

## E-Signature Utilization during Covid-19 Pandemic: Legality & Data Protection Aspects

The usage of electronic signature ("**e-signature**") is growing for online transactions in light of the Covid-19 pandemic in Indonesia. It becomes evident that an increasing number of Indonesian businesses have adopted local e-signature technology during the past month, as physical distancing measures in place make it difficult to ink contracts in person.<sup>1</sup> On the normative side of the ledger, contractual agreements are legal and binding provided that the basic requirements of a contract under Article 1320 of the Indonesian Civil Code (*Burgerlijk Wetboek*) are fulfilled. This means that generally when legally competent parties reach an agreement, whether they agree verbally, electronically or in a physical document on a permissible cause without any form of coercion, the contract shall be valid.



It is commonplace that these agreements are signified by signings, which are traditionally completed with “wet signatures”. e-signature is permissible by law but there are certain terms to its implementation.

Law No. 11 of 2008, as amended by Law No. 19 of 2016 on Electronic Information and Transactions ("**UU ITE**"), confirms that e-signature are valid and acceptable. As for the technicalities, Government Regulation No. 71 of 2019 on Implementation of Electronic Systems and Transactions ("**PP 71/2019**") provides that e-signature can be done in two ways: certified and uncertified. A certified e-signature is one done under the authentication of certified providers and an uncertified e-signature simply means one completed over electronic means. As this happens, there are three private Indonesian e-signature providers, i.e. PrivyId, Digisign and Vida.<sup>2</sup> Furthermore, according to the Indonesian Ministry of Communications and Information ("**IMCI**") website,

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<sup>1</sup>Harsono, Norman (2020) 'Indonesia's e-signature start-ups gain traction amid pandemic' Source: <https://www.thejakartapost.com/news/2020/04/13/indonesias-e-signature-start-ups-gain-traction-amid-pandemic.html> (accessed on 23 June 2020).

<sup>2</sup>Harsono, Norman (Ibid). PrivyID (2020), PrivyID Offers Free Digital Signature Service Amid Covid-19 Outbreak in Indonesia' <https://blog.privy.id/wfh-free-digital-signature-covid19/> (accessed on 1 June 2020).

there are three additional state owned enterprise and government agencies which can serve as Indonesian e-signature providers: (i) the Money Printing Company of the Republic of Indonesia/Perusahaan Umum Percetakan Uang Republik Indonesia (“**Perum Peruri**”), (ii) State Code and Cyber Agency/*Badan Siber dan Sandi Negara* (“**BSSN**”), and (iii) Agency for the Assessment and Application of Technology/*Badan Pengkajian dan Penerapan Teknologi* (“**BPPT**”). These Indonesian e-signature providers can be categorised as service providers along with financial technology.

It is important to note that a certified e-signature has stronger evidentiary value, e.g. during a court proceeding where the parties need to prove that the e-signature is authentic. This is why for agreements of great significance, certified e-signature is a necessity. In this legal alert we discuss the legal aspects, or legality aspects and data protection aspects of e-signature.

### **What Spurred the Prominence of e-signature in Indonesia?**

Before going further with the legality and data protection aspects, it should be pointed out that technology-focused financial institutions based in Indonesia were the ones propelling the demand for e-signature at the early stages of adoption. The top two fastest-growing financial technology (“**fintech**”) areas in Indonesia are peer-to-peer (P2P) lending and e-payment. Based on Bank of Indonesia statistics, the value of e-money transactions grew six fold between 2012 and 2017 to IDR12.3 trillion (\$840 million).<sup>3</sup> Authenticating transactions in fintech must be carried out in line with the OJK regulations, in this case in line with Article 41 of Regulation No. 77 of 2016 regarding Information Technology-Based Loan Provision Services (“**OJK Regulation 77/2016**”).

### **Instances wherein Uncertified e-signature Utilization is Appropriate: First Legal Aspect**

As regards to signing of documents that are only being used internally and are not going to be submitted to courts and government institutions in Indonesia, uncertified e-signature can be utilized in this case to help with efficiency amidst the Covid-19 outbreak. Whereas for signing of documents that are to be used externally and for submission to courts and government institutions in Indonesia, parties can utilize e-signature from certified providers (or registered certified providers) in Indonesia.

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<sup>3</sup>Batunanggar, S. 2019. Fintech Development and Regulatory Frameworks in Indonesia. ADBI Working Paper 1014. Tokyo: Asian Development Bank Institute. Source: <https://www.adb.org/publications/fintech-development-regulatory-frameworks-indonesia> (accessed on 18<sup>th</sup> of August 2020).



## Several Exemptions on Circumstances of e-signature Utilization: Second Legal Aspect

Documents that require formal notarial processes are usually not compatible with e-signature or digital transaction managements. Such examples include<sup>4</sup>:

- a. corporate documents, such as articles of association (and amendments thereto), shareholders resolutions, share/asset transaction documents;
- b. HR documents;
- c. IP transfer documents;
- d. real property transfer contracts and deeds (except lease contracts and other contracts related to real estate, which can be generally signed validly via any form of e-signature); and
- e. certain corporate documents, such as share/asset transaction documents.

Some Indonesian notaries find it acceptable to use e-signature on statement letters from companies during this COVID-19 situation. One example of such implementation is the non-obligation of general meeting of shareholders (“**GMS**”) participants to sign the minutes of the GMS with wet signatures, as stated in The Financial Authority (*Otoritas Jasa Keuangan* or “**OJK**”) Regulation No. 16/POJK.04/2020 (“**POJK 16/2020**”). In such scenarios, the notary is allowed to provide a deed for the minutes that is agreed upon electronically by way of POJK 16/2020.

## Data Protection Aspects of e-signature for Service Providers

There are several data protection aspects of e-signature. First, usage of e-signature means the authentication of such persons, and their signatures, by service providers. Automatically, this means that service providers require data on personal information regarding the individual or information requiring certification. Under the personal data protection regulation in Indonesia, establishing consent is mandatory upon collection of personal data. Service providers must obtain consent from users for collecting personal data. This constitutes the right to consent, which has the following legal basis: Article 14 paragraph (1) section (a) 15 paragraph (1) section (b) of Government Regulation 71 of 2019 on the Implementation of Electronic System and Transactions.

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<sup>4</sup> DocuSign. “eSignature Legality Summary” Source: <https://www.docusign.com/how-it-works/legality/global/indonesia>, accessed on 23 June 2020.

Second, service providers list requirements and information needed in order to be certified for the users' knowledge. PrivyID mentions on their website that they collect Indonesian ID cards (or KTP/Kartu Tanda Pengenal) or other types of identification cards, telephone numbers, email addresses, and photos of the individuals or organizations. Within the purview of personal data protection law in Indonesia, e-signature service providers must inform users of its data collection. Upon collection of personal data to authenticate the user's e-signature, service providers must inform users about the types of personal data that will be collected, the purpose of collection and the potential sharing of data with third parties. This constitutes the right to be informed; and Article 26 of serves as a legal basis for this right.

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