

Use of Fingerprints as Authentication of the Applicant's Identity in Notarial Deed Minutes Based on Electronic Systems

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Abstract. *This study aims to determine the practice of notaries in Indonesia, namely the placement of the facer's fingerprints as authentic and vital evidence in various transactions, requiring adaptation to face the challenges of forgery and maintain validity. The placement of the facer's fingerprints emerged as a solution to improve security and legal certainty, using a normative legal approach with a statutory approach method. Then the data was collected from primary legal materials (Notary Law and related regulations), secondary (legal literature and journals), and tertiary (dictionary and legal encyclopedia). Data collection methods include literature studies, field observations, and interviews with competent sources. Data analysis used a qualitative descriptive-analytical method with a deductive-inductive thinking framework. The results of the study show that the Notary Law requires the placement of fingerprints to increase the validity of the deed. Fingerprints, as unique biometrics, provide stronger legal certainty. However, its implementation faces technical challenges (system accuracy, infrastructure), legal (uncomprehensive regulations, personal data protection), and social (public trust, digital literacy). Comprehensive and integrated regulations, which take into account technical, legal and social aspects, are crucial to ensure the effectiveness, security and fairness in the implementation of fingerprinting in the making of notarial deeds.*

Keywords: Digitalization; Fingerprints; Notary.

1. Introduction

The rapid development of information technology 4.0, various sectors of life have undergone significant transformation. One sector that is not left behind in this change is the legal sector, especially in notarial practice. Digitalization has become a necessity, especially in the context of public services that increasingly prioritize efficiency, transparency, and accountability. Electronic signatures, as part of

digitalization, offer innovative solutions in the process of legalizing legal documents, including notarial deeds. Notarial deeds are the basis for various legal and business transactions, ranging from sales and purchase agreements, company establishment, to debt agreements. One of the crucial elements in making a notarial deed is the presence of a person appearing to validate the contents of the deed. In this context, the placement of the person appearing's fingerprints is an important aspect that cannot be ignored. The placement of fingerprints in the notarial deed serves as a form of validation from the parties involved, increasing the legal force of the deed, and minimizing the risk of fraud or forgery.¹

In the legal aspect, the existence of legal certainty in a transaction is greatly influenced by the formalities that must be complied with. In this case, Law Number 2 of 2014 concerning the Position of Notary clearly regulates the procedures and requirements for making a notarial deed. In it, there are provisions regarding the presence of parties who will sign the deed, as well as the need for adequate identification. The placement of fingerprints as a form of additional identification is relevant in this context, because it can provide stronger evidence of the presence and consent of the person appearing. The urgency of the placement of fingerprints lies not only in the identification aspect, but also in the legal protection of all parties involved.²

In many cases, legal disputes arise due to claims from one of the parties who feel aggrieved, either due to the unclear contents of the deed or due to alleged manipulation. With the attached fingerprints, the verification process becomes easier and can speed up dispute resolution. This reflects the basic principles of law, namely certainty and justice. On the other hand, the formality in placing fingerprints also requires a good understanding of the applicable legal process. Notaries as public officials have a great responsibility in ensuring that all procedures are carried out in accordance with existing provisions. Notaries must have a deep understanding of the law and best practices in making deeds, including how to integrate technology into the process without ignoring existing legal principles.³

Considering all these dimensions, it is important to conduct a legal review of the placement of the facer's fingerprints in the minutes of notarial deeds. This review will not only provide a better understanding of its urgency and formality, but will also identify potential problems and solutions that may be encountered in practice. This approach is expected to provide a positive contribution to the development of notarial law in Indonesia, as well as ensuring that the practice of making notarial deeds remains relevant and adaptive to the times. In this analysis,

¹Yuserlina, A, 2017, The role of fingerprints in the investigation process to determine the perpetrators of crimes. *JCH (Journal of Legal Scholars)*,3(1), p. 46-60.

²Misbach, I. H, 2010, *The power of fingerprints*, VisiMedia, Jakarta, p. 12.

³Dita, PES, Al Fahrezi, A., Prasetyawan, P., & Amarudin, A. (2021). Door Security System Using Fingerprint Sensor Based on Arduino UNO R3 Microcontroller. *Journal of Computer Engineering and Systems*,2(1), p. 121-135.

we will further discuss the legal basis governing the placement of fingerprints, the practical implications of its application, and the challenges faced by notaries in implementing this policy. In addition, it is also important to examine the views of the public and other legal practitioners on the use of fingerprints in notarial deeds, and how this will affect public trust in the legal system in Indonesia.

2. Research Methods

This research applies normative legal research methods with a statutory approach.⁴The analysis focused on secondary data including primary legal materials (the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law Number 2 of 2014 concerning the Position of Notary, Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, and Government Regulation Number 24 of 2016 concerning Integrated Electronic Administrative Services), secondary legal materials (related literature, previous research results), and tertiary legal materials (legal dictionaries, encyclopedias, and reference sources for scientific writing procedures). Data collection was carried out through literature studies, observations, and selected interviews (purposive sampling) with sources who have relevant competencies. Data analysis used a qualitative descriptive-analytical approach with a deductive-inductive thinking framework, guided by the rules and procedures applicable in legislation.

3. Results and Discussion

3.1. Use of fingerprints as a means of authenticating the identity of the person appearing in the making of notarial deed minutes

The concept of cyber notary in Indonesia is still under debate, although technology allows the role of Notary online and remotely, but legally this seems impossible.⁵Cyber notary still has shortcomings both in terms of meaning and conceptualization in making a Deed. However, in its regulation, the concept of cyber notary cannot be implemented effectively and efficiently due to the legal vacuum between the meaning and implementing regulations of cyber notary itself. So here it can be seen that cyber notary has been regulated but has a legal vacuum (*rechtsvacuum*) in the perspective of its meaning. In a legal vacuum, of course, it makes Notaries hesitate to use the concept of Cyber notary, so that as a result it hinders the development of the notary profession in serving the needs of the community.⁶

⁴ Peter Mahmud Marzuki, 2008, Introduction to Legal Science, Kencana, Jakarta. P. 35.

⁵Edmon Makarim, (2011) "Modernization of Future Notary Law: Legal Study of the Possibility of Cyber Notary in Indonesia." Law and Development 3 p. 468

⁶Cyndiarnis Cahyaning Putri and Abdul Rachmad Budiono, (2019) "Conceptualization and Opportunities of Cyber Notary in Law", *Scientific Journal of Pancasila and Citizenship Education*, Vol. 4, No. 1, p.30

Notary as a profession that plays a very important role in providing services for the community who have interests, especially in terms of making authentic deeds. Notary as a public official who has the authority to make a written deed whose legal certainty is guaranteed. The existence of a notary is very much needed by the community who have interests, where the community relies on and has a sense of trust in the notary to pour everything they want into an authentic deed. Notary makes a deed not based on personal desires, but based on the free will of the parties who have interests.⁷Notaries are tasked with confirming all information and statements given to them regarding something desired and desired by the interested parties. The deeds made include matters related to all acts or agreements assigned to the Notary based on laws and regulations. In carrying out his profession, a Notary is required to apply precision, caution and accuracy so that the community using his services obtains legal protection. The presence of a Notary is expected to provide a sense of security to the community who have an interest in carrying out a legal relationship. The validity of the signature on the deed will also remain valid even if the Notary concerned is dismissed or the term of office has ended as long as the deed has been made before the dismissal or end of the term of office. An authentic deed as evidence stating that everything that has been conveyed by the person appearing is true. In carrying out the making of an authentic deed, the Notary is based on the request of the parties appearing according to their will or desire so that their interests and rights can be protected. This protection can be provided by making a deed without only prioritizing one or some parties. Signing can be interpreted as a statement by a person that they have agreed to the contents contained in the deed. As stated in Article 1 number 8 of the Notary Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary (hereinafter referred to as the Amendment UUJN) determines that the minutes of the deed contain the signatures of the parties, witnesses, and the Notary, which are then stored as part of the Notary Protocol. From the provisions of this article, the storage of the minutes of the deed is only required to contain signatures. The rapid development of technology, communication and information has influenced various aspects of human life.⁸The validity of a notarial deed in the event that the person appearing cannot read or write can enter into an agreement if there is a substitute for a signature, namely a fingerprint, and this must be confirmed in the notarial deed regarding this matter.⁹After the enactment of the Amendment to the UUJN, the fingerprints of the person appearing have become something that is mandatory for Notaries even

⁷Wulan Wiryantari Dewi, Ibrahim R, Legal Force of Attachment of the Applicant's Fingerprints by a Notary Public to the Minutes of the Deed, *Acta Comitas: Journal of Notary Law*, Vol. 5, No. 3, 2020, p. 437.

⁸Setiawan, Daryanto, the impact of the development of information and communication technology on culture, *JURNAL SIMBOLIKA Research and Learning in Communication Study*, Vol. 4, No.1, 2018, p. 67.

⁹Sajadi, I, Saptanti, N, & Supanto, S, Notary's Responsibility for the Validity of Notarial Deeds Made for Applicants Who Cannot Read and Write, *Repertorium*, Vol. 2, No. 2, 2015, p. 181.

though the person appearing has signed the minutes of the deed and if the Notary does not carry out his/her obligations, sanctions will be imposed.

The notary must apply the opinion to explain to the person appearing that the person appearing must also affix fingerprints in addition to the signature. If there is a person appearing who is unwilling to affix his fingerprints, then the Notary concerned must be able to provide an explanation regarding the function of fingerprints so that the person appearing does not refuse to do so. The rule regarding the requirement for Notaries to attach fingerprints is very important, because if you only rely on someone's signature, the signature can change over time and age so that it is inconsistent, it is possible that the person has had a stroke which ultimately results in the shape of his signature no longer being the same.¹⁰

Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to the Law on Notary Positions states:

"A notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws. "One of the legal acts that is closely related to the notary and the parties when making a notarial deed is the affixing of signatures. At the end of the notarial deed there is usually a sentence: "After I, the Notary, read this deed to the parties and witnesses, then immediately the parties, witnesses, and I, the Notary, sign this deed" Article 44 paragraphs 1 and 2 of Law Number 2 of 2014 concerning the Position of Notaries also regulates the obligation to sign notarial deeds and their sanctions, which read as follows: the reasons for a party who cannot sign the deed. With the enactment of Law Number 2 of 2014 concerning the Position of Notaries, Article 16 letter C also emphasizes "In carrying out his/her position, a Notary is required to attach letters and documents as well as the fingerprints of the party on the minutes of the deed", so that now every notary is required to affix the fingerprints of the party on the minutes of the deed he/she makes. Thus, a notary will take the fingerprints of the party who is unable to sign the deed for his/her own protection. The law can provide preventive protection, namely to prevent the occurrence of conflict or disputes and as a form of caution, as well as repressive, namely to resolve conflicts or disputes because Notaries are often questioned by parties who deny the contents of the deed, their signature or their presence.¹¹ Thus, fingerprints can provide protection for Notaries and parties in good faith from the bad intentions of other parties. This is also a form of prevention and anticipation of the falsification of the presence of the person appearing who is not real. The truth of the presence of the person appearing is very necessary considering the profession of a Notary is very noble and dignified. Fingerprints were first used by the Federal Bureau of Investigation (hereinafter abbreviated as the FBI) in the United States

¹⁰Wibawa, IBP P, Use of Changing Signatures by Applicants in the Making of Notarial Deeds, Acta Comitatus: Journal of Notary Law, Vol. 3, No. 3, 2018, p. 467.

¹¹Hadjon, P. M, 1987, Legal Protection for the Indonesian People, PT. Bina Ilmu, Surabaya, p. 2.

around 1960. In further developments, fingerprints were not only used for criminal purposes, but also for non-criminal purposes.

Reviewed from Law Number 2 of 2014 concerning Amendments to the Notary Law regarding the urgency of attaching fingerprints to the minutes of the deed, it began because of the many problems of false identities. In practice, it often happens that the person appearing denies or forgets that he or she has ever appeared before a notary, or denies his or her own signature. Falsity also often occurs in proof of a person's identity, such as an Identity Card or passport. This is dangerous for notaries because in making a deed, the identity of the persons appearing is required as a requirement for the authenticity of the notarial deed. With the presence of fingerprints, the concept of non-repudiation is indirectly applied, namely avoiding the denial that the person appearing has never appeared before a notary and has never signed a deed.

Strengthened by the Government in responding to Article 16 paragraph 1 letter c which is stated in the DIM (Problem Inventory List) stating the reason for including the article is "To provide legal certainty regarding the truth of the identity of the person appearing because fingerprints cannot be falsified". Law Number 2 of 2014 concerning the Position of Notary, does not clearly state which fingerprints are used (thumb, index finger, middle finger, ring finger, or little finger). Regarding the fingerprints, there are many opinions, some argue 10 (ten) fingers, some 5 (five) fingers, the right or left fingers, some argue only thumbprints. In PP INI (Central Management of the Indonesian Notary Association) has issued a unified position stating that only the right thumbprint is used. The fingerprints are taken in connection with the making of certain deeds (every deed made in the form of deed minutes).¹²

Thus, at this time the function of fingerprints is only to strengthen the evidence and the notary's belief in the identity of the person appearing. Although Article 15 Paragraph 3 of Law No. 2 of 2014 concerning the Position of Notary regulates Cyber Notary which allows the use of electronic fingerprints as part of electronic transactions, Law No. 2 of 2014 concerning the Position of Notary itself has not specifically regulated the electronic fingerprint. So that the use of electronic fingerprints refers to the provisions of Article 1 number 12 of Law Number 11 of 2008 concerning Information and Electronic Transactions, namely as a signature used for authentication and verification tools. The urgency of the obligation to attach the fingerprints of the person appearing on the minutes of the notarial deed as stipulated in Law Number 2 of 2014 concerning Amendments to the Law on the Position of Notary is that fingerprints are closer to legal certainty than signatures because each person has different fingerprints, so that if a dispute occurs in the

¹²Dewi, Amelia Sri Kusuma. Implementation of GMS through Electronic Media related to the Obligation of Notaries to Attach Fingerprints of Appearing Persons. Legal Arena, Vol. 8, No.1, 2015, 108.

future, the relevant party cannot deny it and it is also an application of the concept of nonrepudiation (cannot be denied).

3.2. Legal Protection related to the use of fingerprints as a means of authenticating the identity of the person appearing in the making of notarial deed minutes.

Notary as a public official who is authorized to make authentic deeds as regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position Regulations. So it can be concluded that the authority of a Notary is to provide assistance in making authentic deeds. Therefore, it is important for a Notary to be able to understand the provisions regulated by law so that the general public who do not know or do not understand the rules of law can understand correctly and not do things that are contrary to the law.¹³

The use of fingerprints as a method of individual identification has long been known and applied, both manually and electronically. In Indonesia, this technology is increasingly being adopted in various sectors, from law enforcement to the banking sector. However, its implementation is not free from various challenges and obstacles, both technical, legal, and social. The implementation of fingerprint identification systems, both manual and electronic, faces a number of significant technical challenges. In manual systems, limitations in technology and officer expertise can lead to low accuracy of identification results. The quality of fingerprint prints obtained can be affected by various factors, such as the subject's skin condition, the quality of ink and paper, and the officer's expertise in taking prints. This can result in ambiguity in identification, especially if the quality of the fingerprint print is low or damaged. The non-standard procedure for taking fingerprint prints manually is also an obstacle in itself, causing inconsistent results that are difficult to compare. As a result, the potential for misidentification is quite high, which can have serious consequences, especially in the context of law enforcement. Electronic systems, although more sophisticated, also have limitations in accuracy. Electronic fingerprint sensors have varying levels of sensitivity, and the quality of readings can be affected by factors such as dirt, sweat, and the subject's skin condition.

It is important to perform regular calibration and maintenance to ensure the accuracy and optimal performance of the electronic system. Furthermore, the need for adequate infrastructure is a challenge in itself. The implementation of an electronic fingerprint system requires a large investment in the procurement of hardware and software, as well as training of skilled personnel in the operation and maintenance of the system. Not all regions in Indonesia have equal access to adequate information technology infrastructure, so the implementation of this system may be more difficult in remote or less developed areas. This gap in access

¹³Kezia Debora Pingkan Angel Maramis, Ro'fah Setyowati, Legal Review of the Application of Fingerprints of Applicants in Notarial Deed Minutes, NOTARIUS, Vol. 15, No. 2, 2022, p. 718.

to technology can exacerbate inequalities in the implementation of fingerprint identification systems. Finally, the aspect of compatibility between systems also needs to be considered. The use of different types of sensors and software can cause difficulties in the exchange and matching of fingerprint data. Technical standardization and system interoperability are essential to ensure the effectiveness and efficiency of the use of fingerprint identification as a whole. The absence of this standardization can result in difficulties in data integration and collaboration between different institutions. The use of fingerprints in the legal context in Indonesia is regulated by various laws and regulations, including Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) and Law Number 24 of 2013 concerning Population Administration (UU Admuduk). However, its implementation still faces various challenges. One of the main challenges is ensuring the protection of users' personal data. Fingerprints are highly sensitive and personal biometric data, which if misused can result in significant losses for individuals. Therefore, clear and strict regulations are needed to ensure the security and confidentiality of fingerprint data. It is important to guarantee the legality of the collection and use of fingerprint data. The collection of fingerprint data must be carried out with a clear legal basis and informed consent from the individual concerned. Regulations must ensure that data collection is only carried out for legitimate and proportionate purposes.

Transparency and accountability are also very important in fingerprint data management. Institutions that manage fingerprint data must be responsible for data security and ensure protection against unauthorized access or misuse of data. The law enforcement aspect is also a challenge. Although the ITE Law and the Population Administration Law regulate the protection of personal data, there are still legal loopholes and there is no effective mechanism to take action against violations of biometric data security. More significant efforts are needed to improve supervision and law enforcement related to fingerprint data protection, the emergence of new technologies in the processing and use of fingerprint data, such as artificial intelligence (AI) and big data, require more comprehensive and adaptive regulations to ensure data security and privacy. Acceptance of the use of fingerprint technology in Indonesian society also faces several social and cultural barriers. Public trust in the security and confidentiality of fingerprint data still needs to be improved. Concerns about data misuse, both by authorities and third parties, can cause public resistance to the use of this technology. Lack of understanding of the benefits and risks of using fingerprint technology can also be an obstacle. Intensive public socialization and education are needed to increase trust and reduce public concerns. Differences in digital literacy levels in society are also an obstacle. People who are less familiar with digital technology may have difficulty using the fingerprint identification system.

The aspect of equality and inclusion also needs to be considered. Some groups of people, such as the elderly and people with disabilities, may have difficulty using the fingerprint identification system. The system designed must consider the

needs and abilities of various groups of people to ensure fair and inclusive access. The use of this technology must be balanced with the principles of ethics and social norms that apply in Indonesia. Good and accountable governance is essential to ensure that the use of fingerprint technology does not violate human rights and humanitarian values. The implementation of the use of fingerprints in Indonesia is also faced with various legal and regulatory obstacles. Until now, there has been no specific law that comprehensively regulates the use of fingerprints as a means of identification. Although several laws and regulations have regulated the use of fingerprints in certain contexts, such as in the immigration or banking systems, these regulations are still partial and have not been fully integrated. Regulations governing the use of fingerprint data must ensure that the data is only used for legitimate purposes and with the informed consent of the data owner. Regulations that are too broad and unmeasured can endanger citizens' privacy rights. Therefore, it is necessary to revise and improve relevant laws and regulations to comprehensively regulate the use of fingerprints. The regulation must regulate the technical, legal, and ethical aspects of the use of fingerprints, including monitoring mechanisms and sanctions for violations. Good regulation can provide legal certainty and protect individual rights, while encouraging the development and use of safe and effective fingerprint identification technology.

Regulation of the Minister of Law and Human Rights Number 37 of 2016 concerning the Use of Biometric Technology. Provides a legal basis for the use of biometric technology in fingerprint identification in Indonesia. However, there are still several issues that need to be reviewed legally related to the use of biometric technology in fingerprint identification. Regulation of the Minister of Law and Human Rights Number 37 of 2016 is a regulation that regulates the use of biometric technology in fingerprint identification in Indonesia. This regulation aims to provide a clear legal basis and regulate orderly procedures and protect individual rights related to the use of biometric technology. Although the regulation has been established, there is still a need to conduct a comprehensive legal review of the implementation and use of biometric technology in fingerprint identification against personal data protection based on Regulation of the Minister of Law and Human Rights Number 37 of 2016. This legal review is important to evaluate the effectiveness of the regulation, practitioner compliance, and the impacts and challenges faced in the implementation of biometric technology.

In order to achieve effective and safe use of fingerprints as an identification tool, comprehensive regulatory adaptation is needed. Ideal regulations should cover technical, legal, and ethical aspects of fingerprint use. Regulations should also ensure that the use of fingerprints does not violate individual personal rights and privacy. To achieve all of this, there needs to be harmonization between related laws, especially with Permenkumham No. 37 of 2016 concerning Methods of Taking, Formulating, and Identification of Fingerprint Imprints. In this case, the principle of proportionality and legal expansion are very important. The ethics of fingerprint use must be integrated into every stage of biometric technology use.

Regulations must provide a framework for inter-agency cooperation and coordination in the implementation of fingerprint identification systems. This is very important to ensure interoperability and harmonization of fingerprint identification systems between institutions. Cooperation between institutions can avoid data duplication and increase the efficiency of using fingerprint identification systems. Good coordination can ensure that fingerprint identification systems are integrated and unified. Thus, regulatory adaptation must pay attention to the technical, legal, and ethical aspects of fingerprint use to ensure security, accuracy, and compliance with human rights.

4. Conclusion

The Notary Law (UUJN) requires Notaries to attach the fingerprints of the person appearing to the minutes of the deed to increase validity and prevent identity forgery. In line with the principle of non-repudiation. Although the Law does not specifically regulate the method of taking fingerprints (manual or electronic), the Indonesian Notary Association recommends the use of right thumb fingerprints. The use of electronic fingerprints, although possible, is still constrained by integration with the national population data system. Overall, this obligation aims to protect Notaries and parties with good intentions and avoid legal disputes in the future. It is necessary to improve the regulations governing the use of fingerprints in making authentic deeds. These regulations must be comprehensive, covering technical, legal, and ethical aspects, and guaranteeing the protection of personal data in accordance with the principles of transparency, accountability, and data security. These regulations must consider potential conflicts with human rights and establish dispute resolution mechanisms, then the regulations must explicitly regulate the mechanism for securing fingerprint data, including access, storage, and use of data. These regulations must comply with international standards and establish strict sanctions for violations of data protection.

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