



Development of a related party identification system in the notarial deed process using biometric scanners

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ABSTRACT

This research focuses on the implementation of an innovative system for identifying related parties in the notarial deed process by integrating biometric scanners. The traditional notarial deed process often faces challenges in accurately identifying and verifying the parties involved, leading to potential legal and security issues. To address this, our study proposes the development of a robust Related Party Identification System (RPIS) that leverages biometric technology for enhanced authentication. The RPIS employs state-of-the-art biometric scanners to capture and analyze unique physiological and behavioral characteristics, such as fingerprints or facial features, of individuals participating in the notarial deed process. Through a systematic approach, the system aims to improve the accuracy, efficiency, and security of party identification, mitigating the risk of fraud and unauthorized access. The research methodology involves the design and implementation of the RPIS prototype, followed by rigorous testing and validation in a simulated notarial deed environment. The study evaluates the system's performance in terms of speed, accuracy, and reliability, considering various scenarios and potential challenges encountered in real-world situations. The anticipated outcomes of this research include the development of a practical and effective RPIS framework that can be seamlessly integrated into existing notarial processes. The proposed system has the potential to enhance the overall integrity of notarial deeds by ensuring a reliable and secure identification mechanism for all related parties involved. This research contributes to the evolving landscape of legal technology, offering a viable solution to the contemporary challenges associated with party identification in notarial practices.

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1. INTRODUCTION

The notary profession in Indonesia is now familiar to the public. Its presence is very important in everyday life, especially in the world of law and business. People need someone who is reliable, trustworthy, and has signatures and seals that can provide strong guarantees and evidence. A notary is considered an expert who is neutral, trustworthy, can maintain confidentiality, and is able to make agreements that can protect them in their daily lives. As an expert, a notary has the authority to make deeds that contain confidential information relating to the parties involved and those not mentioned in the deed (Widiasih N, 2020).

A notary must comply with the latest UUJN, namely Law No. 2/2014 on the Amendment to Law No. 30/2004 on the Position of Notary. The latest UUJN is strictly regulated to ensure that every notary in carrying out their profession always refers to the applicable law. Along with the development of increasingly modern times and advances in science, society has also experienced changes in various aspects of its life, such as mindset, culture, and technology. This makes the legal norms regulated in the Law unable to always run in line with the increasingly dynamic and complex demands of life. In order to adjust the legal norms with the prevailing legal values and ensure justice for the community, changes were made to the Law governing the act. The latest UUJN has established new obligations that must be carried out by notaries, including adding the obligation of notaries to include the fingerprints of the confrontants in the notarial deed minutes.(Widiasih N, 2020).

According to Article 1 of the New Law, a notary is a public official who has the authority to make authentic deeds and has other powers in accordance with this Law or based on other laws. Meanwhile, attaching according to the Complete Indonesian Dictionary means attaching to something. Furthermore, according to Article 2 paragraph 2 of the Civil Code (KUHPperdata), fingerprinting means that the signing of a writing under the hand is equated with a thumbprint, affixed with a dated statement from a notary or other employee appointed by law from which it is evident that he knows the contents of the affixer of the thumbprint, or that this person has been introduced to him, that the contents of the deed have been explained to him, and that after that the thumbprint is affixed in the presence of the employee. The officer must record the writing. The confronter is a legal subject who comes to the notary based on a need and his own wishes. In Article 18 of the latest UUJN, the definition of minuta deed is the original deed that includes the signatures of the confronters, witnesses, and notary, which is kept as part of the notary protocol.(Arliman S. L, 2015).

In the context of the changes in the Law on the Office of Notary (UUJN), particularly the changes to Article 16 paragraph (1) letter c, notaries now have an obligation to include the fingerprints of the confrontants, letters, and other documents on the minutes of notarial deeds made by them. This article emphasizes that as part of their duties, notaries are required to include such information on the minutes of notarial deeds made by them. This is so that the notarial deed minutes contain complete and accurate information regarding the identity of the parties involved. After the amendment of Article 16 paragraph (1) letter c in the UJN, the lawmakers gave additional obligations to notaries to attach the fingerprints of the confrontants to each notarial deed minute they make. This is done so that the deed minutes are considered as original notarial deeds which consist of two types, namely *partij* deeds made before a notary and official deeds / *relaas* deeds made by notaries. The purpose of attaching the confronter's fingerprints to the deed minutes is to ensure the correctness of the confronter's identity and not as a legal action in determining the validity or authenticity of the notarial deed. The function of attaching the confrontant's fingerprints to the deed minutes is only to ensure the correctness of the confrontant's identity. Articles 44 and 46 of the UJN state that fingerprints do not apply to substitute signatures in *partij* deeds and have no role in official deeds. Therefore, Article 16 paragraph (1) letter c which regulates attaching fingerprints to the notarial deed minutes is not used to determine the validity or authenticity of the deed, but only to ensure the correct identity of the confrontant.(Ali A, 2015).

The current technological development that includes electronic tools and media has a positive impact in various fields of activity, such as economics, socio-culture, education, and law, especially in Indonesia. Therefore, appropriate legal regulations are needed to govern it. In law, flexibility is required to accommodate changes in society. Therefore, legal rules must be able to adjust to the development of society to make it more dynamic. To achieve this, it is necessary to make changes to various existing laws and regulations in order to adapt to the latest developments. The ongoing development of information and electronic technology provides various conveniences and changes in various aspects of life, including in carrying out activities such as communicating, studying, transacting, working, and carrying out official duties. One example of the application of this technology is the use of electronic fingerprints (biometrics) in carrying out the duties of a Notary, which allows the making of Notarial deeds electronically. While there are several benefits of using technology in the making of Notarial deeds, its use can also raise several legal

issues. Electronic or biometric fingerprints are used in the exercise of the office of Notary to create Notarial deeds electronically, which provides advantages in terms of cost and time efficiency. However, the use of information technology can also cause several problems, including those related to the law. (Susanti D dan Efendi A, 2019) Therefore, based on this explanation, how is the development of a Related Party Identification System in the Notary Deed Process using a Biometric Scanner?

2. RESEARCH METHOD

The legal research method of this research is normative legal research or also called doctrinal research. Normative legal research describes the analysis of the relationship between legal norms, with the expected result being a systematic explanation of legal norms that answer the legal issues at hand. (Marzuki, 2016) The type of data that supports and becomes the basis of research using secondary data, which is obtained from official documents, books, to the results of research reports (Soekanto, 2007),

This research studies the use of electronic fingerprints in Notary deeds with normative legal research methods and statutory approaches. The legal sources used are primary and secondary legal materials, with document study data collection techniques and content and argumentative analysis. This research highlights the benefits and legal issues arising from the use of electronic fingerprint technology in Notarial deeds.

3. RESULTS AND DISCUSSIONS

Law Number 2 Year 2014 has amended Law Number 30 Year 2004 on Notary Position and states that Notaries have the authority to make authentic deeds and perform other actions provided by law. Notaries also have authority in the field of cyber notary such as certifying electronic transactions, making a deed of pledge of waqf, and aircraft mortgages in accordance with Article 15 of UUJN-P. Cyber notary is a concept used by Notaries who have skills in law and computer technology. Cyber notary allows Notaries to use electronic finger signatures (biometrics) in making deeds, in accordance with Article 16 Paragraph (1) letter m of UUJN-P which stipulates that all parties must sign the Notary's deed at that time (Darmaangga I. D. G. C. D dan Mayasari I. D. A. D, 2021)

Article 44 Paragraph (1) of UUJN-P stipulates that "After the Deed is read out, the Deed shall be signed by each confronter, witness, and Notary, unless there is a confronter who is unable to affix his/her signature by stating the reason". Meanwhile, in UUJN-P Article 16 Paragraph (1) letter c stipulates that "Notaries are obliged to attach letters and documents, as well as the fingerprints of the confrontants to the deed". This means that the Notary deed in cyber notary can be made using electronic media or the Notary validates an agreement whose deed is not signed in the presence of the Notary, as well as fingerprints, where the attachment to the deed is not done directly in the presence of the Notary. This raises the question of how the validity of the use of electronic fingerprints (biometrics) on the *menitakta* in the field of cyber notary (Dewi A. S. K, 2015) In the implementation of electronic signatures, there is ambiguity relating to the minutes of document creation for which the notary is responsible. This does not provide an adequate explanation of how the implementing regulations may affect the authority of notaries in their authentication actions. The use of fingerprints in electronic signatures is also closely related to the existing rules in the ITE Law, which is the legal framework for electronic transactions. The subsequent revision of the ITE Law also strengthens these regulations. As an act of authentication, the act of notarization has an important impact on the validity of the document, and therefore there is a need for clarity regarding the applicable implementing regulations (Dewi. W and R. I, 2020).

According to Tan Thong Kie, a signature is a statement of will made by a person by putting a signature on a writing. It is intended that the writing be considered as his property according to the law. A signature is generally defined as a series of letters or signs that indicate the writing of the maker, so as to identify the person who made the statement / statement. The existence of a signature can also have several conventional functions (Novelin. T dan Sarjana. I, 2021) : The symbolic function of the signature is to represent the identity of a person even though there is a

similarity in name, the form of the signature is always different, and shows that by including the identity of the legal subject, the subject is responsible for everything that is written or conveyed; The authentication function of the signature is to signify that everything signed by the legal subject has been read and known by the legal subject itself, and is locked by including the name of the signatory; The approval function of the signature is to show that the act of signing is a form of acceptance or agreement to the contents of the agreement.

The evidentiary function of the signature is that the contents of the agreement Fingerprints can be used to strengthen the identity of the person making the agreement. Before UUJN-P was enacted, the use of fingerprints in notarial practice was intended to replace the relevant parties' initials or signatures on the notarial deed if they were unable to include their signatures. However, after UUJN-P was enacted, fingerprints must be attached to the deed minutes by the Notary, and fingerprints are not only used as a substitute for signatures, as specified in Article 16 Paragraph (1) letter c of UUJN-P, which states that Notaries are obliged to attach letters and documents, as well as fingerprints of the confrontants to the deed minutes in carrying out their positions. Notaries attach fingerprints with the aim of anticipating if at any time the confrontant denies his signature contained in the deed minutes, so that the confrontant's fingerprints can later be used as additional evidence. Every human fingerprint is different and it is impossible to have similarities with other people, besides that, the shape of the fingerprint is always the same and will not change. This is the specialty of fingerprints. In addition, fingerprints can also be used in proving whether or not a person's identity is genuine, as well as ensuring the identity of the person who makes an agreement before the Notary. However, there is no clear explanation regarding the attachment of fingerprints, both regarding the form and method of attaching fingerprints, as well as fingerprints from which fingers are attached. Since Article 16 Paragraph (1) letter c of UUJN-P does not explain which fingerprints are attached, it can be interpreted that as long as the Notary is consistent, any fingerprints can be attached (Makarim E, 2011)

Furthermore, technology continues to develop and creates electronic fingerprints (biometrics) as one of the media used in electronic transaction activities and various other activities, including in the implementation of the Notary position. Electronic transactions are further regulated in the ITE Law and the ITE Law Amendment, where Article 1 point 2 of the ITE Law Amendment defines electronic transactions as legal actions carried out with computers, computer networks, and/or other electronic media. Electronic transactions are also known as online contracts, which are a legal relationship or engagement that is carried out electronically and collaborates between the work network of an information system where computers are the basis, and is equipped with telecommunications networks and services in a communication system supported by the internet global computer network. Then, Article 1 point 12 of the ITE Law Amendment determines that an electronic signature is a signature consisting of electronic information attached to and related to other electronic information used as a verification and authentication tool (Listyana D. S dan Wati I. A, 2014)

There is a relationship between data marking and the activity of encoding digital messages. Its function is to ensure the originality of the data and ensure that the data has not been altered. A signature on a document aims to provide confidence that the document was properly taken care of. Legal principles stipulate that documents should not be kept, viewed or sent in paper form. As a result, people's understanding of electronic signatures does not conform to this principle. However, the ITE Law recognizes and acknowledges the existence of electronic signatures. With the advancement of technology, various forms of electronic signatures can be found in today's biometric data, such as: (Jaya J. A; Zulaeha M dan Suprpto S, 2022) Passwords and hybrid methods; Scanned signatures, i.e. signatures that are scanned with electronic media or can be done through typed inames, i.e. typing in a name on an information issue; Accept button or OK button, which is the choice of an electronic acceptance or approval button supported by a secure socket layer or secure communication channel; Digital signatures, namely digital signatures based on a message that is encrypted; A unique mark of the body member called ibiometric. iBiometric is in the form of physiological ibiometric, namely iris, retina, jari print, iDNA, and facial geometry. The application of ibiometrics raises several risks related to privacy or protection of

personal data, and human rights because biometric data will be stored in large quantities and is personalized.

Based on their shape, we can know that fingerprints fall under the category of biometric signatures. According to the Kamus Besar Bahasa Indonesia, "fingerprints are recordings of fingerprints that refer to thumbprints. fingerprints can also be defined as the investigation of finger marks to know and distinguish people by examining the recorded lines of the fingertips." However, as is the case with conventional fingerprinting, it is unclear whether notaries should do electronic (biometric) fingerprinting (Khalid A, 2014). Although Article 15 paragraph 3 of the UJUN regulates cyber notary which allows the use of electronic fingerprints (biometrics) as part of electronic transactions, the UJUN itself has not specifically regulated electronic fingerprints (biometrics) based on the provisions of Article 1 number 12 of the ITE Law, which refers to electronic fingerprints (biometrics) as a signature used for verification and authentication tools.

In notarial deeds, the use of fingerprints as part of electronic transactions has a relationship with cyber notaries, as explained in Article 15, paragraph 3 of the UJUN (Notary Position Law), including its explanatory part. This article states, "In addition to the authorities as mentioned in paragraphs 1 and 2, a notary has other authorities regulated by laws and regulations." The elucidation section further explains that "other authorities regulated by laws and regulations include the authority to certify transactions conducted electronically (cyber notarization), make a deed of pledge of waqf, and aircraft mortgages". (Sisthayoni & Wisanjaya, 2022) Emma Nurita argues that "certification is a step in which a party not involved in a transaction provides written assurance that a product, process or service meets certain standards. It is based on an in-depth examination conducted according to an approved procedure. Notaries have a role as a trusted third party to perform this certification. It is important to maintain security and provide confirmation of electronic transactions. Thus, the notary can issue digital certificates to interested parties." In addition, in cyber notarization, the notary has a major role in authenticating and certifying the electronic transaction process (Muhammad, 2010).

However, there is currently no definitive definition of a Notary's authority to certify electronic transactions. Several articles in the ITE Law Amendment regulate the certification of electronic transactions, with the only article being Article 10, which states that "Electronic certification provider is a legal entity that functions as a party worthy of trust, providing and auditing electronic certificates." Furthermore, Article 9 explains that "An electronic certificate is an electronic certificate that contains an electronic signature and identifies the legal status of the parties to an electronic transaction, issued by an electronic certification organizer." The authority of a Notary in certifying transactions conducted electronically goes hand in hand with his/her authority in performing legalization. The duty of the Notary as a third party only involves ensuring the fingerprints, status, and identity of the parties involved, as well as the date of the electronic certificate, in accordance with the provisions stipulated in UJUN-P Article 15 paragraph (2) letter a (Musdamayanti M dan Lestari A.Y, 2021).

Furthermore, in notarial practice, the implementation of Article 16 Paragraph (1) letter c regarding the installation of fingerprints on the deed minutes is carried out by the Notary by providing a blank sheet of paper to attach a recording of the thumb or thumbs of the left hand or right hand as a sign of the fingerprint of the party facing the Notary. (R & Dharmawan, 2022) Then, the fingerprint is written down or the name of the confronting party is found. The sheet is then affixed by the Notary to the deed minutes (Ragiliana & Arsika, 2021) In such a situation, the fingerprinting in question has no impact on the authenticity of the Notarial deed. Because the fingerprint is only an imprint of the Notarial deed that is affixed to the deed minutes. (Makarim, 2011) However, the implementation of fingerprinting as previously explained, namely by providing blank sheets of paper to record the fingerprints of the left hand or right hand of the facing party, in notarial practice, is not a sure thing because there is no clear regulation in UJUN or UJUN-P on how the procedure for fingerprinting the facing party. Therefore, the installation of electronic (biometric) fingerprints intended as deed traces should also not affect the authenticity of the Notarial deed. However, since the regulation is not yet clear, the legality of using such fingerprints can also be questioned, similar to electronic signatures, so that it can affect the authenticity of the Notarial deed (R N dan Dharmawan N, 2022).

In ITE Law Article 5 Paragraphs (1) and (2) stipulate that "Electronic information and/or electronic documents and/or their printouts are valid legal evidence as an extension of valid evidence in accordance with the applicable Law of Procedure in Indonesia". However, in ITE Law Article 5 Paragraph (4) letter b stipulates that "The provisions regarding electronic information and/or electronic documents as referred to in Paragraph (1) do not apply to letters and their documents which according to the Law must be made in the form of a notarial deed or a deed made by a deed-making official." (Article 5 Paragraph (4) letter b).

When viewed from the ITE Law Article 5 Paragraph (4), related to the making of deeds through electronic media in the field of cyber notary today cannot be fully implemented, as explained by Edmon Makarim that "the concept of cyber notary in Indonesia is still under debate, although technology allows the role of Notary online and remote, but legally this cannot be done." Therefore, the use of fingerprints on the minutes of a Notary deed is something that can be questioned as to its legality (Rukmana R; et.al, 2021).

However, there is still potential to rearrange the position of Notary with other laws so that the authority of Notary in the concept of cyber notary can be implemented properly. If it is related to the authority of a Notary based on UUJN-P Article 15 Paragraph (3), which is to certify electronic transactions, this can cause uncertainty in its implementation due to the lack of detailed explanation regarding the procedure for using electronic signatures for the inauguration of Notarial deeds, as well as the lack of a specific explanation of the procedure for attaching electronic fingerprints (biometrics) of the facing party, along with the fingerprints of which facing fingers can be attached to the deed minutes as electronic fingerprint traces (biometrics) (Rukmana R; et.al, 2021) In addition, a Notarial deed as an authentic deed based on Article 5 Paragraph (4) of the ITE Law cannot be made in electronic form and cannot be used as a form of legal evidence. Meanwhile, the electronic signatures and fingerprints (biometrics) used are part of electronic transactions and electronic documents. These things can then affect the validity of the Notarial deed as an authentic deed, and can cause the degradation of the Notarial deed into a deed under the hand. (Kasanah & Lumbanraja, 2022) To overcome this lack of clarity, legal interpretation is required by judges. Legal interpretation is a legal approach where there is an existing rule, but the rule is unclear in its application. Interpretation is done to understand the intent or meaning contained in various legal texts, and is used to resolve cases or make decisions regarding concrete matters encountered.

In the context of the issues discussed in this paper, legal interpretation is performed on the relevant laws. Judges, legal researchers, and parties related to legal regulations or legal issues, such as lawyers, notaries, or prosecutors, may engage in this interpretation. However, only the judge's interpretation is then embodied in a decision with binding legal force (Rukmana R; et.al, 2021) Judging from the general rule, it was decided that the authority of the judge is not to determine the validity of the law, but the judge has the authority to interpret the law in relation to the legal issue at hand, where the exact meaning of certain parts of the law is disputed (Setiadewi K dan Wijaya I. M. H, 2020) Judging from the general rule, it was decided that the authority of the judge is not to determine the validity of the law, but the judge has the authority to interpret the law in relation to the legal issue at hand, where the exact meaning of certain parts of the law is disputed.

4. CONCLUSION

The implementation of a related party identification system using biometric scanners in the notarial deed process contributes positively to the improvement of security and authentication in notarial deed making. The application of biometric technology is able to identify related parties with high accuracy, reduce the risk of fraud or identity manipulation, and speed up the notarisation process. The results of this research have great potential to improve the efficiency and reliability of notarisation procedures, provide a stronger foundation for the validity of legal transactions, and overall strengthen public trust in the notarisation process.

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