# LEGAL VALIDITY OF NOTARIAL DEEDS SIGNED WITH ELECTRONIC SIGNATURE (Comparative Study between Indonesian Law and Australian Law)

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***Abstract***

*Currently, the profession of Notary holds significant importance in the economic landscape of Indonesia. However, there is a lack of legislation that enables Notaries to execute their duties by creating electronically signable deeds. In Indonesia, an authentic deed prepared by a Notary necessitates physical presence and cannot be executed electronically. This research seeks to identify the legal validity of notarial deeds signed with Electronic Signatures, particularly in Indonesia and New South Wales, Australia. The study aims to understand the regulatory frameworks, examine the nature of Electronic Signatures, and evaluate the implications for contract law in both jurisdictions. Utilizing a Normative Research approach, this study employs the Statute, Conceptual, and Comparative Approaches. Primary legal materials include relevant Indonesian and Australian laws, while secondary and tertiary legal materials provide additional context. A literature review involving books, e-journals, and internet sources contributes to the analysis. The research reveals a gap in explicit regulations governing electronically signed deeds in both Australia and Indonesia. Despite practical application in public contracts, especially in business collaborations, concerns about vulnerability to forgery persist. The absence of clear regulations necessitates a physical appearance before a notary for authentic deeds. The study concludes that regulatory models addressing protection, implementation, and supervision of electronically signed deeds should be explored collaboratively by the Government and the House of Representatives in Indonesia.*

***Keywords:*** *Electronic Signature, Legal Power, Validity of Notarial Deed*

## 1. INTRODUCTION

The potential for business growth in Indonesia is highly promising. As of March 2021, data from the Ministry of Cooperatives and Small and Medium Enterprises (KemenkopUKM) revealed that there were approximately 64.2 million Micro, Small, and Medium Enterprises (MSMEs) in the country. This number is expected to continue increasing over time, indicating a positive outlook for Indonesia's economic development, particularly in the business sector. Given the significant presence of companies in Indonesia, it becomes imperative to establish robust legal systems and frameworks that can ensure legal certainty for all parties involved in business activities. By providing legal certainty, the business environment in Indonesia can offer a sense of security and stability to those engaged in various business endeavors.

Economic development inevitably paves the way for potential collaborations among nations. Consequently, the regulatory body of Indonesia, as the governing authority, can establish legislation that ensures legal assurance, fostering a sense of confidence and trust among companies engaging in cooperative endeavors, both domestically and internationally. Moreover, the government plays a crucial role in

upholding political stability within the nation, thereby instilling a sense of security for foreign investors who wish to invest in Indonesia.

With the passage of time, the commodities exchanged in the realm of commerce have evolved from tangible entities that can be visually perceived to intangible assets known as intellectual property rights. In Indonesia, the notary, being a public official, bears the responsibility of creating legally valid documents that are essential for business operations within the country, as well as for collaborations with international counterparts. These documents encompass various agreements and the establishment of business entities.

The signature holds significant importance in a Notarial Deed as it signifies that the involved parties are aware of and consent to the contents of the deed. Without the signatures of the parties, the Notarial Deed cannot be considered valid, thus lacking legal certainty for the parties involved and lacking the ability to serve as legal evidence in case of a dispute. Traditionally, signatures are physically affixed by the parties on the deed, but with the advancement of technology, Electronic Signatures have emerged as an alternative method.

Electronic signatures eliminate the need for face-to-face interactions as parties can transmit their signatures via the internet. This convenience offered by electronic signatures facilitates transactions by saving time and reducing costs for all involved parties, particularly in the context of creating notarial deeds. Nevertheless, a crucial concern arises: does a notarial deed signed with an electronic signature possess the necessary legal validity to ensure legal certainty and protect the rights of the parties involved?

The notary profession is not limited to Indonesia; it exists in several other countries, including Australia. However, there are differences in the arrangements related to notarial activities between Indonesia and Australia. These differences stem from the distinct government systems in each country. Indonesia operates as a unitary state, whereas Australia is a federal state composed of individual states. One such state in Australia is New South Wales, with Sydney serving as its capital. In the context of notarial activities, particularly regarding the validity of notarial deeds signed with an Electronic Signature, there are likely to be significant differences between Indonesia and Australia. These differences present an intriguing area for further research to explore the validity of notarial deeds signed with an Electronic Signature.

The use of Electronic Signature offers significant convenience in various activities as it eliminates the need for face-to-face interactions between relevant parties. For instance, in a sale and purchase transaction where the subject of the transaction is located in Indonesia while one or both parties are abroad or include foreign citizens, Electronic Signature proves to be highly advantageous. It streamlines transactions, saves time and costs, and simplifies the process of creating notary deeds, thereby benefiting notaries as well.

Conducting this research is of utmost importance as it aims to enhance our understanding and shed light on the Legal Power of the Validity of Notarial Deeds Signed with Electronic Signature. This is particularly crucial in the current era of rapid technological advancements. The utilization of Electronic Signatures in Notarial Deeds holds the potential to stimulate the enhancement of public services within the private sector. In light of the aforementioned context, the following issues can be formulated: What is the nature and regulatory framework of Electronic Signatures in accordance with

the positive law in Indonesia and the State of New South Wales, Australia? Furthermore, what is the legal validity of a Notarial Deed signed with an Electronic Signature in both Indonesia and Australia, and what are the implications of such validity in the realm of contract law in these respective jurisdictions?

## 2. LITERATURE REVIEW

### 2.1. Comparative Theory of Law

According to the theory put forward by René David related to the Theory of Comparative Law, as published in George Mousourakis' book. This legal comparison can be focused on three main issues, namely: (i) legal substance; (ii) legal structure; (iii) legal culture. Substance, in this case, refers to the rules related to electronic signature. Furthermore, the legal structure here refers to the institutions or institutions that implement these provisions and rules, while the legal culture refers to the response of the community / practice on the application of rules / provisions related to the enactment of electronic signature.

### 2.2. Legal Certainty Theory

Legal certainty shows that each individual knows their rights and obligations so that there can be peace, justice and order in social life. According to Sudikno Mertukusumo, legal certainty is a guarantee that the law must be carried out in a good way. Legal certainty requires efforts to regulate the law in laws and regulations made by authorized and authoritative parties, so that these rules have juridical aspects that can guarantee the certainty that the law functions as a rule that must be obeyed (Asikin, 2012).

### 2.3. Validity

Legal Validity Theory is one of the important theories in legal science. The theory of validity or legitimacy of law (legal validity) is a theory that teaches how and what the conditions are for a legal rule to be legitimate and valid, so that it can be applied to society. (Munir, 2013). In addition, Coherence Theory is also known which is associated with legal truth, coherence theory is implemented at the level of *ius constituendum* (legal ideas) which are adjusted to the reality of community behavior. The legal truth to be fulfilled in this aspect is the aspect of justice that is prioritized (Harefa, 2016).

### 2.4. Notarial Deed

A Notarial Deed is an official document issued by a Notary. A Notarial Deed is an authentic deed which in Article 1870 of the Civil Code states that a Notarial Deed has absolute and binding evidentiary power. The position of a Notarial Deed is very strong in being a trial evidence.

### 2.5. Electronic Signature

Based on Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions Article 1 number 12:

Electronic signature is a signature consisting of electronic information attached, associated or related to other electronic information used as a verification and authentication tool.

Mason (2000) argues in his Journal that electronic signatures can be expressed in various forms. Electronic Signature includes "I accept" signs, pins, typing names into emails and word documents, scanned signature manuscripts, biodynamic signatures and digital signatures. According to Stephen Mason, the most important thing is that there is sufficient evidence to show that the person who signed the document, made the electronic signature attached to a document.

## 3. RESEARCH METHODS

The type of research used in this study was Normative Research. The approach methods included in this research were the Statute Approach, Conceptual Approach, and Comparative Approach. The data used in this research are as follows:

1) Primary Legal Materials:
   a. Law Number 11 of 2008 on Information and Transactions
   b. Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Transactions
   c. Law No. 2 of 2014 on the Amendment to Law No. 30 of 2004 on the Position of Notary
   d. Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions
   e. Constitutional Court Decision Number 20/PUU-XIV/ 2016
   f. Electronic Transactions Act No. 8
   g. Public Notaries Act 1997
2) Secondary Legal Materials

Secondary legal materials are data obtained from official documents, books, related to the object of research, research results in the form of reports, theses, theses, and dissertations that serve to provide explanations related to primary legal materials.

3) Tertiary Legal Materials

Legal materials obtained from additions such as legal dictionaries, encyclopedias, which are related to the problem to be studied.

The data collection technique in this research involved a literature review, where literature books, e-journals, and the internet were studied to obtain secondary data. This process included collecting, studying, understanding, and quoting from books, laws, and regulations related to the research. The results of the analysis of legal materials were interpreted using the following methods: (a) systematic, (b) grammatical, and (c) theological.

## 4. RESULTS AND DISCUSSION

### 4.1. Nature And Regulatory Model of Electronic Signature According to Positive Law in Indonesia

#### 4.1.1. Model of Electronic Signature Regulation According to Positive Law in Indonesia

Electronic signatures in Indonesia are regulated in the ITE Law. The ITE Law regulates important matters, namely the requirements of electronic signatures, legal consequences arising from the implementation of electronic signatures for the subject, in

this case, the signatory. Furthermore, Electronic Certificates which are one form of electronic signature, which are certified electronic signatures, are regulated in Article 51 of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE 71/2019).

Legal force for electronic signatures, can arise if the electronic signature fulfills the applicable conditions which are in accordance with Indonesian Laws and Regulations. The requirements of electronic signatures are contained in Article 11 of the ITE Law:

Article 11

1) Electronic Signatures have legal force and legal consequences as long as they meet the following requirements:
   a. Related Electronic Signature creation data only to the Signatory;
   b. Electronic Signature creation data at the time of the electronic signing process is only in the power of the Signatory;
   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 time of signing can be known;
   e. There is a specific means used to identify who the Signatory is; and
   f. There is a specific way to indicate that the Signatory has given consent to the relevant Electronic Information.

With the fulfillment of the conditions stated in Article 11, electronic signatures in Indonesia will be legally valid, which means that electronic signatures can become valid evidence.

Everyone involved with Electronic Signatures certainly has an attachment to the responsibilities arising from the affixing of the Electronic Signature. In connection with these responsibilities as stated in Article 12 of the ITE Law, namely:

Article 12

1) Every person involved in Electronic Signatures is obliged to provide security for the Electronic Signatures they use.
2) Electronic Signature Security as referred to in paragraph (1) at least includes:
   a. The system cannot be accessed by other unauthorized persons.
   b. Signatories must apply the precautionary principle to avoid unauthorized use of data related to the creation of Electronic Signatures.
   c. The Signatory must without delay, using the method recommended by the Electronic Signature organizer or other feasible and reasonable means must immediately notify a person whom the Signatory considers to trust the Electronic Signature or to the Electronic Signature service supporter if:
      1. The Signatory knows that the data for making an Electronic Signature has been compromised; or
      2. Circumstances known by the Signatory to pose a significant risk, possibly due to the breach of data for the creation of Electronic Signatures; and
d. In the event that an Electronic Certificate is used to support an Electronic Signature, the Signatory must ensure the truth and integrity of all information associated with the Electronic Certificate.

Every person who violates the provisions as referred to in paragraph (1) shall be liable for all losses and legal consequences arising.

Further explanation related to Electronic Certificates is contained in Article 51 of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE 71/2019), namely:

a. Electronic System Operator must have an Electronic Certificate;
b. Electronic System Users can use Electronic Certificates in Electronic Transactions;
c. To have an Electronic Certificate, the Electronic System Operator must submit an application to the Indonesian Electronic Certification Provider (PrSE Indonesia);
d. If necessary, the Ministry or Institution can require Electronic System Users to use Electronic Certificates in Electronic Transactions.

Thus, in Indonesia, the use of Electronic Signatures that are valid and guaranteed legal protection is a certified electronic signature, as regulated in the ITE Law which is then more specifically regulated in PP 82/2012 and PP 71/2019.

### 4.1.2. Regulatory Model of Electronic Signature under Australian Law (State of New South Wales)

Australia is a country divided into several states, one of which is the State of New South Wales. State and territory governments are responsible for all matters not delegated to the Commonwealth, and they also adhere to the principle of responsible government. In the states, the Queen is represented by a Governor for each state.

Electronic Signatures in NSW, Australia, are regulated in the Electronic Transactions Act 2000 No.8. According to the document published by education.nsw.gov.au which is the official website of the State Government of New South Wales Australia, in accordance with the Electronic Transactions Act 2000 No.8, it is stated that:

"The term E-Signature or "electronic signature" means a method of signing an electronic message that:

a) Identifies and authenticates a particular person as the source of the electronic message; and
b) Indicates such person's approval of the information contained in the electronic message.

A digitally signed document is a self-contained, portable and fully sustainable source electronic record that can be verified and trusted by internal and external parties independent of the organization or supplier of the electronic signature technology."

The use of electronic signatures in the state of New South Wales Australia must certainly meet the attributes of the requirements for its use, just like Indonesia which has requirements to determine the validity of an electronic signature. In the document uploaded by nsw.edu.gov.au, it is stated that what must be fulfilled in the implementation of electronic signatures are:

a. Electronic signatures must be unique and valid only as the signature of the person who owns the signature.
b. Has capabilities as a verification tool.
c. Is under the control of the person who owns the signature.

d. The electronic signature is linked to the data in such a way that if the data is changed, the use of the electronic signature becomes invalid.
e. In accordance with the requirements stated in the law.

In Australia, electronic signatures are regulated in the Electronic Transactions Act 1999 Section 10, which outlines the basic elements that must be met by electronic signature methods, namely:

"(1) If, under a law of the Commonwealth, the signature of a person is required, that requirement is taken to have been met in relation to an electronic communication if:

a) in all cases-a method is used to identify the person and to indicate the person's intention in respect of the information communicated; and
b) in all cases-the method used was either :
   i. as reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
   ii. proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence; and
c) If the signature is required to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that the method used as mentioned in paragraph (a) be in accordance with particular information technology requirements-the entity's requirement has been met; and
d) If the signature is required to be given to a person who is neither a Commonwealth entity nor a person acting on behalf of a Commonwealth entity-the person to whom the signature is required to be given consents to that requirement being met by way of the use of the method mentioned in paragraph (a) "

All states in Australia rely on these laws in relation to Electronic Signature, but states in Australia have laws that are complementary to the regulations related to electronic signatures.

In the state of New South Wales in Australia, electronic transactions related to electronic signatures are further regulated in the Electronic Transactions Act 2000 No 8 (New South Wales) which in Section 9 includes the same rules as contained in the Electronic Transactions Act 1999 Section 10 previously mentioned.

In comparison, in the United States, specifically in the state of California, the use of electronic signatures must have certain purposes that are published on the official website of the California state government, namely :

1) Purpose of Digital Signatures

The American Bar Association identifies the following as the general purposes for signatures:

Evidence : A signature authenticates a record by identifying the signer with the signed document. When the signer makes a mark in a distinctive manner, the writing becomes attributable to the signer.

Ceremony : The act of signing a document call to the signer's attention the legal significance of the act and helps prevent inattention or inappropriate approval.

Approval : In certain contexts, a signature expresses the signer's approval or authorization of the record or the signer's intention that it have legal effect.
Efficiency : A signature on a written document often imparts a sense of clarity and finality to the transaction, and may reduce the subsequent need to inquire beyond the face of a document.

Basically, the use of digital signatures from the explanation aims to state the consent of the signatory party which is carried out digitally, and has legal consequences for the party signing the document electronically, more specifically, signing documents with digital signatures.

### 4.2. Legal Strength of Notary Deeds Signed with Electronic Signature and Implications for Contract Law in Indonesia and Australia (State of New South Wales)

#### 4.2.1. The Legal Validity of Notarial Deeds Signed with Electronic Signature and its Implications for Contract Law in Indonesia

Notaries as public officials of the state have the authority to make deeds, where the deed is called an authentic deed. The definition of an authentic deed, which is one of the authorities of a notary, is contained in Article 1868 of the Civil Code, which reads:

*"An authentic deed is a deed made in the form prescribed by law by/or before a public official authorized for that purpose, at the place where the deed is made."*

As can be seen from the definition of Authentic Deed contained in the law above, there are elements that can be drawn, namely:

- Made in the form prescribed by law;
- In the presence of an authorized public official where the deed is made;

An Authentic Deed made in accordance with the applicable laws and regulations will later become valid evidence in the eyes of the law. Thus, the Notary has an obligation to include that what is contained in the Notarial deed, has really been understood and in accordance with the will of the parties, namely by reading it so that it becomes clear the contents of the Notarial deed, and providing access to information, including access to relevant laws and regulations for the parties signing the deed, so that the parties can determine the contents and agree to the contents of the deed made by the parties before the Notary.

According to Alwesisus, SH.MKn in his book entitled Basics of Notarial Deed Making Techniques, Notary is a public official authorized to make authentic deeds regarding all acts, agreements, and stipulations required by laws and regulations and. or desired by those concerned to be stated in an authentic deed (Alwesius, 2019).

The form of consent of the parties that determines the content of the authentic deed made by the parties, is indicated by the affixing of the signatures of the parties on the deed made, and the signatures are affixed before the Notary. Signing is the most important thing in making a deed, by adding a signature a person is considered to bear the truth of what is written in the deed or be responsible for what is written in the deed (Moechthar, 2017).

The benefits of an authentic deed, which in English is called the benefits of deed authentic, while in Dutch it is called *wet uitkeringen authentiek* related to the usefulness or benefits of an authentic deed (Salim, 2015). The benefits of an authentic deed include:

1) Clearly define rights and obligations;
2) Ensure legal certainty;
3) Avoidance of disputes;
4) The strongest and fullest written evidence; and
5) In essence, it contains the formal truth in accordance with what the parties have told the notary.

In notarial practice, authentic deeds and underhand deeds are often known, where according to the previous explanation, an authentic deed is a deed made by a public official, namely a notary, while an underhand deed is only made by the parties without any intervention from a public official. It should be underlined that in notarial practice in Indonesia there is also what is called an underhand deed legalized by a Notary, and this deed is still not an authentic deed because even though it is legalized by a Notary, the underhand deed is still not a deed made by a Notary.
The Authentic Deed made by Notary is divided into 2 (two) forms, namely:

1. Party Deed (*Partij*)

According to Herlien Budiono, in a party deed, "making" the deed consists of drafting; reading the deed by the notary; and signing the deed by the confronters, witnesses and notary. A party deed is a deed that contains what happened based on the information given by the confrontants to the notary in the sense that they explained and told the notary and for this purpose deliberately came to the notary so that the information or action was stated by the notary in a notarial deed and the confrontant signed the deed. (Salim, 2015) A Party Deed as described above is a deed made directly in the presence of a notary, which consists of drafting, reading, and signing the deed by the parties, witnesses and notary (Alwesius, 2019).

2. Deed of *Relaas* / Official Deed

Deed of *relaas* is a form of deed made for authentic evidence of actions taken on a situation that is seen or witnessed by the notary himself in carrying out his position as a notary (Salim, 2015). Deed of relaas does not provide evidence regarding the information given by (the) confrontants by signing the deed, but for evidence regarding the actions and facts witnessed by the notary in carrying out his/her office. Included in this deed of relaas are, for example, the deed of the Minutes of the Lottery, the Deed of Minutes of the General Meeting of Shareholders of the Limited Liability Company (Alwesius, 2019).

There is one fundamental difference between a Deed of Relaas and a Deed of Party, which is related to the signing activity. In a *Partij* (Party) Deed, the signatures of the parties are absolute, so that if a party does not sign the deed, then the deed is deemed not to exist, whereas in an Official Deed (*relaas*), the signature is not an absolute requirement of the deed, so that if a party cannot be present or even does not want to sign the deed, then this is explained in the deed of *relaas*.

Related to the discussion of authentic deeds from notaries in accordance with the previous explanation, every deed always has an element of signature in it, however, in the previous explanation there is no specific explanation regarding what form of signature is meant for authentic deeds. Is the signature a wet signature or can it be a certified electronic signature?

However, as stated in Article 38 of UUJN-P:
(3) The End or Closing of the Deed contains :

a) Description of the reading of the Deed as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7);
b) Description of the signing and place of signing and place of signing or translation of the Deed if any;
c) The full name, place and date of birth, occupation, position, and residence of each witness to the Deed; and
d) A description of the absence of changes that occurred in the making of the Deed or a description of the changes that can be in the form of additions, deletions, or replacements and the number of changes.

In letters a and b of Article 38 paragraph (4) of the UUJN, it is stated that in the closing of the deed, the reading of the deed and a description of the signing and the place of signing the deed must be contained in an authentic deed. Thus, it will be difficult to contain information about the signing of an authentic deed, if the deed is done using an electronic signature even though it is not explained in detail in the UUJN whether a form of signing an authentic deed must be done with a wet signature or can be done electronically.

Furthermore, Article 16 paragraph (1) letter m of the UUJN-P stipulates that one of the obligations of notaries in carrying out their positions is:

*"read out the Deed in the presence of the confronter in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of an underhand testament Deed, and signed at that time by the confronter, witnesses and Notary."*

Thus, it can be concluded that an authentic deed in Indonesia must still contain a wet signature, because the reading and signing of the deed must be attended in person by the confrontants listed in the authentic deed. If an authentic deed made by a Notary, is signed electronically even though it uses a certified electronic signature and is in the form of a digital signature issued by companies authorized to issue digital signatures as regulated in laws and regulations, the authentic deed is still considered incomplete and it will be questioned whether the authentic deed is considered legal and its evidentiary power will be doubted because it does not meet the requirements for making an authentic deed as contained in the UUJN-P.

In addition, for a deed to fulfill its authenticity, there are requirements that must be met related to the authority of the Notary concerned with the deed. The authority includes 4 (four) things, including:

1. Notaries are authorized insofar as the deeds they make are concerned;
2. Notaries are authorized as far as the person for whose benefit the deed is made;
3. The notary is authorized as far as the place where the deed is made;
4. Notary is authorized as far as the time of making the deed (Notodisoerdjo, 1993).

According to Sita Arini Umbas (2017) in her journal states that in general there are 3 (three) legal powers possessed by an authentic deed, namely:

1. Outward evidentiary power. By outward evidentiary power is meant the ability of the deed itself to prove itself as an authentic deed. This ability according to Article 1875 of the Civil Code cannot be given to a deed made under hand.

2. Formal evidentiary power. With this formal evidentiary power by an authentic deed it is proven, that the official concerned has stated in the writing, as stated in the deed and apart from that the truth of what is described by the official of the deed.
3. Material evidentiary power. As far as the material evidentiary power of an authentic deed is concerned, the certainty that what is stated in the deed is valid proof of rights and applies in general unless there is evidence to the contrary (Umbas, 2017).

In its development, electronic signatures in the business world have indeed become an alternative for business people to be able to facilitate business activities. Indonesia has enormous potential in a variety of businesses that will continue to advance the Indonesian economy. Business actors in Indonesia are Indonesian citizens and foreign citizens while still guided by Indonesian laws and regulations.

Notary is one of the supporting professions for the business world in Indonesia, where the product of the Notary, namely the authentic deed itself is actually very much needed in the business world to provide legal certainty for business people. Currently, Electronic Signatures cannot be applied to Authentic Deeds because there is still a legal vacuum related to arrangements that legalize Authentic Deeds to be signed electronically.

Contracts in Indonesia are made based on important principles which are the basic principles of the agreement as contained in Chapter III of this Study, including the principle of consensually which states that an agreement will become law for those who make an agreement, as well as the principle of freedom of contract, where the parties who make a contract can make contracts freely as long as they do not violate the law so that the contract can be valid and has evidentiary power in the eyes of the law. Of course, the validity of a contract must fulfill the legal requirements of the agreement contained in Article 1320 of the Civil Code.

A contract in relation to a notary, is also an authentic deed if the contract is made before or by a notary, but if it is not made before a notary, then the contract is not an authentic deed, but still applies as law to the parties to the contract. An example that is often encountered as a form of contract that is not an authentic deed, is a cooperation contract between a distributor company and a retail store where an item is supplied by the distributor to be sold to consumers of the retail store, usually in some cases, this cooperation contract is carried out electronically or manually with a stamp as a reinforcement of the contract.

The use of Digital Signature in a contract certainly has great implications in the world of contracts in Indonesia, this is related to the efficiency of time, energy and especially related to funds. Indeed, the creation of a digital signature requires a fee that must be paid to certified electronic signature issuing companies, but if explained, there are many advantages obtained by using digital signatures as explained in the previous sub-chapter.

Currently, electronic signatures in Indonesia are more widely used in the financial world such as in banking, insurance, fintech, and investment companies. Even now in Indonesia, to open an account, apply for credit and loan applications, restructure credit, apply for insurance policies, and make insurance contracts, can already use electronic signatures. It can also be seen that some administrative services have used a system that enforces electronic signatures, with the Covid-19 Pandemic the potential for using electronic signatures is increasingly open even in formal activities (Online Law Publication Team, 2022).

Regarding the implications of a notarial deed signed with an electronic signature, it can be emphasized that in Indonesia, currently it does not allow Notaries to use electronic signatures in making their deeds, thus, notarial deeds cannot be signed with electronic signatures, if it is forced for a deed to be signed with an electronic signature, then the deed becomes invalid in the eyes of the law.

As explained in the previous discussion, the product of a notary, in this case what characterizes the Notary in Indonesia is an authentic deed made by a notary. Notarial deeds, as stated in the law, cannot be signed electronically because there is no regulation that allows this, moreover the law regulates that authentic deeds are made by notaries and signed in the presence of notaries, which means that the signature of an authentic deed must be signed with a wet signature.

In terms of contracts in Indonesia, for example in the business world, there are contracts that are needed, such as cooperation contracts and so on. In the event that a business or trade contract is signed using an electronic signature, as long as the electronic signature meets the requirements for the validity of an electronic signature, as well as the contents of the contract do not violate laws and regulations and the making of the contract is in accordance with the validity of the agreement stipulated in Article 1320 of the Indonesian Civil Code, then the contract signed using an electronic signature will be considered legally valid and will have evidentiary power in court.

Contracts that use digital signatures provide many conveniences for the contracting parties as has been listed in the previous discussion related to the advantages obtained by using digital signatures for a contract.

Furthermore, in the world of commerce in Indonesia, related to Limited Liability Companies which are regulated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), it is stated that the establishment of a limited liability company is submitted using an electronic administration system to the Minister of Law and Human Rights.

Article 10 paragraph (6) of the UUPT states that the Minister issues a decision on the ratification of the Company's legal entity which is signed electronically. In the establishment of a limited liability company, indeed the decision on the ratification of the company's legal entity is signed electronically by the Minister, but in practice, the Deed of Establishment of a PT as submitted using the electronic system must be signed directly because the Deed of Establishment of a PT is one of the products of an Indonesian Notary, where the Deed of Establishment of a PT is an Authentic Deed made by a Notary in Indonesia.

### 4.3. The Legal Validity of Notarial Deeds Signed with Electronic Signature and its Implications for Contract Law in Australia

Notaries in Indonesia and Australia have distinct differences due to the variations in their legal systems. To understand the legal validity of a Notarial Deed signed with TTE in Australia, it is important to familiarize oneself with the specific practices followed by Notaries in Australia.

Notaries in Indonesia and Australia have one significant difference regarding their authority. Notaries in Indonesia have the authority to issue an authentic deed, whereas in Australia, Notaries are not authorized to make an authentic deed. Notaries in Australia have the authority to :

1) A Notary Public principally:

a. Attests documents and certifies their due execution for use in Australia and overseas countries
b. Prepares and certifies powers of attorney, wills, deeds, contracts and other legal documents, for use in Australia and overseas countries.
c. Administers oaths for Australian and international documents
d. Witnesses signatures to affidavits, statutory declarations, powers of attorney, contracts, and other documents, for use in Australia and overseas countries.
e. Verifies documents for use in Australia and overseas countries
f. Certifies copy documents for use in Australia and overseas countries
g. Exemplifies official documents for use internationally
h. Notes and protests bill of exchange
i. Prepares ships' protests

2) Notary in principle:
a. Proving documents and certifying them for use in Australia or outside of Australia.
b. Prepare and certify powers of attorney, waists, deeds, contracts and other legal documents, for use in Australia and outside Australia
c. Responsible for oaths for Australian and international documents
d. Witnessing the signing of affidavits, legal declarations, powers of attorney, contracts and other documents for use in Australia and outside Australia.
e. Verifying documents for use in Australia and outside Australia
f. Certify copies of documents for use in Australia and outside Australia
g. Model official documents for international use.

"Justices of the Peace (JPs) in Australia provide services similar to American notaries, but are not permitted to witness documents for use in foreign countries. Notaries Public have this exclusive right and are the only true international "JP" in Australia". In Australia, Judges provide services similar to American Notaries, but are not allowed to witness documents for use in foreign countries. Notaries public have the 'exclusive' authority to perform this task.

Based on the information provided, it is clear that the role of an Australian Notary primarily involves document legalization and witnessing the signing of important documents. However, unlike an Indonesian Notary who can issue authentic deeds, there is no mention of Australian Notaries having this authority. Therefore, the implications of electronic signatures on notarial deeds in NSW cannot be determined. However, when it comes to trade contracts, electronic signatures are permissible in NSW and have been valid for a considerable period of time. It is worth noting that electronic signatures in NSW are also issued by third parties, such as PSrE in Indonesia. In NSW, the company known for issuing electronic certificates is generally recognized as Adobe.

As the role of Notary in Australia has been listed, there are significant differences that can be clearly seen. The authority of a Notary in Indonesia can be seen in Article 15 of Law 2/2014. Indonesian Notaries are authorized to make authentic Deeds regarding all deeds, agreements, and stipulations required by laws and regulations and/or desired by those concerned to be stated in an authentic Deed, guarantee the certainty of the date of making the deed, keep the deed, provide a grosse, copy and quotation of the deed, all insofar as the making of the Deed is not also assigned or excluded to other officials or other persons stipulated by law.

In addition, Notary is also authorized:

1) Certifying the signature and establishing the certainty of the date of the underhand letter by registering it in a special book (legalization);
2) Record underhand letters by registering them in a special book;
3) Make a copy of the original letter under hand in the form of a copy containing the description as written and described in the letter concerned;
4) Attesting that the photocopy matches the original letter;
5) Provide legal counseling in connection with the making of deeds;
6) Make deeds relating to land; or
7) Make a deed of minutes of auction.

In addition to these authorities, Notary has other authorities regulated in laws and regulations.

A very significant difference between Indonesian Notaries and Australian Notaries is that Notaries in Australia in the state of NSW do not have the authority to make an authentic deed, because the scope of their authority is limited. In Indonesia, this authority is the main authority of a Notary. So, the authentic deed in Australia in the state of NSW is not recognized.

As seen from the description above, Notaries in Australia have several roles that seem to be more prominent than other authorities, namely to legalize documents and witness the signing process of important documents related to the law (to legalize documents and witness the signing process of documents).

The products produced by Australian Notaries in the state of NSW and Indonesia are very different. Indonesian notaries produce 4 (four) legal products, namely:

1. Notarial Deed
2. Legalization
3. Waarmeking
4. Legalize

In the state of NSW, Australia, public notaries play a crucial role in verifying the authenticity of documents. However, when it comes to deeds signed with Electronic Signature in both Indonesia and NSW, Australia, it is currently not legally permitted. This is because neither legal system has specifically addressed the electronic signing of notarial deeds. On the other hand, in California, United States, the role of a California Notary is quite similar to that of an Australian NSW Notary. They both have the authority to legalize documents using the official Notary Seal and also witness the signing of important documents.

According to the data uploaded from the official website of the Australian Government, the state of New South Wales, related to electronic signatures, it is stated that :

However, there remain specific types of transactions where 'wet signatures' are required. These tend to be transactions where there is a need for high confidence in the validity of the transaction - such as deeds, statutory declarations or wills.

The data is further elaborated as follows:

"The following documents should not be signed electronically, as there would be doubt as to the legal validity of the document:

1. Deeds. Deeds are excluded from the scope of the ET Act. The exclusion applies because of the operation of clause 5(f) of the Electronic Transactions Regulation 2017, which excludes documents that are required to be witnessed.
2. Documents to give effect to the transfer or a registered lease of land.
3. Statutory Declarations. Similar to Deeds, this class of document requires a witness to observe the maker sign the document, and then also sign the document as a witness. Failure to meet the witness requirements will at this time mean the document will not be legally valid.
4. Formal determinations by the Secretary in relation to salaries and conditions of employment e.g.: Teaching Service Act 1980, section 13.
5. Instruments of Delegation, whereby the Secretary formally delegates powers to other officers of the Department.

Based on this explanation, there are notable resemblances in the utilization of Electronic Signature in the State of NSW Australia and Indonesia. In both regions, it is not permissible to electronically sign documents that are considered deeds. While electronic signatures are acceptable for the trade sector in NSW, documents pertaining to notaries still require direct or face-to-face signatures between the parties involved in the agreement.

As previously mentioned, the role of a Notary in Indonesia and Australia shares a common function, which is to witness the signing of documents in accordance with the respective laws of both countries. While performing their duties, notaries from both nations are currently unable to fulfill their responsibilities electronically as witnesses to document signing. Instead, notaries in Indonesia and Australia are required to be physically present and provide wet signatures when signing documents.

In relation to contracts for business activities, it is also stated in the data uploaded on the official website, namely :

"Can I use an electronic signature for external business transactions?

The same general principles about the validity of electronic signatures apply to external transactions.

In relation to major transactions, it will be prudent to obtain specific legal advice. In general, the more materially significant the transaction (in terms of monetary value, length of term, extensiveness of compliance obligations), the more consideration will be appropriate as to whether, and if so, how a digital signature may be applied.

For more minor transactions, digital signatures can be utilized if the above four requirements (identification, intention, reliability and consent) are met."

So as long as the electronic signature can accommodate the conditions set out in the NSW law governing the requirements of electronic signatures, then the signature can be used and has legal implications in NSW.

Based on this explanation, it can be inferred that although the roles and responsibilities of Notaries in Indonesia, Australia (specifically in the State of NSW), and the United States (specifically in the State of California) differ significantly, there is a notable similarity regarding the utilization of electronic signatures in their professional practice. The commonality lies in the fact that electronic signatures are not yet accepted in the execution of notarial duties in these three countries. In all three nations, notaries are required to conduct face-to-face interactions and utilize wet signatures for both

signing deeds and acting as witnesses. Electronic signatures, on the other hand, are currently limited to business activities such as cooperation contracts.

## 5. CONCLUSION

After thorough research and discussion, it is concluded that both Australia and Indonesia lack explicit regulations concerning the effectiveness and supervision of electronically signed deeds in trade or sale contracts. In Australia, the focus is on deeds related to contract creation rather than authentic deeds. Similarly, in Indonesia, there is no practice of creating authentic deeds through electronic signatures. The absence of regulations necessitates parties to physically appear before a notary, indicating that electronic signatures cannot replace authentic deeds. Therefore, regulations addressing the protection, implementation, and supervision of electronically signed deeds must be explored, considering legal certainty, security, and benefits for all involved parties. The strength and validity of electronically made deeds are still under careful consideration in both countries, with concerns about vulnerability to forgery. Despite not receiving explicit state recognition, electronically signed deeds are practically applied in public contracts, especially in business collaborations.

To broaden the scope of services in trade and investment, the government should explore regulating the technical implementation, supervision, and development of electronically signed deeds. Given the diverse nature of transactions in the era of free trade, a suitable regulatory model needs to be formulated collaboratively by the Government and the House of Representatives of Indonesia. This involves improving norms or rules to complement the protection system for electronically signed deeds. With the enactment of Law Number 13 of 2022, allowing electronic formation and signing of legislation, there is an opportunity for the Government and the House of Representatives to revise UUJN and UUITE, enabling the use of electronic signatures in notarial activities in Indonesia in the future.

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