IMPLICATIONS OF USING ELECTRONIC STAMP DUTY AS PROOF OF AUTHENTICITY OF ELECTRONIC DOCUMENTS IN INDONESIA

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Abstract
The rapid development of the times affects all aspects of life. In this digital era, government regulations must also follow the flow of changes, including the use of stamp duty. In 2020, the Minister of Finance Sri Mulyani inaugurated the e-Materai. This electronic stamp duty issuance raises questions about its implications for its use as proof of document authenticity. This study aims to explain the use of e-stamp as a means of proving their authenticity and provide answers to their benefits to the community. This research uses a normative method through searching regulations and applicable regulations and synchronizing existing research data with applicable laws. The implementation of the stamp duty system is still preserved in Indonesia even though the Dutch state itself, as the originator, has not implemented the system for a long time. With the stamp duty which has a budgetary function and a document authentication function, there are still many shortcomings in the authentication function. The absence of recording information regarding the purchaser of stamp duty, identity and description of what documents are attached makes the authenticity proof function not optimal, whereas the later proof system in Indonesia is also still not qualified and it is proper that the sealing system must apply the rules of information security law.

Keywords : Electronic Stamp Duty, Document Authenticity

A. Introduction
Information and communication technology is very advanced and has penetrated almost all aspects. In commercial areas, trade transactions carried out manually are now starting to be carried out electronically and online using information and communication technology. Electronic commerce and transactions (e-Business, e-Government, e-Commerce, Procurement) are a promising trend. This is because electronic transactions can be done anytime, anywhere and by anyone in real-time.

An electronic transaction can be considered good if it can be accessed quickly and safely, the application is easy to use, and has a broad scope. In addition, electronic transactions can offer advantages such as increased efficiency, flexibility, market expansion, and responding to customer requests in real-time. From a society's point of view, electronic transactions are considered reasonable if they can connect people, change culture and mindset, and successfully change the market ecosystem. These three are the key to the success of electronic trading transactions carried out within the trading mechanism (company) and based on applicable
regulations and policies. Digital payment starting to get attention all around the world. This kind of payment can clearly help many people fulfill their daily needs and because its become more and more efficient.¹

Electronic transactions run through information and communication technology, namely the internet. Although supported by the sophistication of modern communication, the internet is very vulnerable to information security attacks. Electronic transactions become very vulnerable to information security disturbances that can cause discomfort for electronic transaction actors without an information security system. There are four information security criteria in electronic transactions: confidentiality, authenticity, integrity and non-repudiation.

Then in article 26, paragraph 3 it is explained that (3) Every Electronic System Operator is obliged to delete irrelevant Electronic Information and/or Electronic Documents under its control at the request of the Person concerned based on a court order. (4) Every Electronic System Operator must provide a mechanism for deleting Electronic Information and/or Electronic Documents that are no longer relevant to the provisions of laws and regulations.

The importance of security for electronic transaction activities is a necessity, therefore security in electronic transactions is so important, two instruments can be used to secure electronic transactions, namely electronic seals and e-meterai. An electronic seal is a piece of data attached to an electronic document or other data, ensuring the data's origin and integrity. This term is used in EU Regulation No. 910/2014 for electronic transactions in the European internal market, while e-seal is a label or carik in electronic form that has characteristics and contains security elements issued by the Government of the Republic of Indonesia, which is used to pay taxes on Documents.²

These two instruments are part of technological developments in electronic transactions, which make all modern societies follow suit. Even though electronic transactions are still valid, without the need for an electronic seal or e-stamp. In principle, the validity of an agreement is not determined by the physical form of the agreement. Both printed and digital/electronic, both oral and written, will be considered legal according to the law if they meet the criteria of Article 1320 of the Civil Code (KUHPerdata) namely meeting the requirements of the agreement, skills, specific objects, and lawful reasons as referred to in Article 1320 of the Civil Code and described in the article.

With this incident, the community-made their conclusions, they thought that a document or agreement letter that was not accompanied by a seal was invalid.³

Referring to Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Articles 5 to 12 are explained that Electronic Information and/or Electronic Documents and/or their printouts are valid legal evidence, which is an extension of legal evidence by the applicable procedural law in Indonesia. Likewise, Electronic Signatures have legal force and legal consequences as long as they meet the following requirements:

1. The related Electronic Signature creation data only to the Signer;
2. The Electronic Signature creation data at the time of the electronic signing process is only in the power of the Signatories;
3. Any changes to the Electronic Signature that occur after the signing time can be known;
4. There are specific methods used to identify who the Signatories are; and
5. There are specific ways to show that the Signer has given their consent to the relevant Electronic Information.

¹ Rifqy Tazkiyyahturohmah, Eksistensi Uang Elektronik sebagai Alat Transaksi Keuangan Modern, Journal Muslim Heritage, Volume 3 No.1, Year 2008, Page. 22
² Law Number 10 of 2020 concerning Stamp Duty
³ Siti Nurdiyah, Fungsi Bea Meterai Dalam Surat Perjanjian, Notarius Vol. 13 No. 2 Year 2020, page. 883
The provisions of the Civil Code and the ITE Law indicate that an agreement made electronically has the same power as an agreement signed by the parties directly (with the direct presence of the parties).

Likewise, with the power of proof, electronic and recorded agreements will have the same evidentiary power as agreements signed directly by the parties.

Based on this fact, without using an electronic seal or e-meterai, electronic transactions can be kept secure, therefore this journal has two main objectives, namely: (1) Theoretically: want to explain the use of e-seal as a means of proving the document authenticity and (2) Practically: answering the problems and benefits of e-meterai to the community.

Based on the introduction, the novelty of the article in this article is that even without using an electronic seal or e-seal, electronic transactions can remain safe. This article also explains the use of e-seal to prove the authenticity of documents and to find problems and benefits of e-seal for the community.

There are two research methods: normative legal research methods and sociological or empirical legal research methods. In this journal research, the research method uses a normative approach. That is, where the author combines a literature study focused on law. In addition, the authors will collect data for this study using normative data collection techniques. Through observations related to electronic seals and the primary legal material in the form of laws. The results of the data were obtained with primary and secondary legal materials.

Generally, these materials come from library materials such as legislation and related books and journals. The secondary data used in this study are:
1. The 1945 Constitution of the Republic of Indonesia
2. Civil Law Code
3. Law Number 10 of 2020
4. Law Number 19 of 2016
5. Government Regulation Number 71 of 2019

B. Discussion
1. Stamp Duty and Its Functions

The history of the birth of Stamp Duty (stamp duty) began in Holland (Holland) in 1624 as a tax on sealed paper. The tax comes from the advice of someone whose name is not known. At that time, the Netherlands needed a considerable cost because it was involved in a war with Spain. The Dutch government issues stamped sheets of paper with different fixed prices for each use stated in the paper.

A list of Stamp Duty and tax coverage in the Netherlands March 11, 1723. The Stamp Duty or tax is imposed on last wills, and depends on the asset’s value. The tax is also imposed on dividing goods, rent (on the amount of the rental value per year) on bonds, the amount insured on letters of transportation and transfer of goods, petitions and approvals, and each copy thereof. In many countries, stamp duty has its own history and it functions. such as in France, British and Australia. First, in France they then imitated the imposition of a tax on this document in 1651. In 1664, the idea emerged to impose a tax on sealed paper in England. The year 1671 was taxed on various legal instruments, most of which were used in the Courts of Justice. The Stamp Duty, originally intended to tax animal skins, parchment, and paper (vellum, parchment and paper) was first legalized in England in 1694.

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4 Soerjono Soekanto, Pengantar Penelitian Hukum, print. 3 (Jakarta: UI Press, 2006), page. 5
6 Soerjono Soekanto and Sri Mamudji, Penelitian Hukum Normatif Suatu Tinjauan Singkat, (Jakarta: PT Raja Grafindo Persada, 2001), page. 12
In 1765, the British government attempted to impose Stamp Duty on its American colonies. This effort led to a protest from Boston residents known as the Boston Tea Party, with the famous "no taxation without representation" demand. In protest against the taxation, Bostonians confiscated the first ship carrying seals to arrive at the city's port. This protest later triggered the outbreak of the American war of independence.

In Australia, the Stamp Duty was first imposed in New South Wales on July 1 1865 under Act 29 Vic No. 6. The rule was later extended and amended by subsequent regulations which expired on December 31 1874. The Stamp Duties Act was re-imposed under the Stamp Duties Act. 1880 (44 Vic No. 3) and since then, the Stamp Duty has been imposed continuously until today in various countries.

The definition of stamp duty is a tax on letters and documents of a civil nature. The stamp duty in Indonesia was also levied based on the Indonesian stamp duty during the Dutch East Indies era. 1921 (ABM 21), also known as Zegel's rule. Indonesia experienced pros and cons over the emergence of this stamp duty. One of the steps taken by the Indonesian government about taxes is the issuance of the Stamp Duty Law no. 13 of 1985. In principle, the tax reform in the tax law sharpens taxpayers' legal awareness.

However, in the Netherlands itself, there are no more stamp duties. On the other hand, Indonesia preserves the colonial era's cultural heritage.

The development of stamp duty in Indonesia has undergone various changes until recently the government issued a regulation on stamp duty in the Law of the Republic of Indonesia Number 10 of 2020 concerning Stamp Duty. The nature of the stamp duty is described in detail in Article 2 (2) of the Law of the Republic of Indonesia Number 10 of 2020 concerning Stamp Duty. Meanwhile, documents that can be stamped are civil documents and documents that can be used as evidence in court. The articles included in the Stamp Duty are explained in Article 3 (2) of the Stamp Duty Law. In the renewal of the Stamp Duty Law, the government agreed that the current stamp duty rate is Rp. 10,000 (ten thousand rupiahs) for each document listed in Article 3 above.

The face value of stamped documents may increase or decrease depending on the individual's income level and socioeconomic status but may also have different fixed rates to support the implementation of the monetary and financial sector in the program by the government. Stamp duty is subject to a fixed rate, namely a fixed rate, which is collected separately from the amount.

The function of stamp duty as a means of proving the authenticity of data recognized by the state is often found in various daily documents to achieve legal certainty. In the event of a legal dispute, the stamp has legal force. One of the most vital pieces of evidence in civil court cases is written evidence. Written evidence in civil cases must be sealed to serve as evidence in court. A letter of agreement or document can be written evidence.

However, written evidence can be divided into deed and non-deed. There are also two types of deeds, namely authentic deeds and non-deeds, where the parties only own non-deeds. If one of the parties does not deny the evidence submitted, the document is considered an authentic instrument. Provisions regarding the deed are regulated in Articles 1867 to 1880 of the Civil Code. The original writing as proof of binding is given a seal because the state can

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7 Bustamar Ayza, *Hukum Pajak Indonesia*, (Jakarta: Penerbit Kencana, 2017), page. 143
9 Irwansyah Lubis, and friends, *Taat Hukum Pajak Praktis Dan Mudah Taat Aturan*, (Jakarta: Mitra Wacana Media, 2018), page. 28
guarantee the truth of the written document and proven by the evidence. Over time, the essence of this stamp duty has diminished. The country's economic income is stable enough to generate income from other taxes.

Because the precursor to the stamp duty was part of the government's income in wartime and colonial times, but now the situation is different and irrelevant.

Stamp duty has a budgetary function and a document authentication function, which analyzes the document authentication function in this journal. On closer inspection, different authentication processes need to pay attention to several things, such as:

1. The validity, validity of identity and the truth about the origin of information or electronic document and who received it and who sent it.
2. The authority to create, receive and transmit such electronic information and documents is valid
3. The validity of a process in the production, storage, receipt and delivery of these documents
4. Ensuring information or documents are valid or unique for the purposes carried out without changes in integrity.

Associated with authenticity, its existence has a different meaning from Law Number 43 of 2009 concerning Archives.

The state is responsible for the files. In the Archives Law, there are two functions related to authenticity: the function of trusting archives as legal evidence and the function of authenticity itself. In a separate bar, the stamp acts as a means of proof of the authenticity of the document, in the application it is not yet effective.

One of the essential components in the stamp is often ignored by the public and the government namely the unique code or serial number that exists even though the number is a distinguishing feature of a document from other documents.

The essence of the stamp which has this unique code is not fully realized in a document due to the ignorance of the public and the government of a reliable proof system due to the lack of records/data that can be used as support. So the essence of the stem seal only serves as proof of payment of tax documents issued by the public for the state. In fact, the Stamp Duty Law itself has stated clearly from the start that the collection of Stamp Duty is only limited to paying taxes. Based on the 2013-2018 Central Government Financial Report, the government in 2018 received Rp 5.5 trillion from the sale of stamp duty.

But the function still not optimal. According to Law No. 43 of 2009 concerning Archives (Archive Law), the state's responsibility for its archives has a different view because the law regarding authenticity has a different function. This function is divided into the function of authenticity and the function of trustworthiness of the archive to become legal evidence.

These different views often confuse the public because an authentic deed should have perfect proof and can be trusted in court.

The role of third parties in the authentication process is vital. Such as strengthening and clarifying the information as well as explaining the originality and guaranteeing the authenticity of the information or electronic documents. Meanwhile, in the legal context, especially in the scope of civil proceedings, the meaning of authenticity is oriented to the document's objective. The strength of proof of a written document is an authentic deed, it is assumed that legally cannot be denied because the office makes it according to the format and procedures regulated

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11 Edmon Makarim, *Keautentikan Dokumen Publik Elektronik Dalam Administrasi Pemerintah dan Layanan Publik*, Law Journals and Development Years 45 No.4 October-December 2015, page. 517
by laws and regulations. unless it can be proven otherwise.\textsuperscript{14} As an authentic deed made by an official by the legislation, the evidence has an excellent value in terms of formal or material terms in court compared to written evidence that the parties only make. The authenticity of electronic documents can be determined in the following ways:\textsuperscript{15}

1. The existence of a reliable authentication method through the development of an information and communication security system that makes it impossible for denial from the party sending the document and also the recipient of the document (one of which is the use of an electronic signature supported by a trusted third party electronic certificate):

2. \textit{E-Identification} ensures that the electronic identity used is valid

3. \textit{E-Authentication} ensures that the security system is valid (e-sign, e-seal, time-stamping, registered delivery services and website authentication).

So if these three things are not fulfilled in the electronic document, it can be said that the authentication is in doubt.

2. \textbf{Electronic Stamp Duty (E-stamp)}

   E-Meterai is a type of stamp duty in an electronic format with unique characteristics and contains a security element issued by the Government of the Republic of Indonesia, which is used to pay taxes on electronic documents.\textsuperscript{16}

   Through Law Number 10 of 2020, the government authorized digital or electronic stamps on October 26, 2020. This was done for the renewal of Law no. 13 of 1985 concerning Stamp Duty which is no longer by legal developments, community needs and the need for stamp duty management. This E-Stamp is stamp duty in the form of a label, which is done by affixing it to a digital document through a particular system. Electronic Stamp Duty, or e-stamp is a stamp duty used for electronic documents.

   Because previously, Stamp Duty was only in paper and was used for documents in physical or paper form. This E-Stamp will be used for digital document purposes only. The government does this to support digital transaction activities which are increasingly in demand today due to the pandemic that has been ongoing since last year.

   Through this digital document, a person does not need to come and sign the document directly or in front of an authorized official when making a transaction. The process of attaching the electronic seal is better used after the document has added the value of the electronic signature.\textsuperscript{17}

   So it can't ruin the system that will read the information inside the digital signature or digital stamp. The Law supports this on Information and Electronic Transactions or ITE No. 11 of 2008 in Article 5 paragraph 1 which states that electronic documents are legal evidence. This means that electronic documents have the same position as paper documents, so they need the precise handling as paper documents, including the use of Electronic Stamp Duty.

   The enactment of the Stamp Duty Law will undoubtedly benefit the public, especially if the government also implements a public document depository policy to store and trace documents that use stamps. This will be in line with the Archives Law provisions which focus on authenticity and reliability because every document that uses stamp duty as state revenue should also agree to be called a state archive.\textsuperscript{18}

\textsuperscript{14} Edmon Makarim, \textit{Keautentikan Dokumen Publik Elektronik Dalam Administrasi Pemerintah dan Layanan Publik}, Law Journals and Development Years 45 No.4 October-December 2015, page. 518

\textsuperscript{15} ibid

\textsuperscript{16} E-meterai@co.id

\textsuperscript{17} Rizka Khairunnisa, \textit{Pengembangan Desain Meterai Elektronik Mendukung Digitalisasi Bea Meterai Di Indonesia}, Journal of Computer and Informatics Vol. 15 No.1 Year 2020, Page. 296

\textsuperscript{18} https://www.kompas.id/baca/opini/2020/12/30/meterai-dan-keautentikan-pembuktian
The electronic application of the Stamp Act will, by itself, prevent the falsification of electronic documents in electronic transactions by facilitating access to traceability of the authentic history of the document itself. Even if used cross-border, e-seal can support the legalization of cross-border public documents as regulated in the 1961 Hague Convention. There is an inaccurate definition in Government Regulation No. 71 of 2019 where electronic seals are defined as the use of e-signatures by corporations. As a result, the existence of e-seal which is supposed to be an e-seal implementation has to be applied with a different concept in Indonesia. For the sake of the effectiveness of the Stamp Act, it is hoped that the Government Regulation on e-stamp will consider two possible models for the application of e-stamp by organizers of Electronic Signatures (TTE)/Electronic Certificates (SE).

The implementation of the e-stamp by the organizers of the Electronic Signature/Electronic Certificate is a synchronization of the application of the Stamp Act with the ITE Law and the Archives Law. However, the amendment to the Stamp Act itself provides simplification in its application and is only valid once for specific documents. This does not rule out the possibility of expanding the scope of its application to other documents as stated in Article 3 Paragraph (2) letter (h) which will be determined later in a government regulation (PP).19 As a legal consequence of the statement "for the sake of the community's needs" in the third preamble, the existence of an authentication system support is a must.

This is by Article 2 and Article 1 of the Stamp Act which states that stamp duty is a label or strip in the form of a paste, electronic, or another form that has characteristics and contains a security element issued by the Government of the Republic of Indonesia, which is used to pay taxes on documents (Article 1 (4)). Therefore, it is proper for the sealing system to apply the rules of information security law (confidentiality, integrity, availability, authorization, authenticity and non-repudiation) to provide the function of securing documents in the authentication process as evidence before court, both on paper and electronically.20 In other words, the sealing system must be supported by an excellent electronic registration system to explain the chain of authenticity since it was issued, purchased and attached to the document by the user. It must also be in line with the requirements for accountability for the operation of the electronic system according to Article 15 of the Information and Electronic Transactions/ITE Law (reliable, safe, responsible).

The validity of the time record at the time of affixing the Signature to the document (signing) as evidence when the stamp duty is due must be properly traceable by the users of the document, both centrally and distributed.

It is enough to check the Unique Code (number) of the Stamp Duty, it will be legally clear (i) when and where the document was signed, (ii) how it was delivered safely to the recipient, (iii) the origin of the document and its integrity/integrity, and (iv) who signed, so that it can be valid evidence and cannot be rejected in court.21

The stamped document will have legal force in court. Written evidence or letters are the most important evidence in civil cases, they are placed first important evidence. In the field of civil law, people who carry out civil law actions generally intentionally make written evidence for the proof at a later date.22 In civil cases, evidence becomes very important when there is a dispute between the parties related to the existence of a party who feels that their civil rights have been harmed by filing a lawsuit to the court to obtain legal certainty and proper settlement.23

19 https://law.ui.ac.id/v3/meterai-dan-keautentikan-pembuktian
20 ibid
21 ibid
22 Riduan Syahrami, Materi Dasar Hukum Acara Perdata, (Jakarta: Citra Aditya Bakti, 2009), Page. 90.
23 Mega Tumilaar, Fungsi Meterai Dalam Memberikan Kepastian Hukum Terhadap Surat Perjanjian, Privacy Law Journal Vol. 3 No.1 Year 2015, Page. 68
Before the seal was discovered, people used the paper stamp and stick it to the document and scanned it. The power of the document remains valid according to the law as long as it does not contradict then it can still be used as perfect evidence in court.\(^{24}\) Currently, more and more people are making transactions using digital platforms or through electronic media, while so far many large-value transactions have been made using digital documents that do not use digital seals due to the absence of regulations governing, therefore through this digital seal it’s suspected that there will make state revenue through stamp duty will be significant.\(^{25}\)

In digital form of document, the photocopied document also can be used as evidence but on the condition that the photocopy must be accompanied by a valid statement in the eyes of the law which shows that the photocopy is the same as the original. When submitting evidence of letters or documents in the form of a deed or electronic form, if needed in an examination in court, it can be photocopied or printed then sealed or must be sealed later to the post office so that it can be said to be valid as evidence.\(^{26}\)

For validating an electronic product, it is done by printing the digital product and then stamping it and ratifying it by the Post Office Official. This Sealing later provision is regulated in the Stamp Duty Law no. 13 of 1985, which states that a document whose stamp duty fee has not been paid, remains valid, but cannot be used as evidence before the court if it is printed from an existing electronic document without sealing later.\(^{27}\) Electronic stamp duty also has benefits such as reducing crimes regarding stamp duty. An example crime regarding stamp duty is stamp counterfeit of forgery. This activity is illegal, its results loss on state income through duty stamp taxes.\(^{28}\)

Document that sealed by e-meterai and has digital signature that obtained a certificate from the Certification Authority Institution, will more secure in the authentication of document, besides digital signature is very difficult to forge and associate with a unique combination of documents and private keys, and implemented all the rules and regulations.\(^{29}\)

C. Conclusion

Indonesia still preserves the legacy of the colonial era, while the Netherlands, which was the forerunner to the creation of the Stamp Duty itself, has not implemented this system anymore. The stamp itself has a budgetary function and a document authentication function. In Indonesia, in explaining the function of proving the authenticity of the document itself, it is still not maximized because it has never been recorded by the stamp issuer, that a certain number of stamps is attached to a particular document, so that the record can be used to support the authenticity of the document. In the authentication system for documents as well as regarding the security and authenticity of information both in writing and electronically, there must be synchronization with the national legal system to ensure implementation by the rules of several laws such as the ITE Law, Archives Law, Public Service Law and Government Administration Law.

\(^{24}\) Fika, Pratiwi, *Penggunaan Materai Yang Di Scan Pada Surat Kuasa Di Bawah Tangan Dalam Suatu Perjanjian*, Jurnal Konstruksi Hukum Vol. 1 No.1 Year 2020, Page. 102

\(^{25}\) Triasita Nur Azizah, dkk. “*Pengaturan Bea Meterai Dalam Kegiatan Perdagangan Elektronik Di Indonesia Menurut Teori Tujuan Hukum*”. Volume 07, No. 1 Year 2021, Page. 38

\(^{26}\) Feiti, Veronica, *Analisis Yuridis Terhadap Meterai Elektronik Ditinjau Dari Undang-Undang Nomor 10 Tahun 2020*, Jurnal Hukum Vol. 5 No. 1 Year 2019 ,Page 53

\(^{27}\) Dian Dewi Khasanah. *Analisis Yuridis Kekuatan Hukum Sertipikat Tanah Elektronik Dalam Pembuktian Hukum Acara Perdata*. Vol 1, No. 1 Year 2021

\(^{28}\) Arifki, Nindi Achid, *Penyelesaian Kerugian pada Pendapatan Negara melalui Pengungkapan Ketidakbenaran (Suatu Kajian Hukum Doktrinal dalam Sistem Perpajakan)*. Jurnal Hukum Vol 1 No.1 year 2019, page 6

\(^{29}\) Ronald Makaleo Tandiabang, Tomy Handaka Patria, Anang Bamea, *Otentikasi Dokumen Elektronik Menggunakan Tanda Tangan Digital*, 2005, online articles on websites www.itb.go.id
Everything in this modern era relies on technology for online activities, which also impacts the seal. Paper seals have been replaced with electronic seals which have a good impact on the environment because they are paper-less. It is proper that the sealing system must apply the rules of information security law (confidentiality, integrity, availability, authorization, authentication and non-repudiation)

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