

Analysis of Electronic Credit Agreements Related to Peer-To-Peer Lending Signed Electronically Using the Director's Personal E-sign Account Without an Electronic Seal

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Abstract

Peer-to-peer lending (hereinafter referred to as "P2P Lending") is the provision of funding services that brings together lenders and borrowers through an internet-based electronic system. Since it was officially regulated in Indonesia at the end of 2016, the use of P2P Lending has continued to grow rapidly and has become an important part of the financing ecosystem in Indonesia. Until early 2025, the amount of debt Indonesian citizens obtained through P2P Lending platforms was recorded to have increased significantly to reach trillions of rupiah. In the implementation of P2P Lending, Article 154 of the Financial Services Authority Regulation Number 40 of 2024 on Information Technology-Based Joint Funding Services stipulates that credit agreements between the lender and borrower must be signed electronically. An electronic signature ("E-sign") serves to guarantee the identity, integrity, and non-repudiation of the agreement. Further on the legal developments, Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, which is strengthened by Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions introduces the concept of an electronic seal. This electronic seal serves to guarantee the origin, integrity, and completeness of electronic information or documents, specifically those used by business entities or institutions. Based on these developments, this study seeks to examine the impact of not using an electronic seal in a P2P Lending credit agreement, especially in cases where the recipient of funds and/or the lender is a business entity, and the agreement is only signed using the Director's personal E-sign account. This study uses a

normative legal method with a statutory approach, to analyze: (1) the validity of P2P Lending credit agreements without electronic seals, and (2) the evidentiary power of the credit agreement, especially in the event of a dispute between the lender and the borrower.

1. Introduction

Peer-to-peer lending, also known as collaborative funding services based on information technology, is the provision of financial services to connect fund providers and fund recipients in direct funding through an electronic system using the internet (hereinafter referred to as "P2P Lending"). P2P Lending significantly contributes to increasing financial inclusion in Indonesia, where individuals and businesses that are considered difficult to receive loans from financial institutions like banks can obtain loans from P2P Lending platforms.¹ These loans can be utilized as business capital or working capital for small enterprises. Many micro, small, and medium enterprises (hereinafter referred to as "MSMEs") obtain working capital through P2P Lending due to the quick process and the absence of collateral requirements.² It can be concluded that P2P Lending also supports the growth of MSMEs in Indonesia.

Since the official regulation of P2P Lending in Indonesia at the end of 2016, the use of P2P Lending services has shown consistent and rapid growth. Based on data as of February 2025, the outstanding amount on P2P Lending platforms overall has increased by 31.06% year-on-year, with an outstanding amount of IDR 80.07 trillion.³ This achievement reflects that the P2P Lending industry continues to grow significantly and plays an important role in financial inclusion as well as supporting the strengthening of the MSME sector in Indonesia.

Article 154 in conjunction with Article 143 of the Financial Services Authority of the Republic of Indonesia Regulation Number 40 of 2024 concerning Information Technology-

¹ Rezkania Nisaputra, "Fintech dan Peran Pentingnya Bagi Inklusi Keuangan", infobanknews.com, 1 September 2022, tersedia pada [https://infobanknews.com/fintech-dan-peran-pentingnya-bagi-inklusi-keuangan/#:~:text=Jakarta%20%E2%80%93%20Industri%20financial%20techonology%20\(fintech\)%20peer%2Dto%2Dpeer,alternatif%20pendanaan%20bagi%20masyarakat%20unbankable%20dan%20underserve.](https://infobanknews.com/fintech-dan-peran-pentingnya-bagi-inklusi-keuangan/#:~:text=Jakarta%20%E2%80%93%20Industri%20financial%20techonology%20(fintech)%20peer%2Dto%2Dpeer,alternatif%20pendanaan%20bagi%20masyarakat%20unbankable%20dan%20underserve.), accessed on 1 Mei 2025.

² Asosiasi Fintech Pendanaan Bersama Indonesia, "Pelaku UMKM: Dipermudah Fintech P2P Lending Dapatkan Modal Usaha Karena Tanpa Agunan", afpi.or.id, 22 Desember 2023, tersedia pada <https://afpi.or.id/articles/detail/pelaku-umkm-dipermudah-fintech-p2p-lending-dapatkan-modal-usaha-karena-tanpa-agunan>, accessed on 1 Mei 2025.

³ CNN Indonesia, "Utang Pinjol Rp80.07 T Jerat Warga RI Jelang Lebaran 2025", [cnnindonesia.com](https://www.cnnindonesia.com/ekonomi/20250411160729-78-1217883/utang-pinjol-rp8007-t-jerat-warga-ri-jelang-lebaran-2025), 11 April 2025, tersedia pada <https://www.cnnindonesia.com/ekonomi/20250411160729-78-1217883/utang-pinjol-rp8007-t-jerat-warga-ri-jelang-lebaran-2025>, accessed on 1 Mei 2025.

Based Peer-to-Peer Lending Services (hereinafter referred to as "POJK P2P Lending") stipulates that the agreement between the lender and the borrower must be executed using an electronic signature secured with an electronic certificate. The agreement is a credit agreement that at a minimum includes the loan amount, loan term, installment value, penalty provisions, as well as the rights and obligations of each party.⁴ An electronic signature is a signature that consists of electronic information attached, associated, or related to other electronic information used as a means of verification and authentication.⁵ There are two types of electronic signatures, namely certified and non-certified.⁶ Certified electronic signatures must use an electronic certificate that contains the electronic signature and the signer's identity.⁷

Certified electronic signatures have the same legal force as wet signatures.⁸ However, the validity and legal consequences of an electronic signature depend on the fulfillment of the requirements specified in Article 11 of Law Number 11 of 2018 as last amended by Law Number 1 of 2024 concerning Electronic Information and Transactions (hereinafter referred to as "ITE Law"), as follows:

- a. the data for creating the Electronic Signature is solely related to the Signer;"
- b. the data for creating the Electronic Signature during the electronic signing process is solely under the control of the Signer;
- c. any changes to the Electronic Signature that occur after the signing time can be detected;
- d. any changes to the Electronic Information related to the Electronic Signature after the time of signing can be detected;
- e. there is a specific method used to identify who the signer is; and
- f. there are specific methods to demonstrate that the Signer has given approval for the related Electronic Information.

The requirements in the ITE Law as mentioned above serve to guarantee electronic signatures in terms of the signer's identity, the integrity of the signed document, and non-repudiation of the signature.

In the case of the use of electronic signatures, for users in the form of business

⁴ Peraturan Otoritas Jasa Keuangan Republik Indonesia tentang Layanan Pendanaan Bersama Berbasis Teknologi Informasi. POJK Nomor 40 Tahun 2024, selanjutnya disebut POJK P2P Lending, Article 154.

⁵ Undang-Undang tentang Informasi dan Transaksi Elektronik. UU Nomor 11 tahun 2008 sebagaimana diubah terakhir oleh UU Nomor 1 tahun 2024 tentang Perubahan Kedua Atas Undang-Undang Nomor 11 tahun 2008, selanjutnya disebut UU ITE, Article 1 number 12.

⁶ Peraturan Pemerintah Tentang Penyelenggaraan Sistem dan Transaksi Elektronik, PP Nomor 71 Tahun 2019 LN 189 TLN 5438, selanjutnya disebut PP 71/2019, Article 60.

⁷ Ibid, Article 1 Number 20.

⁸ Triana Wati, "Kekuatan Hukum dan Aspek Keamanan Dalam Tanda Tangan Elektronik", *Jurnal Sains Student Research* 1, No.1 (2023), p. 4.

entities, it is further regulated by Government Regulation Number 71 of 2019 on the Implementation of Electronic Systems and Transactions (hereinafter referred to as "PP 71/2019"). Article 59 paragraph 2 of PP 71 states that in the case of an electronic signature representing a business entity, it is referred to as an electronic seal. Therefore, the electronic signature for users in the form of a business entity and not an individual, is in the form of an electronic seal. The ITE Law then strengthened the legal position of electronic seals as a service that can be used by business entities. However, the ITE Law does not further regulate the use of electronic seals.

Considering the obligation to use electronic signatures in signing credit agreements based on Article 154 of the P2P Lending POJK mentioned above, when linked to the provisions of PP 71/2019, there is potential for confusion in practice. PP 71/2019 states that "an electronic signature representing a business entity is referred to as an electronic seal." Conceptually and functionally, an electronic seal is distinguished from an electronic signature with a personal account because it represents a business entity, not an individual. However, POJK P2P Lending does not explicitly require the use of electronic seals in transactions involving business entities as parties. With the absence of such normative clarity, there is potential for inconsistencies or violations of legal provisions in the practice of P2P Lending transactions involving business entities in the future.

The party authorized to represent the limited liability company both in and out of court is the Board of Directors.⁹ The limited liability company can determine in its articles of association regarding the Board of Directors who are entitled to represent the company, in the event that there is more than one Director of the company. Generally, a Director is appointed as the President Director of the company and is entitled to represent the company independently, in order to promote efficiency in several corporate actions of the company, such as signing agreements where the limited liability company is a party. It is possible to stipulate in the articles of association that 2 or more Directors are entitled to jointly represent the company.

However, there are restrictions on representation by the Board of Directors. According to legal regulations, members of the Board of Directors are not authorized to represent the company if there is a case in court between the Board member and the company, or if the Board member has a conflict of interest with the company.¹⁰ In this case, other members of the Board of Directors who do not have a conflict of interest with the company can represent the company. If not, then the board of commissioners can represent the company. In the company's articles of association, other restrictions on the

⁹ *Undang-Undang tentang Perseroan Terbatas*, Nomor 40 Tahun 2007, sebagaimana diubah terakhir dengan UU Nomor 2 Tahun 2022 tentang Cipta Kerja, selanjutnya disebut UUPT, Article 98 number 1.

¹⁰ UUPT, Article 99.

authority granted to the Board of Directors can also be stipulated to protect the interests of the company and shareholders. One example is the inclusion of debt or credit value limits that require prior approval from the board of commissioners or shareholders before the board of directors signs the related credit agreement.

Thus, if in the practice of P2P Lending transactions, the lender or borrower is a limited liability company, but the credit agreement is only signed by the Director using an electronic signature account representing himself personally—without using an electronic seal representing the business entity—legal issues may arise regarding the validity of the agreement, and it may weaken the evidentiary power of the agreement if a dispute occurs in the future. Therefore, based on the explanation above, in this research, the researcher wants to investigate the following: How is the validity of the P2P Lending credit agreement conducted with the personal electronic signature of the director without the company's electronic seal? and How is the evidentiary strength of the P2P Lending credit agreement if it is not accompanied by an electronic seal, especially in the event of a dispute between the lender and the borrower.

2. Research Method

The research method that will be used in this study is a normative juridical approach, which involves examining primary, secondary, and tertiary legal materials with a conceptual approach. The legal materials used as the basis for the analysis in this research are as follows:

1. Primary legal materials consisting of the Civil Code, the ITE Law, the Company Law, Government Regulation 71/2019, Minister of Communication and Information Regulation 11, and POJK P2P Lending;
2. Secondary legal materials consisting of books, journals, and articles related to this writing; and
3. Tertiary legal materials consisting of Indonesian language dictionaries, legal dictionaries, and encyclopedias, which provide further explanations of the primary and secondary legal materials used.

This research aims to analyze the validity and evidentiary strength of credit agreements signed without an electronic seal, so that it can be beneficial for practitioners related to electronic signatures and electronic seals.

3. Results and Discussion

A. Fundamental principles in the implementation of electronic signatures under the ITE Law in the context of private law

The implementation of electronic signatures as regulated in the ITE Law implicitly

adopts two fundamental international legal principles in the regulation of electronic systems and transactions, namely 1) the functional equivalent approach and 2) technology neutrality. The essence of the principle of technology neutrality is that a legal regulation should not be discriminatory towards certain technologies. Meanwhile, the Functional Equivalent Approach generally recognizes that functionally, electronic information is equivalent to information written on paper.

The principle of the functional equivalent approach was first introduced in the Model Law on Electronic Commerce drafted by the United Nations Commission on International Trade Law ("UNCITRAL"). The purpose of this principle is to provide a normative foundation to ensure that electronic information and documents have the same legal value as paper documents and wet signatures. In this context, the legal value of electronic data is assessed based on its ability to meet the elements of being written, signed, and original.¹¹ For example, information is considered written if it can be stored and retrieved.¹² The principle has been firmly adopted in the ITE Law. Article 5 paragraphs (1) and (2) of the ITE Law read as follows:

- 1) Electronic Information and/or Electronic Documents and/or their printed results are valid legal evidence."
- 2) Electronic Information and/or Electronic Documents and/or their printed results as referred to in paragraph (1) are an extension of valid evidence in accordance with the applicable Procedural Law in Indonesia.

The aforementioned article has affirmed that electronic information and documents are valid pieces of evidence and equates the evidentiary power of electronic information and documents with that of information and documents made in writing on paper. This regulation focuses on the legal function of the information and documents, not their form.

Furthermore, Article 11 of the ITE Law adopts the functional equivalent approach again by stipulating that electronic signatures have valid legal force and consequences as long as they meet certain requirements. This provision substantively equates the function of electronic signatures with handwritten signatures. Therefore, the application of the functional equivalent approach principle in the ITE Law allows the execution of electronic transactions with legal force equivalent to transactions written on paper, thereby creating legal certainty in electronic transactions.

B. The validity of the P2P Lending credit agreement conducted with the personal electronic signature of the director without the company's electronic seal

¹¹Makarim, *Notaris dan Transaksi Elektronik*, (Depok: Rajawali Pers, 2020), p. 30

¹² *Ibid*, p. 35.

In making an agreement, which is an act where one or more persons bind themselves to one or more other persons,¹³ the principle of freedom of contract must be fulfilled. Article 1320 of the Civil Code (hereinafter referred to as "KUHPer") stipulates four conditions for the validity of an agreement:

1. Agreement between those who bind themselves;
2. The ability to create an obligation;
3. A certain thing;
4. A legitimate reason.

Paragraph 4 of Article 1320 of the Indonesian Civil Code above serves as the basis for the principle of freedom of contract, where the contracting parties are allowed to make agreements that create any obligations, provided that the performance of such obligations is lawful.¹⁴ Article 1337 of the Indonesian Civil Code further explains that a cause is prohibited if it is forbidden by law or contrary to good morals or public order. If this condition is violated, the agreement is null and void by law, meaning the agreement never existed.¹⁵

Basically, the creation of an agreement is not required to be in written form according to contract law in Indonesia, because agreements made verbally remain valid as long as the parties agree and meet the requirements in Article 1320 of the Indonesian Civil Code. However, in practice, agreements are generally made in writing and signed using wet signatures, so that the physical document of the agreement can be used as evidence of the parties' agreement. With the development of information technology, agreements are starting to be made electronically – from the drafting stage, signing, to sending them to the relevant parties.

Article 1319 of the Indonesian Civil Code states that all agreements are subject to general regulations. It can be interpreted that any agreement, whether electronic or non-electronic, is subject to the regulations in Chapter 2 and Chapter 1 of Book 3 of the Indonesian Civil Code.¹⁶ Therefore, the principles and regulations regarding the aforementioned agreements also apply to agreements made electronically, also known as electronic contracts.

An electronic contract is defined as an agreement between parties made through

¹³ Kitab Undang-Undang Hukum Perdata [Burgerlijk Wetboek]. Diterjemahkan oleh R. Soebekti dan R. Tjitrosudibio, selanjutnya disebut KUHPer, Article 1313.

¹⁴ Suryono Suwikromo, "Pemberlakuan Asas Kebebasan Berkontrak Menurut Hukum Perdata Terhadap Pelaksanaannya Dalam Praktek", *Lex Privatum Vol. III*, No.4 (2015), p. 1.

¹⁵ Subekti, *Hukum Perjanjian*, (Jakarta: Penerbit Intermasa, 2022), p. 20.

¹⁶ Amalia Hanifah, "Kontrak Dagang Elektronik (E-Commerce) Sebagai Suatu Bentuk Perjanjian Yang Melahirkan Perikatan." (Tesis Magister Kenotariatan Universitas Indonesia, Depok, 2004), p. 81.

an electronic system,¹⁷ which consists of a series of electronic devices and procedures that among other functions prepare, store, display, and/or transmit electronic information.¹⁸ As long as the electronic contract is made in accordance with the requirements of Article 1320 of the Indonesian Civil Code, the agreement is valid under Indonesian contract law. In this writing, the electronic contract being analyzed is an electronic contract that is created and signed entirely electronically.

The credit agreement between the lender and the borrower in a P2P Lending transaction, which is an electronic contract, must be signed using a certified electronic signature¹⁹. Certified electronic signatures have legal force and valid legal consequences, as long as the requirements specified in Article 11 of the ITE Law are met, as follows:

- a. the data for creating the Electronic Signature is solely related to the Signer;"
- b. the data for creating the Electronic Signature during the electronic signing process is solely under the control of the Signer;
- c. any changes to the Electronic Signature that occur after the time of signing can be detected;
- d. any changes to the Electronic Information related to the Electronic Signature after the time of signing can be known;
- e. there are specific methods used to identify who the signer is; and
- f. there are certain ways to show that the Signer has given approval for the related Electronic Information.

A certified electronic signature is an electronic signature supported by an electronic certificate. An electronic certificate contains an electronic signature and the identity of the signer,²⁰ and is issued by an electronic certification provider, which is a legal entity trusted to issue and audit electronic certificates (hereinafter referred to as "PSrE").²¹ The party whose identity will be listed in the electronic certificate is the party that must apply for the issuance of the electronic certificate to PSrE when creating an electronic signature account. Furthermore, PSrE is required to conduct an examination of the application to ensure the accuracy of the applicant's identity. In this certification process, PSrE is required to match the applicant's identity with the identity data issued by the authorized agency.²² As an illustration, if the applicant is an Indonesian citizen, the identity document provided by the applicant is the Identity Card issued by the Population and Civil

¹⁷ UU ITE, Article 1 number 17.

¹⁸ *Ibid*, Article 1 number 4.

¹⁹ POJK P2P Lending, Article 154.

²⁰ UU ITE, Article 1 number 9.

²¹ *Ibid*, Article 1 number 10

²² Peraturan Menteri Komunikasi dan Informatika Republik Indonesia Tentang Tata Kelola Penyelenggaraan Sertifikasi Elektronik, Nomor 11 Tahun 2022, selanjutnya disebut Permenkominfo 11, Article 26 number 4.

Registration Office ("Dukcapil"). Therefore, PSrE is required to verify the ID card with the national population system at Dukcapil.

Certified electronic signatures have a higher evidentiary value because there is a verification or due diligence process conducted by PSrE, which is a trusted party. The results of the due diligence are also considered trustworthy and reliable, and there is a digital audit trail indicating that verification has been conducted by the authorized agency. Thus, certified electronic signatures are considered valid unless proven otherwise.²³ On the other hand, an uncertified electronic signature is not supported by an electronic certificate. Therefore, such a signature is not immediately considered accurate or trustworthy. Even though non-certified electronic signatures are still legally recognized in Indonesia, there is a difference in their evidentiary value compared to certified electronic signatures.²⁴

In addition to electronic signature account issuance services, PSrE can also provide certified electronic seal services.²⁵ An electronic seal is an electronic signature that represents a business entity, not an individual.²⁶ The process of issuing an electronic certificate for an electronic seal is the same as issuing a certificate for an electronic signature. PSrE is obligated to conduct a verification or due diligence process on the authenticity of the identity of the electronic certificate applicant.²⁷ For this process, there are no specific regulations regarding which identity documents must be verified when the applicant for the electronic certificate is a business entity.

According to the prevailing legal provisions in Indonesia, business entities can be classified into legal entities and non-legal entities. The fundamental difference lies in the existence of a corporate veil in legal entities. Corporate veil means that the legal entity is a separate legal subject, distinct from its owner. Therefore, a legal entity can take civil actions in its own name, can own property in its own name, and can be summoned to court in its own name. On the other hand, in an unincorporated business, there is no corporate veil. Therefore, there is no separation between the business entity and its owners or partners, so any actions taken by the unincorporated business entity remain attached to the owners or partners, and the assets also remain the property of the owners or partners. Considering these characteristic differences, each type of business entity is subject to different legal regulations according to its type.

Therefore, to determine the identity documents that must be verified by PSrE, one can refer to the applicable legal regulations in Indonesia concerning the type of legal entity

²³ *Ibid*, Article 33.

²⁴ PP 71/2019, The explanation of Article 60 number 2.

²⁵ Permenkominfo 11, Article 33.

²⁶ PP 71/2019, Article 59 number 2.

²⁷ Permenkominfo 11, Article 40 *juncto* Article 26.

in question. As an illustration, the identity documents of a business entity in the form of a limited liability company include the deed of establishment and articles of association, including the letter of ratification, approval from, and notification to the Minister of Law.

According to the applicable laws and regulations, a limited liability company obtains legal entity status after receiving approval from the Minister of Law.²⁸ In addition, any amendment to the articles of association of a limited liability company also requires approval from or notification to the Minister of Law.²⁹ Among other things, changes to the articles of association include the name of the limited liability company, the duration of the company's existence, and the identity of the Board of Directors who can represent the company. Therefore, it is very important for PSrE to ensure that the limited liability company in question has an appropriate name, is legally recognized as a legal entity, is still operational as a legal entity, and is represented by individuals who have the authority to represent the limited liability company.

Article 26 paragraph 4 of the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 11 of 2022 concerning the Governance of Electronic Certification Implementation (hereinafter referred to as "Permenkominfo 11") stipulates that "In the event that the identity used in the examination is issued by the authorized Institution in accordance with the provisions of the legislation, then the identity shall be compared with the database of that Institution." Before the issuance of an electronic certificate, PSrE is required to conduct verification by matching the applicant's identity documents in the form of a business entity with the identity data issued by the authorized agency. Referring to the illustration above, in the case of a limited liability company, PSrE is required to match the identity data submitted by the applicant with the data recorded at the Ministry of Law, as the authorized agency to provide approval and endorsement for limited liability companies.

Thus, an analysis of the validity of electronic credit agreements in P2P Lending transactions is necessary, where the lender or borrower is a limited liability company, but the credit agreement is only signed by the Director using an electronic signature account that represents him personally—without using an electronic seal that represents the business entity.

Article 154 in conjunction with Article 143 of the POJK P2P Lending requires that the credit agreement between the lender and the borrower be executed using an electronic signature secured with an electronic certificate. Although POJK P2P Lending does not explicitly require the use of electronic seals, based on the previous explanation, it can be concluded that an electronic seal is an electronic signature representing a business entity.

²⁸ UUPT, Article 7 number 2.

²⁹ *Ibid*, Article 21 number 1 *juncto* Article 21 number 3.

Thus, implicitly, a systematic interpretation of the provisions of Article 154 in conjunction with Article 143 of the POJK P2P Lending indicates that in the case of a loan agreement between the lender and the borrower, which are legal entities, the loan agreement must also be executed using an electronic seal as a legitimate representation of the legal entity. Therefore, neglecting the use of electronic seals in transactions involving business entities has the potential to create inconsistencies with the applicable positive legal provisions and could open up space for legal risks in the future practice of P2P Lending services.

In a credit agreement in a P2P Lending transaction where the lender or borrower is a limited liability company, the legal subject bound by the credit agreement is the limited liability company itself. Therefore, the use of an electronic seal is necessary to represent the limited liability company as a party in the agreement. However, if the credit agreement is only signed using an electronic signature account that represents the Director personally, the credit agreement can still be considered valid as long as it uses a certified electronic signature in accordance with the regulations in the ITE Law and meets the elements of validity of the agreement according to Article 1320 of the Civil Code. However, further proof is still required that the Director is indeed the Director of the limited liability company that is the legal subject in the agreement, considering the absence of a digital record indicating that verification or due diligence has been conducted on the identity of the limited liability company.

3. The Evidentiary Strength of a Credit Agreement Signed Without an Electronic Seal

In the practice of P2P Lending transactions, disputes often arise in their implementation. The disputes cover various aspects related to borrowing and lending, especially concerning default due to non-payment. The number of default cases in P2P Lending transactions in Indonesia with overdue periods exceeding 90 days has reached trillions of Rupiah, reflecting the significant risk of default in P2P Lending transactions. Based on statistics from the Financial Services Authority, as of February 2025, approximately Rp. 2,225,000,000,000 in P2P Lending loans have experienced defaults for more than 90 days.³⁰

In the event of a dispute in the future, the signed credit agreement will serve as evidence showing the obligations of each party. Therefore, it is important to analyze the evidentiary value of a credit agreement that is only signed by the Director using an electronic signature account representing himself personally —without using an electronic seal representing the business entity. This needs to be considered so that the

³⁰ Otoritas Jasa Keuangan, “Statistik LPBBTI Februari 2025”, [ojk.go.id](https://ojk.go.id/id/kanal/iknb/data-dan-statistik/fintech/Pages/Statistik-LPBBTI-Februari-2025.aspx), 30 April 2025, tersedia pada <https://ojk.go.id/id/kanal/iknb/data-dan-statistik/fintech/Pages/Statistik-LPBBTI-Februari-2025.aspx> , accessed on 10 Mei 2025.

agreement remains legally valid and can be accepted as evidence in dispute resolution processes as strong proof.

As explained in the previous discussion, a credit agreement that is only signed using an electronic signature account representing the Director of the relevant limited liability company personally is considered valid as long as it uses a certified electronic signature in accordance with the regulations in the ITE Law and meets the elements of validity of the agreement according to Article 1320 of the Civil Code. From the perspective of legality under Indonesian law, the agreement is valid and legally binding. However, from a proof perspective, signing with the Director's personal electronic signature account without using the electronic seal representing the relevant limited liability company can weaken the evidentiary value of the credit agreement before the judge. Additional evidence is still needed to show that the Director is indeed the Director of the relevant limited liability company, which is the legal entity in the agreement.

There are various efforts that can be undertaken to resolve disputes that arise, especially in the context of credit agreements in P2P Lending transactions. Each party in an agreement has the freedom to determine and agree on the method of dispute resolution related to the agreement in which they are a party. Generally, the choice of dispute resolution is explicitly stated in the credit agreement to avoid variations or conflicts in the interpretation of the agreement. In practice, the parties agree to resolve disputes through court proceedings or through arbitration forums. Therefore, this writing focuses on dispute resolution through civil courts.

Civil courts are judicial institutions authorized to handle civil cases, which pertain to individuals or legal entities of a private nature. These cases include, among others, contract disputes, unlawful acts, and family disputes. In this context, civil courts can handle disputes related to credit agreements, including credit agreements in P2P Lending transactions. In the process of dispute resolution in civil court, the parties are given the opportunity to present their arguments and evidence for the judge's consideration.

Herzien Inlandsch Reglement (hereinafter referred to as "HIR") is one of the civil procedural law regulations that serves as a guideline in the civil procedural law process. Among other things, the HIR regulates what is considered as evidence in civil court. Article 164 of the HIR states:

"Means of evidence, namely:"

written evidence, (KUHPerd. 1867 et seq.; IR. 165, 168; S. 1867-29.)

witness testimony, (KUHPerd. 1895; IR. 168 et seq.)

presumption, (KUHPerd. 1915; IR. 173.)

confession, (KUHPerd. 1923 et seq.; IR. 174 et seq.)

oath, (KUHPerd. 1929 et seq.; IR. 155 et seq., 177, 381.)

everything with due regard to the regulations prescribed in the following articles. (KUHPerd. 1866; JR. 295.)”

According to the provisions in HIR, written documents can serve as evidence in civil court proceedings. Article 165 of the HIR further states that an authentic deed is a written piece of evidence that has perfect strength. Besides authentic deeds, there are also handwritten documents, such as agreements that are not made in the presence of a Notary or other authorized officials. Agreements made under hand do not have the same evidentiary power as authentic deeds. Along with the development of law in Indonesia, the ITE Law stipulates that electronic information and electronic documents are recognized as valid legal evidence.³¹ This provision reflects the legal adaptation to the advancement of information technology in Indonesia, as well as expanding the types of evidence that can be used in judicial proceedings.

Electronic information is one or a collection of electronic data,³² whereas an electronic document is any electronic information that has been processed in analog, digital, electromagnetic, or similar forms so that it can be understood.³³ An electronic contract is one example of an electronic document. Therefore, the credit agreement made electronically in transactions on the P2P Lending platform is one of the hand-written documents that can be used as evidence in civil court proceedings.

To ensure the validity of the electronic contract, it must be signed using an electronic signature as a form of agreement by the parties involved. Additionally, credit agreements in P2P Lending transactions are required to be signed using electronic signatures supported by electronic certificates issued by PSrE.³⁴ Electronic signatures have legal force and valid legal consequences, as long as the requirements specified in Article 11 of the ITE Law are met, as follows:

- a. the data for creating the Electronic Signature is only related to the Signer;"
- b. the data for creating the Electronic Signature during the electronic signing process is solely under the control of the Signer;
- c. any changes to the Electronic Signature that occur after the signing time can be detected;
- d. any changes to the Electronic Information related to the Electronic Signature after the time of signing can be known;
- e. there are specific methods used to identify who the signatory is; and

³¹ UU ITE, Article 5.

³² *Ibid*, Article 1 number 1.

³³ *Ibid*, Article 1 number 4.

³⁴ POJK P2P Lending, Article 154.

- f. there are certain ways to show that the Signer has given approval for the related Electronic Information.

These requirements contain elements of identification, integrity, and non-repudiation of the document, which ensure:

1. The document is duly signed by the concerned party;
2. The document has not undergone any changes after being signed; and
3. The document cannot be denied by the party who signed it.

Thus, it can be concluded that as long as the electronic credit agreement in P2P Lending transactions is signed with a certified electronic signature that meets the requirements of Article 11 of the ITE Law, the agreement will be considered legally valid evidence, unless proven otherwise. However, Article 59 of PP 71/2019 states that in the case of an electronic signature representing a business entity, it is referred to as an electronic seal. This indicates a fundamental difference between the functions of personal electronic signatures and electronic seals in the context of legal subject representation.

An electronic seal functions as a security instrument to ensure that the information and electronic documents originate from a valid and legitimate business entity, and to guarantee the integrity and authenticity of the information and electronic documents.³⁵ Thus, the electronic seal essentially serves as a guarantee of validity from a trusted party, namely PSrE, that the business entity, which is the legal subject in an electronic contract, truly exists legally and has been officially verified. This guarantee is realized through an electronic certificate issued by PSrE, thereby creating a digital record of the verification that has been carried out.

Furthermore, in the electronic certificate, the identity of the individual responsible for the electronic seal belonging to the respective business entity can also be included.³⁶ Verification of their identity is also conducted for that party.³⁷ With the thorough verification conducted by PSrE, electronic contracts involving a business entity as a party and equipped with an electronic seal will have reliable evidentiary power compared to electronic contracts that are not equipped with an electronic seal. Certified electronic seals are considered valid unless proven otherwise.³⁸ Therefore, the burden of proof lies with the party disputing the existence and validity of the electronic contract in question.

An electronic contract that is not accompanied by an electronic seal has lower evidentiary power compared to a contract that is equipped with an electronic seal. This is

³⁵ Permenkominfo 11, Article 40 number 1.

³⁶ *Ibid*, Article 40 number 2.

³⁷ *Ibid*, Article 40 number 3.

³⁸ *Ibid*, Article 34 number 3.

because the absence of an electronic seal results in the lack of a digital trail that explicitly shows that the legal entity's identity has been verified as a legal subject in the contract. In other words, there is no guarantee that the business entity mentioned in the contract has actually been verified as a legally existing party.

In the context of civil litigation, the party submitting an electronic contract without an electronic seal will face a heavier burden of proof. This is because the judge may request additional evidence to ensure the identity, integrity, and authorization of the representation from the business entity that is the legal subject of the agreement. Additionally, without an electronic seal, the electronic contract will be more vulnerable to challenges regarding its validity. Thus, in the case where the legal subject in an electronic contract is a business entity, it is advisable to include an electronic seal.

Thus, in the case of an electronic credit agreement in a P2P Lending transaction involving one party that is a limited liability company, and the agreement is only signed with the certified electronic signature account of the relevant company's Director, which meets the requirements of Article 11 of the ITE Law, the agreement will be considered a legally valid piece of evidence in civil court proceedings, unless proven otherwise. However, the absence of an electronic seal on the credit agreement may weaken its evidentiary power, especially when disputes arise in court. This is due to the absence of a digital trail that shows the document truly originates from a legitimate and verified limited liability company, which can lead to doubts. As a result, in court proceedings, the agreement must be supported by additional evidence to ensure the identity, integrity, and authorization of representation from the relevant limited liability company.

4. Conclusion

A credit agreement that is only signed using an electronic signature account representing the Director personally can still be considered valid as long as it uses a certified electronic signature in accordance with the regulations in the ITE Law and meets the elements of validity of the agreement according to Article 1320 of the Civil Code. Nevertheless, further proof is still required that the Director is indeed the Director of the limited liability company that is the legal entity in the agreement, considering the absence of a digital record indicating that verification or due diligence has been conducted on the identity of the limited liability company. Moreover, not using an electronic seal in transactions involving business entities could lead to inconsistencies or violations of legal provisions in the practice of P2P Lending transactions involving business entities.

In P2P Lending transactions involving limited liability companies, and the agreement is only signed with the certified electronic signature account of the Director that meets the requirements in Article 11 of the ITE Law, the agreement will be considered

a legally valid piece of evidence in civil court proceedings, unless proven otherwise. However, the absence of an electronic seal can weaken its evidentiary strength, as there is no digital trail indicating that the document originates from and represents the legitimate limited liability company. Therefore, additional evidence is needed to ensure the identity, integrity, and authorization of the representation of the relevant limited liability company.

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