

The Attachment of Client Photo During the Signing of the Authentic Minutes Deed

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Article Info

Received: 2022-09-12

Revised: 2023-06-29

Accepted: 2023-06-29

Keywords:

Photo;

Electronic Documents;

Notary Public;

Deed Reading;

Deed Signing.

Abstract

This study aims to analyze the urgency of attaching the photo of the person at the time of signing the deed in the minutes of the deed and to examine more deeply the position of the photo as evidence in the trial. The form of this research is juridical-normative which relies on written legal sources with a research typology that is explanatory and in the form of prescriptive. The type of data used in the form of secondary data sourced from primary, secondary and tertiary legal materials with qualitative data analysis methods. Attaching a photo of the person at the time of signing the deed in the minutes of the deed is expected to further guarantee the Notary in carrying out his obligations in the deed inauguration process, so that he does not only adhere to the presence of fingerprints which also have the potential to be taken at different times, because essentially the role of affixing fingerprints on the sheet separate evidence is as additional evidence if the appearer denies his signature and guarantees that the appearer is actually dealing with the notary at the time of signing the deed, but does not guarantee that the signing is done at the same time.

I. Introduction

Notaries carry out an important task in serving the community who need written evidence with perfect evidentiary power in the form of authentic deeds.¹ The notary is obliged to contain the contents of the deed according to the will of the presenter while still paying attention to the form and procedure for making that has been stipulated in the law. An authentic deed defined in "Section 1868 burgerlijk Wetboek (BW) is a deed made in the form prescribed by law by or

¹ Wahid Ashari Mahaputera, "Perlindungan Hukum dan Pertanggungjawaban Bagi Notaris yang Menjadi Turut Tergugat Terhadap Akta yang Telah Dibuatnya," *Indonesian Notary*, 3.2 (2021), hlm. 660.

before the general officer authorized to do so at the place where the deed was done." Furthermore, Section 1869 BW further explains that a deed that no longer satisfies the element as an authentic deed or is defective in its form, then the deed no longer has perfect evidentiary power but only has the capability of proof as a deed under the hand.

The Notarial Deed must provide a certainty value that the contents contained in the deed are by the will of the presenter, as well as prove the truth and certainty regarding "place, day, date, month, year, time, identity, paraf, the signature of the interceptor, prove what is seen, witnessed, heard by the Notary on the official deed/deed of minutes and record a statement or statement."² It is undeniable that in practice there is still a Notary who in making a deed is not signed at the same time either between the Notary and the presenter or between the presenter.³ Such an action constitutes the non-compliance of the notary's attitude, as mandated by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary in conjunction with Law Number 30 of 2004 concerning the Position of Notary (UUJN) which requires "Notaries as general officials to read the deeds that are about before the interceptor with at least 2 (two) witnesses or 4 (four) special witnesses for the making of a will under the deed under hand, and signed at that very moment by the appellant, witness, and Notary."⁴

It is thus reiterated that "as soon as the deed is read, the deed is signed by every appellant, witness, and Notary, except where there is an inability to sign a sign stating the reasoning."⁵ The phrases 'before' and at that very moment relate to the reading and signing of the deed in the sense that the presence of physical or face-to-face directly and face to face in absolute terms and at the same time between the Notary, the presenter and the witnesses which are corresponding provisions in the inauguration of the deed (*verlijden acte*).

Along with the development of the times, it is known as the existence of electronic evidence, which in this case is a photo of the interceptor when signing the deed. The attachment of the accompanying photo during the signing of the deed in the minute of the deed will benefit the Notary if there is a future problem with the act he made. Not infrequently, the interceptor or other third parties who are litigating dispute the notarial deed, so that the Notary is also called as a

² Ling Fransiska, Daly Erni, dan Pieter Everhardus Latumenten, "Degradasi Kekuatan Pembuktian dan Pembatalan Akta Autentik (Studi Putusan Mahkamah Agung Republik Indonesia No.2377K/PDT/2016)," *Indonesian Notary*, 3.2 (2021), 339-57 <<http://notary.ui.ac.id/index.php/home/article/download/1527/365>>, hlm. 340.

³ Ando Iqbal Noorhadi, Widodo Suryandono, dan Pieter Everhardus Latumenten, "Tanggung Jawab Notaris Terhadap Keabsahan Prosedur Pembacaan Akta Dalam Pembuatan Akta Perjanjian Pengikatan Jual Beli (Studi Putusan Majelis Pengawas Pusat Notaris Nomor 11/B/MPPN/XII/2018)," *Indonesian Notary*, 2.1 (2020) <<http://www.notary.ui.ac.id/index.php/home/article/view/681/197>>, hlm. 258.

⁴ Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris. Pasal 16 atau (1) huruf m.

⁵ Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris. Pasal 44 ayat (1).

witness even to the point of being made a suspect under the pretext of participating in forging the contents of the deed. This study aims to analyze the urgency of attaching photos of the presenter when signing the act in the minute of the deed and examine more deeply the position of the photo as evidence in the trial.

2. Research Method

This form of research is juridical-normative, which relies on written legal sources with research typologies that are explanatory and prescriptive in form. The data used is secondary data sourced from primary, secondary, and tertiary legal materials with qualitative data analysis methods.

3. Results and Discussion

3.1 The Urgency of Attachment of The Photo of the Interceptor When Signing the Deed in the Minuta of the Deed

It should be understood that the presence of a Notary with its product in the form of an authentic deed is an effort by the state to create legal certainty and protection for the public who need written evidence with perfect evidentiary power. A Notarial Deed has excellent evidentiary power if it is made by the procedures and procedures established by UUJN.⁶ Thus, the Notary who contained in the contents of his deed seemed to be facing, reading, and signing the deed before the plaintiff, attended by witnesses even though he did not carry out these things at all, namely, the deed was not read and signed at the same time, had violated the UUJN which had an impact on the evidentiary power of his deed. The notary acts in such a way that can be said to be inconsistent and forged the deeds he made, which simultaneously degraded his office's dignity by violating the oath or promise he had uttered.⁷

A deed not signed simultaneously would have implications for the loss of the power of perfect proof so that it becomes an underhand deed. The role of fingerprinting on a separate sheet is as additional evidence if the interceptor denies his signature and guarantees that the interceptor is properly confronted with the Notary at the time of signing the deed. Still, it does not guarantee that the signing is carried out at the same time, so it is essential to attach the photo of the interceptor when signing the deed in the deed minute to guarantee further the Notary carries out its obligations in the process of the inauguration of the deed and preventively can protecting the Notary from

⁶ Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris. Pasal 1 ayat (7).

⁷ Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris. Pasal 4 ayat (2).

prosecution both civil and criminal and against the interceptor or other third parties also cannot deny the incident in the photo.

3.2 The Position of Photos as Evidence in The Trial

The proof is an essential stage in the trial process.⁸ Achmad Ali and Wiwie Heryani, in their book, stated that the purpose of the evidence is to find a relationship between the litigants in the court. The latter compete to provide certainty and confidence to the judges on the arguments put forward in the trial, which are strengthened by evidence so that the judges can decide the case by realizing the value of certainty and legal justice.⁹

Under Article 1866 BW *juncto* Articles 164 HIR and 284 RBg¹⁰, there are 5 (five) pieces of evidence in civil cases, namely written evidence (letters), witnesses, prejudices, confessions, and oaths. In addition to the emergence of civil cases, it is not uncommon for the interceptor or other third parties who have criminal cases to dispute the Notary deed, so that the Notary is also called as a witness even to the point of being made a suspect under the pretext of forging the contents of the deed. In criminal cases, evidence is regulated in Article 184 of the Criminal Procedure Code (KUHP), namely witness statements, expert statements, letters, instructions, and the defendant's statements. As time progresses, evidence no longer has to rely on the type of evidence arranged as mentioned. The birth of Law Number 11 of 2008 *juncto* Law Number 19 of 2016 concerning Electronic Information and Technology (ITE Law) reflects that the law has accommodated innovative times so that the law always coexists with the development of the times that appears with the recognition of electronic evidence.¹¹

The ITE Law explains that what is meant by "electronic information is one or a set of electronic data, including but not limited to writings, sounds, images, maps, designs, photos, electronic data interchange (EDI), electronic mail, telegrams, telexes, telecopy or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed that have meaning or can be understood by people who can understand them. Furthermore, what is meant by an electronic document is any electronic information created, forwarded, transmitted, received, or stored in analog, digital,

⁸ Lilik Mulyadi, *Kompilasi Hukum Perdata Perspektif, Teoritis dan Praktik Peradilan* (Bandung: PT. Alumni, 2009), hlm. 255.

⁹ Achmad Ali dan Wiwie Heryani, *Asas-asas Hukum Pembuktian Perdata* (Jakarta: Prenada Media, 2013), hlm. 20.

¹⁰ HIR stands for "*Herzien Inlandsch Reglement*" which is often translated into the updated Indonesian Regulations, namely procedural law in civil and criminal trials that apply on the islands of Java and Madura. This regulation was valid during the Dutch East Indies era, it is listed in the State Gazette (*staatblad*) Number 16 of 1848, while RBg stands for *Rechtreglement voor de Buitengewesten* which is often translated Seberang Regional Law Regulation (outside Java Madura), namely the procedural law applicable in court civil and criminal cases in courts outside Java and Madura. Listed in *staatblad* 1927 Number 227.

¹¹ Ali dan Heryani, hlm. 27.

electromagnetic, optical, or the like, which can be seen, displayed, or heard through a Computer or Electronic System, including but not limited to writings, sounds, images, maps, designs, photographs or the like, letters, signs, numbers, Access Codes, symbols or perforations that have meaning or meaning or it can be understood by one who can understand it." Therefore, the existence of electronic information can be used as a proof tool used in the trial.

Proof through electronic information and electronic documents and printouts is regulated in the ITE Law with the following provisions:

- (1) "Electronic information and electronic documents and their printouts are valid legal evidence.
- (2) Electronic information and electronic documents and their printouts, as referred to in paragraph (1), are an extension of valid evidence by the applicable procedural law in Indonesia.
- (3) Electronic information and/or electronic documents are declared valid when using electronic systems in accordance with the provisions stipulated in this law.
- (4) Provisions regarding electronic information and/or electronic documents as referred to in paragraph (1) do not apply to:
 - a. a letter that by law must be made in written form; dan
 - b. letters and their documents which by law must be made in the form of a notarized deed or deed made by the deed-making officer."¹²

Based on the aforementioned provisions, it means that electronic information and/or documents and/or their printouts are an extension of valid legal evidence in accordance with the applicable procedural law in Indonesia which requires that "an information must be in written or original form, electronic information and/or electronic documents are considered valid as long as the information contained therein can be accessed, displayed, guaranteed integrity, and accountable so as to explain a state of affairs."¹³

Photos or files are examples of digital evidence that contains digital image files and contains important information related to the camera and the time of its manufacture which in the ITE Law is known as Information and/or electronic documents and/or their printouts.¹⁴ The ITE Law states that electronic information and/or documents and/or their printouts have the power of proof like documents on paper, meaning that electronic documents have proof power equivalent to written evidence (letters), both printed and through a statement letter from an expert stating that the information and/or electronic documents and/or printouts, which in this case are photos are original.

¹² Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik. Pasal 5.

¹³ Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik. Pasal 6.

¹⁴ Resa Raditio, Aspek Hukum Transaksi Elektronik Perikatan Pembuktian dan Penyelesaian Sengketa (Yogyakarta: Graha Ilmu, 2014), hlm. 93.

4. Conclusion

The notary who contained in the contents of his deed seemed to be facing, reading and signing the deed before the plaintiff with witnesses attended even though he did not carry out these things at all, namely the deed was not read and signed at the same time, had violated the UUJN which had an impact on the evidentiary power of his deed. It is the notary who acts in such a way that can be said to be inconsistent with no good faith and forged the deeds he made which at the same time degraded the dignity and dignity of his office by violating the oath or promise he had uttered. A deed not signed at the same time would have implications for the loss of the power of perfect proof so that it becomes an underhand deed. By attaching a photo of the interceptor when signing the deed in the minuta of the deed, it is hoped that it can guarantee that the signing process is carried out at the same time and can preventively protect the Notary from claims both civil and criminal and against the interceptor or other third parties also cannot deny the events in the photo.

Photos in the ITE Law known as electronic information and/or documents and/or their printouts are an extension of valid legal evidence in accordance with the applicable procedural law in Indonesia as long as the information contained in it can be accessed, displayed, guaranteed integrity, and can be accounted for so as to explain a situation. The position of electronic information and/or documents and/or their printouts has the equivalent evidentiary power like documents on paper.

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