

Legal Aspects of Using Digital Signatures in Online Business Transactions

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1. Background

In the current era, the high consumption of technology both as a medium for communicating and seeking information is one of the reasons why progress in society is very fast and has an impact on the acceleration of the business and trade sectors. In addition, that changes and developments that often occur in the world of technology where technological changes are both in the field of communication and information based on computer technology in other words Interconnection Networking (internet) where this network is global and all scale can access technology referred to (Titi, 2020).

Technological advances which must now be recognized have penetrated into all sectors, even in terms of enforcing a law in a country, because of the dynamic location of the law that must adapt to the regulatory needs of the country. this is certainly an important factor when the need for the internet becomes very high and one of them is a change in patterns which were originally based on conventional or physical forms, turning to today's needs with no physical but easy access. Today's society uses the internet more often in various activities (Mastaurant, 2019). One example is in business transactions because there is no time and place limit. Therefore, there has also been a change in the pattern of transactions, from which most people used to make conventional transactions, but now they have turned into electronic transactions.

Along with the development of transaction patterns, adjustments need to be made. For example, the Indonesian state in this transaction pattern greatly influences the change from legal materials based on conventional activities into new forms that adapt to the needs of the community so that the urgency of the presence of a new law as a positive legal material used to protect the public in conducting business transactions is very important. needed. The Government hereby issues several regulations that are used to protect the public from conducting online business transactions, some of these regulations include: Law Number 11 of 2008 which has been changed to Law Number 19 of 2016 concerning Information and Electronic Transactions, here in after referred to as The ITE Law, then its derivative rules are Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems (Mayana, 2021).

Regulations governing electronic transactions are not the only way that can ensure the smooth running of buying and selling transactions. Obstacles will arise, which require continuity between regulation and practice. The main problems that arise in online business transactions in Indonesia are in the regulatory aspect, where online business transactions require the implementation of digital signatures (Izzah, 2021).

The mechanism of buying and selling, both online and offline, requires an engagement that is born as a result of an agreement. The agreement as stated in Article 1313 of the Civil Code is "an agreement is an act by which one or more people bind themselves to one or more other people". With the provisions of the article mentioned above, it means that where the agreement is intended where the parties who promise each other will bind themselves to each other. So that in the event of an act that is legal in the eyes of the law so that it is considered a legal act, it will contain not only a relationship but a relationship that has a legal impact.

So that in every agreement it should be known that where there are rights, there are also obligations of the parties concerned so that there is reciprocity in it that must be understood by the parties. It is also explained in article 1332 of the Civil Code that an agreement must contain certain objects that can be agreed upon by both parties. In the agreement, the principle adopted is the principle of freedom of contract so that with this principle it allows the parties involved to give the maximum freedom in making the agreement as long as whatever is agreed is done legally as contained in the law and the agreement made will ensnare and consistently guideline for all legal subjects.

The sale and purchase agreement in the current era cannot be released through a digital signature mechanism in its implementation. Therefore, to fulfill the authentication of a digital signature, it must meet several requirements that have been stated in the ITE Law. There are six conditions that must be met, namely, first; In the process of making an electronic signature, the data contained in it only has a bond to whom the signature was made. Second; In the case of the process of making an electronic signature where the data intended in it is indirectly under the authority of the undersigned or the owner of the signature. Third; that in the

event of changes related to electronic signatures made outside the time of signing, the changed data will remain known.

Fourth; that in the event of changes related to electronic information containing electronic signatures made outside the time of signing, the changed data will remain known. Fifth; that in the case of proving the results to find out or identify the data on the said signature, certain methods are used. Sixth; and in the case of knowing the validity or approval of the signature owner for the intended use of the digital signature, there is also a certain way to find out (Sihombing, 2020)

However, there are crimes that often arise where there is a deviation from this electronic signature which is carried out by anyone without rights, then to prove the use of an electronic signature it will be an obligation for the service provider of the presence of this electronic signature, which in this case is explained in article 52 paragraph (3) Government Regulation Number 71 of 2019 concerning System Operation and electronic transactions. Article 11 of the ITE Law provides a firm acknowledgment that digital signatures are codes, but digital signatures have the same status as manual signatures and generally have legal powers and consequences. Based on the description described above, this study discusses the following problems; how are the legal aspects of using digital signatures in online business transactions and how are legal remedies in proving digital signatures in online business transactions.

2. Method

The type of research used in this research is normative legal research, through reviewing applicable laws and regulations, conceptual-theoretical literature which is then linked to the problems that are the subject of discussion in this study. The approach in this study uses a statutory approach or known as the statute approach.

3. Discussion

3.1 Legal Aspects of Using Digital Signatures in Online Business Transactions

The ITE Law provides the understanding that an electronic transaction is an act which has legality in the eyes of the law even though the act occurred with the help of technology such as computers, the use of the internet or other means included in electronic media (Athaya, 2021). The birth and development of information and communication technology is also a driving force for the emergence of a method or another option for the implementation of a business transaction which is carried out with the help of technology, one of which is the existence of E-commerce as a form of real technology as a forum for online business transactions (Nugraha, 2016).

Therefore, an electronic transaction is a meeting for pre-parties who need each other, one selling and the other as a party making a purchase, where the object being transacted can be in the form of goods or services using technology media because in this transaction there is no real or physical meeting but the implementation of this transaction via the internet.

Business transactions are increasingly diverse and have progressed very significantly, forcing the parties in them to participate in the developments. Online business transactions are a form of real progress that is felt, when a business activity is forced to take place to keep up with existing technology. There is a law among these activities to balance the development in question, a business transaction occurs involving an agreement for the parties electronically but still binding and has a legal impact on the agreed actions. In the online business transaction in question, the contract agreement between the parties requires a signature as a condition for the validity of an agreement (Setiadi, 2021).

In online business transactions, the signature must also be affixed to every deed or writing containing the agreement. Because business transactions are carried out online or electronically, the signature as a legal requirement for the business transactions carried out also changes. Physical signatures on paper or manuscripts become digital signatures, so that the use of digital signatures in online business transactions is equivalent to a manuscript signature (Dwi, 2012).

Furthermore, positive law in Indonesia provides regulation on the use of digital signatures, especially in the ITE Law. Therefore, digital signatures have legal protection. According to Hikmanto Juwana, "electronic commerce documents are legal and binding when the buyer clicks the send button. In this case the buyer agrees to the terms of the offer.

Deemed to have agreed. Based on the opinion above, consistently mentioning a digital signature regardless of what it looks like is a form of agreement in a business transaction conducted online. So that the validity of a digital signature listed in an electronic document related to its legality in Indonesian positive law is considered valid and from a civil law perspective in accordance with the terms of the agreement in Article 1320 BW and the ITE Law (Sang Ayu, 2019).

The terms of the agreement as referred to above which constitute the validity of an electronic document lies in an agreement that binds both parties and is a subjective element in the online business transactions carried

out. With regard to subjective conditions that are not met, to clarify the agreement of the parties when bound in an agreement, a signature is used (Hikmantoro, 2003).

Whereas in online business transactions, both the need for buying and selling and other transactions, this agreement is obtained from a digital signature affixed to an electronic document as a fulfillment of the conditions for a valid agreement between the two parties and binding for the fulfillment of achievements in the agreed document (Sayid, 2021). So that when an electronic document is not signed, it does not cause legal consequences and has no legal force. Although manuscript signatures are equivalent to digital signatures, digital signatures contain the minimum requirements that have been mentioned and must be fulfilled so that they have legal validity. That the presence of a firm acknowledgment for a digital signature is equivalent to a manuscript signature, automatically gives a sense of security to all parties who are bound by online business transactions to use digital signatures and disputes that will arise in the future.

3.2 Legal Efforts in Proving Digital Signatures in Online Business Transactions

Digital signatures already have a legal framework. In other words, legal remedies can be taken for legal disputes that arise. The procedure for resolving disputes arising from online trading is further regulated by Article 18 of the ITE Law. If online commerce is included in an electronic contract, the parties, and therefore the authorities, must make a choice of law to take and determine the dispute resolution process, whether through litigation, arbitration courts, or other alternative dispute resolution bodies.

In online trading caused by the actions of other parties that cause losses, legal means are the choice of stakeholders, but there are several legal remedies that can be obtained through the trial process or settlement in one of the judicial processes. Out of court or out of court such as mediation, integration, arbitration in accordance with applicable legal regulations or applicable regulations.

However, the dispute resolution provisions above are the decisions of the disputing parties or are included in the standard provisions of electronic documents, which are the laws of the parties. Regarding the evidence and evidence used, electronic information and/or electronic documents have become one of the types of evidence in the litigation process since the enactment of the ITE Law. If the authority to ratify digital signatures is based on Article 5 of the ITE Law, then the electronic document will be verified (Yusep, 2020).

The electronic system in question is designed to prepare, collect, process, analyze, store, display, publish, transmit, and even distribute electronic information, formal requirements, and important requirements that must be met with formal requirements. The process of using electronic evidence does not apply to letters submitted in writing according to the law and made in the form of a notarial deed or a founding deed according to the law. However, the substantive requirement is that the information contained in the electronic document is accessible and visible, its integrity is guaranteed, and the electronic document is considered valid as long as it can be explained.

That in the electronic evidence regulated in Article 5 of the ITE Law there are several formal and material requirements that must be met, with the formal condition that the use of electronic evidence cannot apply to letters which according to the law must be made in written form and according to the law. The law must also be made in the form of a notarial deed or a deed made by the official making the deed. While the material requirement is that electronic documents are considered valid as long as the information contained therein can be accessed, displayed, guaranteed for its integrity and can be accounted for so as to explain a situation (Dermawan, 2021).

That the power of proof inherent in electronic documents in terms of proof of civil procedural law has the power of proof as a deed that hands. Whereas in the private deed only the power of formal and material proof is attached, where the formal is the truth of the identity of the owner of the signature and the identity of the person giving the information, so that when an electronic document contains a digital signature, the owner of the signature automatically withdraws the identity of the signer. the signature and the maker of the statement are formally the same as the identity of the owner of the signature, because the signature contained in the electronic document is equivalent in strength to the deed under the hand, causing the proof not to be absolute in accordance with Article 1876 BW which affirms that at the time the Underhand Deed is submitted, the proposed party must expressly provide both acknowledgment and denial of the signature.

Digital signatures are generally legal and have legal force provided that they meet the intended requirements, in their type there are certified signatures and uncertified signatures, that the certified signature is a certified digital signature made by the service provider. certifications in this field, for example, such as Electronic Signature Certificate Operators or PSrE and other private institutions that are responsible for digital signature creation, and in contrast to uncertified digital signatures whose security cannot be guaranteed and tends to be digitally cracked and damaged. which has an impact on the owner's loss, for example data burglary by irresponsible parties or cyber crime.

That in proving digital signatures, even though it has been recognized as legal evidence, there are still weaknesses, of course, in proving this digital signature. For uncertified signatures, especially those that open up opportunities for parties to commit cyber crimes due to weak protection and especially in proving it will be very difficult to prove the truth of the use of signatures because they do not have electronic certificates and are difficult to trace. Because the process of making this signature is very simple by scanning the signature on paper and saving it in the form of an image and using the owner into an electronic document on his behalf. So that when a dispute occurs, the owner of the signature will be held responsible and provide acknowledgment of the use of the signature on the disputed electronic document.

This is of course inversely proportional to a certified signature because the traces of its use are easier to track and know because there are institutions that provide protection for the use of the digital signature. That a certified digital signature does not only contain data or a signature in electronic form but also contains encrypted data and a digital certificate from the owner of the digital signature, that this also proves that the document is valid and its existence can be proven because it contains an identity certified digital.

That this digital signature is made more complex by using asymmetric crypto logic mechanisms, which means it is a process of data locking with a key, also called a private key that can only be opened by its paired key, namely the public key. By way of locking the data containing the signed document will be encrypted first with a private key. So that when a dispute arises which is in proving the certified digital signature, the certification service provider institution is required to be responsible.

In the trial of proving the digital signature on a deed carried out by the judge, it refers to article 164 HIR regarding evidence which is binding on the judge. Therefore, the proof of a digital signature on a deed is evidenced by evidence of suspicion because the judge cannot know clearly and definitely whether the signature is genuine or not.

4. Conclusion

Where as digital signatures have legal force and legal consequences listed in an electronic document related to their legality, their validity is assessed from a civil law perspective, namely Article 1320 BW and Law Number 19 of 2016 Amendments to Law Number 11 of 2008 and strengthened by Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. Where digital signatures are considered equivalent to manual or manuscript signatures, namely complete and perfect, as long as they meet the requirements set out in Article 11 of the ITE Law.

Whereas legal efforts to prove digital signatures are further regulated in Article 18 paragraph 4 where the parties have the authority to determine forums, whether courts, arbitrations or other alternative dispute resolution institutions, as well as the power of proving digital signatures as evidence based on Article 5 The ITE Law which gives power to the use of digital signature evidence has legal force and is an extension of the applicable evidence in accordance with the applicable procedural law in Indonesia.

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