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## Adoption Of Electronic Signatures In Indonesia

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## ADOPTION OF ELECTRONIC SIGNATURES IN INDONESIA



For the last two years, the coronavirus pandemic (Covid-19) has had a major impact on almost every aspect of life: Travel bans, lockdowns, and quarantining have become commonplace in the fight against the virus.

Indonesia has faced significant challenges in dealing with Covid-19. Since 2020, the government restricted public activity, and business did not escape, either. A second wave of Covid-19 infections started in mid-2021, driven by the Delta variant of the virus, which is proving to be significantly more contagious and injurious to health.

This prompted the government to put into effect emergency public activity restrictions (PPKM *Darurat*), which involved a return to the strict curbs on mobility and social activities of early 2020, in order to suppress the outbreak. Most business undertakings, particularly those regarded as non-essential, are strictly required to implement work-from-home policies. Consequently, non-essential businesses are dealing with difficulties to operate effectively.

This pressure has compelled businesses to seek solutions that allow them to continue to operate effectively and efficiently. The adoption of electronic documents and signatures (**E-signatures**) has been one way to maintain operational efficiency.

Indonesian law had long acknowledged E-Signatures, but until recently they were given a wide berth. Given the curbs implemented during the Covid-19 pandemic, businesses are now accepting the inevitable and adoption of E-signatures is proceeding apace. However, this sudden growth in popularity has brought to light several legal issues associated with their use, especially due to the minimum regulation and guidance on the practical aspects of E-Signatures.

### What is an E-signature?

A common misconception is that an E-signature is a scanned or photographed conventional signature converted into a digital image. Subsequently, the image is attached to a document to indicate that a document has been executed. However, this is incorrect, as a digital image of a conventional signature does not contain the digital provenance of the genuine article. An E-Signature is produced in digital format from the outset, including the associated data that is an integral part of it.

Pursuant to Law No. 11 of 2008 on Electronic Information and Transactions, as amended by Law No. 19 of 2016 (**EIT Law**) and Government Regulation No. 71 of 2019 on the Provision of Electronic Systems and Transactions (**GR 71**), an E-Signature is defined as a signature comprising electronic information that is embedded, associated, or related to other electronic information used as a means of verification and authentication.

According to this definition, it is clear that an E-Signature must contain the following elements:

- Electronic information;
- Electronic information embedded, associated, or related to other electronic information; and
- Electronic information used as a verification and authentication medium.

As a conventional image of a physical signature does not contain adequate information for verification and authentication purposes, it cannot be deemed an E-signature.

### **Is an E-signature a valid means of execution?**

In general, the EIT Law expressly acknowledges electronic information/documents as lawful evidence. Consequently, documents executed in electronic format, including letters, statements, agreements, or application forms, are deemed to possess evidentiary value in court. Electronic information/documents produced by electronic systems in accordance with the EIT Law, and hardcopies thereof constitute admissible evidence in court. This constitutes expansion of the scope of admissible evidence under the prevailing procedural laws in Indonesia.

For agreements, Indonesian law and regulations do not require a “wet” signature (handwritten using a pen) to produce a legally valid and binding agreement. Under the Indonesian Civil Code, an agreement is valid and binds the parties to it if it meets the following requirements:

- i. there is consent of the parties;
- ii. the contracting parties have the legal capacity to enter into the agreement.
- iii. it is concerned with a specific subject; and
- iv. there is admissible cause.

In light of the above, an agreement would be deemed valid if it fulfilled the above requirements, regardless of whether made verbally, conventionally written, or electronic.

The elucidation of the EIT Law adds that although only a digital code, an E-signature possesses equal legal standing in all respects to a wet signature. Thus, electronic documents signed with E-signatures have the same evidentiary value in court as documents signed with wet signatures.

Although the EIT Law recognizes the admissibility of electronic information/documents or hardcopies in court, there are some exceptions:

- a. documents that must be made in writing under the prevailing laws and regulations (e.g., negotiable instruments, evidence of security, and letters used in the civil, criminal, and state administrative procedural law enforcement process); and
- b. documents that must be produced as a notarial or land conveyancer deed.

Should there be a requirement (apart from the exceptions above) that documents must be made in writing or available in its original form, an electronic version thereof would be still considered valid, provided the information it contains can be accessed, displayed, its integrity guaranteed, and the information it contains is reliable.

It can be inferred from the above provision that documents that would not qualify as admissible evidence if electronic, must be executed with a wet signature, instead of an E-signature.

## Requirements for Valid E-Signatures

The EIT Law and GR 71 do not specify one particular method for creating an E-signature. However, an E-signature will only be legally valid and have legal consequences if it fulfils the following criteria:

- a. the personal, biometric, or cryptographic code, or the code yielded from the conversion of a manual signature into an E-Signature, including other codes resulting from the development of Information Technology (**Creation Data**), must be associated only with the signatory;
- b. during the electronic signing process, the Creation Data must be in the sole possession of the signatory;
- c. any alteration to the E-Signature, after signing, is clearly accessible;
- d. any alteration to the electronic information associated with the E-signature after signing is clearly accessible;
- e. a specific method is adopted to identify the signatory; and
- f. there is a specific method to demonstrate that the signatory has given consent to the related electronic information in the document.

## Classification of E-Signatures

According to GR 71, E-signatures are classified into: (1) **Certified E-signatures**: these meet the requirements under GR 71 and are made using an electronic certificate issued by an Indonesian Electronic Certification Authority (**CA**); and (2) **Non-Certified E-Signatures**: these are made without use of an Indonesian CA's services.

Currently, 7 Indonesian CAs have been registered with the MCIT:

- PT Djelas Tandatangan Bersama
- PT Solusi Net Internusa
- PT Privy Identitas Digital
- National Enterprise for Printing and Minting Banknotes and Coins of the Republic of Indonesia
- PT Indonesia Digital Identity (VIDA)
- Electronic Certification Center of the National Cyber and Crypto Agency; and
- Agency for the Assessment and Application of Technology (BPPT).

## Certified vs Non-Certified E-Signatures

Although a variety of well-known CAs operate worldwide, GR 71 clearly states that an e-signature would only be deemed certified if issued by an Indonesian CA. Thus, E-signatures issued by a foreign CA would be deemed Non-Certified E-signatures.

The significant difference between Certified and Non-Certified E-signatures lies in their evidentiary value before court. Notwithstanding their validity as signatures, Non-Certified E-signatures are considered to possess less evidentiary value than Certified E-signatures. Accordingly, it is imperative to use Certified E-signatures in order to ensure that the authenticity of a document would not be challenged subsequently.

## Major Milestones: Online Licensing, Court Proceedings

The use of E-signatures in Indonesia is becoming more common owing to the government's recent efforts to simplify business licensing for the purpose of attracting more investors. The practice was previously adopted by the Indonesian Investment Board (BKPM, now Ministry of Investment) in early 2018 with the issuance of business licenses in electronic format and verifiable E-signatures.

A major change in the licensing regime occurred in 2018 with the launch of the Online Single Submission (OSS) system. This is now the main gateway for business licensing in Indonesia and serves as a centralized system for licenses previously handled by different line ministries, regional governments, and quasi-government bodies (including BKPM), although licensing for some sectors (banking and finance, oil and gas) continues to be administered by specialized regulators.

Following the launch of the OSS system, ministries and government agencies began to develop and improve their own dedicated online licensing systems (mostly linked to the OSS system). This has facilitated submission of electronic documents as a basis for online licensing application, and for the issuance of licenses in electronic format (either with verifiable QR codes or E-signatures).

Business undertakings may download and rely on electronically issued licenses; they serve as valid evidence of business registration. Nevertheless, as the online licensing regime is relatively new and systems are continuously being developed, in some instances businesses are still required to submit hardcopy documents with wet signatures, in addition to electronic documents with E-signatures.

In the financial sector, the Financial Services Authority expressly requires E-signatures to be used in peer-to-peer loan and equity crowdfunding agreements entered into via digital platforms.

In contrast, Indonesian courts have been slow to recognize E-signatures and electronic documents. Although courts have begun to accept electronically signed documents in court proceedings, they will still request hardcopies of these (with wet signatures) to verify the authenticity of the electronic documents. Nevertheless, there has yet to be a court precedent that tests the validity of E-signatures, especially a comparison between Certified E- and Non-Certified E-signatures.

## **Challenges Ahead**

Despite functioning in the same manner and serving the same purpose as wet signatures, E-signatures are still some way from widespread adoption in Indonesia. Suspicion of E-signatures is evident, mainly due to fear of forgery and its evidentiary value before the court. Consequently, many people prefer wet signatures, as they can witness the actual signing process and authenticate the signature by comparing a signatory's specimen with the wet signature, as well as precedents on its evidentiary value before the court. However, the E-signature allows for more comprehensive authentication via electronic systems, and to ensure that a document is unaltered, original, and cannot be repudiated.

Nevertheless, the absence of comprehensive guidance in the use of E-signatures has partly been responsible for delayed E-signature adoption in Indonesia, for instance: (i) clear do's and don'ts in the use of E-signatures; and (ii) rules on the recognition of foreign E-signature providers (foreign CAs). Further, the lack of court precedent that attest the validity of E-signature overshadows the fact that it is acknowledged under the law. Initiatives from the government would accelerate the development and adoption of E-signatures in Indonesia.

## Conclusions

The global Covid-19 pandemic has proven the fundamental usefulness of E-signatures in supporting business and other activities. Although a basic legal framework for E-signatures has been established, there is still resistance to their widespread adoption. This is particularly due to lack of familiarity with this technology in general, and lingering verification doubts. The government will need to take the initiative to issue clear and complete regulations to increase E-signature awareness and trust nationwide.

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