

# The Power of Digital Signature Evidence in Indonesian Civil Procedural Law

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**Abstract:** Enforcement of civil law is carried out through civil procedural law in order to provide justice for the parties to the litigation in order to make light of the case which was carried out in the evidentiary trial. Evidence is regulated in Article 164 HIR/284 Rbg. Nowadays the development of evidence has expanded so that electronic evidence appears after the enactment of Law Number 11 of 2008 concerning Information and Electronic Transactions, one of which is an electronic signature (digital signature). The problem that arises is how strong is the evidence in civil procedural law in Indonesia? So the purpose of this study is to determine the strength of evidence of electronic signatures in Indonesian civil procedural law. This study uses a normative type of research with a legal and conceptual research approach which is then analyzed deductively in order to produce legal arguments in a systematic, logical and theoretical manner. The results of this study found that the strength of evidence against electronic signatures differed depending on the type of electronic signature presented at the trial.

**Keywords:** Civil Procedural Law, Digital Signature, Evidence.

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## 1. Introduction

Law is a system that is integrated with each other in order to realize legal justice, benefits and certainty. it has basic duties and functions in human life in society (Reza Kautsar Kusumahpraja, 2021). Without law in society, the situation will be more chaotic such as legal injustice, uncertainty, law-abiding behavior and other things that can damage the order in society itself, therefore law enforcement is needed. Law enforcement in society can be divided based on the fields of law, including the fields of public law and private law. The author in this legal paper will examine law enforcement in the field of private law, especially in civil procedural law. Based on the legal opinion expressed by Sudikno, it can be explained that civil procedural law is a group of regulations that regulate all material civil law enforcement and are assigned to judges. (Mertokusumo, 2018).

The enforcement of civil procedural law is carried out solely to provide justice to the parties who are litigating in court to clarify their case and to prove who is entitled to an object of the case, in this case, one of the court proceedings is called evidence. This evidence is regulated in Article 164 Herzien Inlandsch Reglement (here in after referred

to as HIR) and 284 Rechtreglement Voor de Buitengewesten (here in after referred to as Rbg), which consists of evidence from letters, witnesses, confessions, oaths, and the judge's suspicions. Along with the development of technology, new electronic-based evidence has emerged such as electronic signatures (digital signatures), other electronic documents and even CCTV which is regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions (here in after referred to as the ITE Law 2008). which was later amended by Law Number 19 of 2019 concerning Information and Electronic Transactions (here in after referred to as the ITE Law 2019). So the author of this legal paper will discuss digital signatures and their relation to the strength of evidence in civil procedural law in Indonesia, because of this a conceptual problem arises, namely if the digital signature is accepted as legal evidence as evidence, then what is the strength of the evidence in a civil trial?

## **2. Method**

The author of this legal paper uses a normative type of research that focuses on positive law by examining legislation, legal systemization, assessment of law, and interpretation of the law to answer questions from legal issues with outputs in the form of legal arguments, legal ideas or legal theories that new (Marzuki, 2011). This legal research uses a statute approach and a conceptual approach. By using legal materials in the form of primary legal materials, namely Law Number 11 of 2008 concerning Information and Electronic Transactions, HIR/RBg, and for secondary legal materials, proceed from legal scientific journals, legal dictionaries, and law books related to the subject matter of the research. All the legal materials will be processed by the author with a literature study which is analyzed deductively to produce answers to problems in the form of a systematic and logistical presentation.

## **3. Result**

The law of evidence in civil procedural law has an important role, without evidence, a judge in a case cannot try the case. According to Soebekti, the Evidence is said to be a judge's effort to make a case so that he can be sure of the arguments presented in a legal problem or the case at hand (Soebekti, 2015). Evidence in civil procedural law in Indonesia is regulated in Article 164 HIR and 284 Rbg which consists of documentary evidence, witness evidence, confession evidence, oath evidence, presumption evidence. In addition, there is also evidence outside of the article, namely in Article 153 HIR and 180 Rbg, namely local examinations, and Article 154 HIR and 181 Rbg, namely expert witness.

With the development of the era that is influenced by globalization today, evidence has also experienced a significant expansion, namely the emergence of electronic evidence, in Indonesia electronic evidence emerged after the issuance of the ITE Law of 2008 wherein Article 1 Number 4 it is explained that electronic documents are any information that is made, made, sent, received or stored in analog, digital, optical electromagnetic or similar forms that can be displayed and/or heard through a computer or sound system, images, design maps, photographs or the like, letters,

signs, numbers, access codes, symbols or perforation that has meaning or meaning or can be understood by people who can understand it. One of the electronic documents is an electronic signature, which as explained in Article 1 Number 12 of the ITE Law 2008 Electronic Signature is a signature, which is an Electronic information signature that is attached to, related to, or related to other Electronic Information used as a means of verification and authentication. In principle, all electronic signs have legal force and legal consequences to fulfill various requirements in Article 11 of the 2008 ITE Law, namely the data for making signatures related only to legal subjects; the data for making the signature is with the attorney of the legal subject of the signatory only; changes to the signature must always be known; changes to information related to the signature must always be transparent; there is a way to identify the signature; there is a way to certify that the subject of the signatory has given consent to the associated electronic information.

Further regulation regarding this electronic signature is regulated in Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (here in after referred to as PP PTSE 2019). According to PP PTSE 2019, the use of electronic signatures is to carry out all electronic transactions that require signatures, levers, and the identity of the legal subject of the signatory. specifically, to represent a Business Entity, this signature nomenclature is referred to as an electronic seal. Electronic signatures based on PP PTSE 2019 are divided into 2 (two) types, namely first certified electronic signatures made by certification bodies and secondly uncertified electronic signatures, namely electronic signatures that are not made with the services of an electronic signature maker. The distinction between these two types has implications for the strength of evidence in the test of evidence.

The validity of electronic signatures is the same as conventional signatures, this is based on the doctrine of the "function equivalent approach". So that the acceptance of whether the electronic signature can be accepted or not as evidence then actually this electronic signature is accepted as legal evidence. It's just that to find out the strength of the evidence, based on the literature study that the author did, the results were casuistic where, whether the electronic signature was certified or not because in this case a different law of strength was produced in the law of evidence. In Civil Procedural law of evidence, it is divided into 5 (five) powers, namely: (Butarbutar, 2016)

First, Weak, namely evidence that does not make the case clear because it is not related to the case or this is only referred to as original evidence. Evidence of origin is evidence that must be supported by at least one other piece of evidence (Asnawi, 2013). So here the judge is unable to hear the case if only evidence that is weak in strength is presented. Second, perfect evidence, which is perfect and does not need to be supported by other evidence unless there is a denial from the opposing party and the judge can decide with such evidence. Third, definite or decisive evidence, that evidence means that the evidence submitted is considered true and cannot be contested and there is no objection from the opponent. rights, the judge is obliged to request an application. Fourth, binding evidence, namely the existence of evidence that binds

directly and is considered unrelated. Fifth, is refutation evidence, namely evidence submitted to provide a rebuttal to the evidence by the opposing party.

In the author's opinion, based on the above, the power of evidence an electronic hand is also divided into two types, namely first, when the evidence is carried out against a certified electronic signature, Ait has perfect evidence strength in the sense that as long as the signature is made and the result of services a certified electronic signature is legally protected because its implementation is based on the principles of good faith from the parties, the organizers, prudence, fairness, and accountability (Dermawan, 2021). Certified electronic signatures have perfect evidence as long as the counterparty does not file a rebuttal. In contrast to the power of evidence on an uncertified electronic signature, in this author's opinion, it has weak proving power, if the author makes an analogy, this is like the power of evidence against an underhand deed This uncertified electronic signature requires other evidence that can support that this electronic signature is genuine, credible and related to the subject of the case, so that the judge can ultimately decide a case. The author's legal argument is supported by that this uncertified electronic signature can and is recognized by law as evidence that will prove a relatively weak legal force not made by the certification body and is likely to be increase higher (Intan Permata Ningrum, 2022).

#### 4. Conclusion

Based on the explanation that the author has conveyed, it can be concluded that electronic signatures are legal and have legal force in Indonesian civil procedural law, both certified and uncertified. Certified electronic signatures have perfect proving power as long as they are not denied by the counterparty and non-certified Electronic Signatures have weak evidence.

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