnessed firsthand. In this regard, in the implementation of the General Meeting of Shareholders (GMS) in accordance with Article 77 of the LLC Law, the GMS can be carried out through teleconference, video conferencing, or other electronic media facilities that allow all GMS participants to see and hear each other directly and participate in the meeting.<sup>30</sup> Shareholders attending the meeting online are deemed to be attending the AGM and their voting rights are still counted in the quorum of attendance.

Every GMS event using electronic media must be made with minutes of the meeting that are approved and signed by all participants of the GMS. Judging from the regulation, it is possible to make minutes of meetings through electronic media by Notaries,<sup>31</sup> assuming that shareholders have held and attended meetings even though they are conducted online and witnessed by notaries through electronic media. However, the matter of making electronic meeting minutes is very difficult for Notaries to do because Notary Law does not clearly and unequivocally regulate electronic signatures or cyber notaries.

The fact occurs when shareholders cannot attend in person or face-to-face to conduct a General Meeting of Shareholders or GMS by means of a GMS by teleconference, video conference, or other electronic media facilities. Legal certainty for shareholders who attend electronically through electronic media is guaranteed by LLC Law.<sup>32</sup> However, regarding the publication of the minutes of the meeting, a GMS decision was made with a circular system. Circular Decisions are regulated in Article 91 of the LLC Law and Explanation of the article. Article 91 of the LLC Law regulates decision-making outside the GMS (circular decision) which requires shareholders to make binding decisions outside the GMS provided that all shareholders with voting rights agree in writing by signing the proposal concerned. The explanation of the article states that what is followed by decision-making outside the GMS is a circular resolution proposal. This kind of decision-making is carried out without a physical GMS being held, but the decision is taken by sending documents in writing and will be decided by all shareholders, and the proposal is approved in writing by all shareholders. The explanation of the article, also states that what is meant by a "binding decision" is a decision that has the same law as the decision of the GMS.

Judging from the concept of an online GMS using electronic media, this is different from the concept of a circular decision. This circular decision was made

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<sup>30</sup> Vela Ardian Ninda, Ermanto Fahamsyah & Rahmadi Indra Tektona, "Prinsip Kepastian Hukum Tanda Tangan Elektronik Pada Akta Rapat Umum Pemegang Saham Melalui Telekonferensi" (2023) 4:6 Jurnal Syntax Transformation 74-87.

<sup>31</sup> M Jordan Pradana, Fauzi Syam & Syamsir Syamsir, "Pembuatan Akta Relaa Pada Rapat Umum Pemegang Saham Perusahaan Non Tbk Melalui Telekonferensi" (2022) 8:2 Selodang Mayang: Jurnal Ilmiah Badan Perencanaan Pembangunan Daerah Kabupaten Indragiri Hilir 166-176.

<sup>32</sup> Nurul Amaliah, "Kepastian Hukum Dalam Penyelenggaraan Rapat Umum Pemegang Saham Secara Elektronik" (2022) 2:2 Jurnal Officium Notarium 257-267.

with the intention of replacing the GMS because it cannot be physically abolished by the GMS. The concept of an online GMS is that the minutes of the meeting are not circular decisions, but the Notary does not have a strong legal basis in the Notary Law related to electronic signatures in the minutes of the GMS which is based on the Deed of *Relaas / Ambtelijk* Deed through the GMS using electronic media. Therefore, the way out of the legal vacuum is to make circular decisions.<sup>33</sup> In fact, when viewed from the LLC Law, it has actually provided very much an opportunity to notaries in terms of electronic signatures or cyber notaries.

Moreover, an electronic signature would be a big question if used in the *Partij Akta/Deed* of the Parties. A deed is a deed made before a Notary which in the deed contains what is given and explained by the consuls to the Notary, then the deed signs the deed.<sup>34</sup> One of the benefits of technology is that it provides convenience and the process that is passed becomes more effective and efficient because the party who will affix the electronic signature does not have to meet in person but can also go through electronic media such as teleconferencing, video conferencing or other electronic media. After meeting using electronic media, they can immediately put an electronic signature without having to take time to sign in person if the parties have no difficulty in meeting in person. It is a question in the case of deeds that use electronic signatures, namely regarding the manner and validity of electronic signatures by the parties to the notarial deed.

Notary Law is a law that serves as a notarial guideline in making deeds, both *partij akta* and *ambtelijk akta*. Because a deed that uses an electronic signature is not regulated in the Notary Law and is also still contrary to the provisions in making a deed,<sup>35</sup> the deed can be degraded from an authentic deed to a private deed. This refers to Article 1869 of the Civil Code, which states that a deed that cannot be required as an authentic deed, either because of the inadequacy or incompetence of the general officer concerned or because of defects in its form, has the power like the private deed. The implementation of this electronic signing has not been regulated in the Notary Law and is contrary to EIT Law, so if at this time there is a Notary who uses an electronic signature, the authentic deed is invalid and can be degraded into a private deed because it conflicts with the Notary Law. Of course, the legal force of an authentic deed and a private deed is different, so this will harm the parties and also not provide legal certainty to the parties who signed the deed.

Regarding the form and nature of the deed, it is regulated in Article 38 to Article 40 of the Notary Law. The article regulates several things such as certainty regarding the hour, day, date, month, year, and place of residence related to the notary's working area, description of the reading of the deed, description of the

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<sup>33</sup> Melissa Lin, "Keabsahan Akta Pernyataan Keputusan Rapat, Risalah Rapat Dan Akta Pernyataan Keputusan Sirkuler Dikaitkan Dengan Wilayah Jabatan Notaris" (2022) 6:1 Maleo Law Journal 79-94.

<sup>34</sup> Junita Faulina, Abdul Halim Barkatullah & Djon S Gozali, "Kedudukan Hukum Akta Notaris yang menerapkan Konsep Cyber Notary di Masa Pandemi Covid-19 di Indonesia" (2022) 1:3 Notary Law Journal 247-262.

<sup>35</sup> Kadek Setiadewi & I Made Hendra Wijaya, "Legalitas Akta Notaris Berbasis Cyber Notary Sebagai Akta Otentik" (2020) 6:1 Jurnal Komunikasi Hukum (JKH) 126.

signing and place of signing the deed, the presence or absence of changes that occur in the making of the deed, and the reading of the deed is attended by at least 2 (two) witnesses. Then Article 41 of the Notary Law explains that if the provisions in Article 38 to Article 40 of the Notary Law are violated, the deed only has the power of proof as a private deed.<sup>36</sup>

## Conclusion

The rapid development of technology must be balanced with laws and regulations that are always updated following the times and the needs of the community, including in terms of regulations regarding the electronic signatures of the parties to notarial deeds. It is very possible that in the future electronic signatures in notarial deeds will be increasingly needed, because of the use of technology that will provide many conveniences to the parties in various aspects including in making deeds for effectiveness and efficiency.

Currently, notarial deeds that use electronic signatures are still widely debated, besides that, it is also contrary to the EIT Law which stipulates that notarial deeds are an exception or are not allowed to use electronic signatures. In addition, the basic regulations regarding the making of deeds in the Notary Law have not regulated electronic signatures. Therefore, the EIT Law and also the Notary Law must be amended which contains how to implement cyber notaries and the validity of notarial deeds that use electronic signatures by the parties so that there are no legal vacancies and provide legal certainty to both notaries and the public. As long as the Notary Law is not changed, the Notary does not have a strong legal basis in making a deed with electronic signatures, because a deed made inconsistent with the Notary Law can be degraded into a private deed.

## Suggestion

There needs to be a paradigm shift from electronic signatures being grown in *partij akta*, to electronic signatures that can be used and have validity in *partij akta*. The use of electronic signatures provides convenience in various aspects, one of which is in public services. For this reason, it is necessary to update the notary office law, especially the regulation of electronic signatures that have not been accommodated at this time due to the constraints of Article 16 paragraph (1) letter m of the notary office law which requires the parties to meet directly with the notary. The article can be added to the concept of cyber notary so that even though there is no face-to-face meeting with the notary, it is still considered valid with the use of verified electronic signatures.

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<sup>36</sup> Gana Prajogo & Abdul Salam, "Otentisitas Akta Notaris Yang Ditandatangani Melalui Online Dimasa Pandemi Covid 19" (2022) 8:1 Palar | Pakuan Law Review 107-119.

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