

Highlighting Indonesia's E-Signature Framework in Times of Covid-19

As the Covid-19 pandemic continues to spread, the Indonesian government has declared a massive social restriction (*pembatasan sosial berskala besar* or "**PSBB**") in DKI Jakarta. With other regions are expected to follow suit in the weeks to come, companies are seeking ways to continue business as usual, insofar as possible. One aspect that has come into the spotlight is the use of electronic signature or e-signature.

Different to the traditional concept of physical signing (often referred to as wet ink) of a document and scanning it as a PDF document, e-signature platforms enable documents to be sent to the signatory and signed by that signatory by simply clicking on the relevant boxes.

We explore below some of the frequently asked questions on the use of e-signature in Indonesia, which is likely to be employed far more widely in the current climate.

Is E-Signatures Legally Binding in Indonesia?

E-signature is governed by Law No. 11 of 2008 on Electronic Information and Transactions (as amended) ("**EIT Law**") and Government Regulation No. 71 of 2019 on Electronic Systems and Transactions ("**Regulation**"). The EIT Law and the Regulation also recognise e-seal (*segel elektronik*), which is an e-signature intended for a private or public body (as opposed to a regular e-signature, which is used by an individual). Both legislations specifically regulate that the use of e-signatures and e-seals has a legal bearing, as well as legal consequences.

There are two types of e-signature under Indonesian law:

1. **E-signature with certification**

This type of e-signature involves the creation of a unique code that is designated for a specific legal subject (also called a digital certificate (*sertifikat elektronik*). The digital certificate, which must be issued by an Indonesian certified e-signature provider (*penyelenggara sertifikasi elektronik*), is created based on the legal subject's identification documents (including his/her ID card); and

2. **E-signature without certification**

This type of e-signature is created without involving the service of an Indonesian certified e-signature provider and may include a digitised version of an individual's handwritten signature.

From a legal perspective, the use of an e-signature/e-seal with certification is preferable as it has more weight when presented as evidence before a court of law.

Under the Regulation, an e-signature/e-seal must fulfil the following conditions to be valid:

1. the e-signature/e-seal source data (which is the unique code generated based on the signatory's hand-written signature) must be associated only with the signatory;
2. at the time of the electronic signing, the e-signature/e-seal source data must be in the signatory's possession;
3. any alteration to the e-signature/e-seal after signing must be traceable;
4. any alteration to any electronic information (e.g. contract) associated with the e-signature/e-seal after signing must be traceable;
5. the signatory must be identifiable based on certain methods; and
6. it can be shown that the signatory has consented to the relevant electronic information.

If all the foregoing conditions are met, an e-signature/e-seal (regardless of its type) on electronic information (including its print-out version) will be legally valid.

Are There Any Limitations on the Use of E-Signatures/E-Seals?

Not all documents can be executed electronically. Indonesian law still requires the following documents to be signed by hand:

1. any contract and deed for the sale of immovable property or the transfer of any interest in immovable property;
2. corporate documents, such as a deed of establishment, articles of association (and its amendments), a deed of shareholders' resolutions and shares/assets transfer documents; and
3. an agreement of a mortgage over land or immovable property.

Who Can Provide E-Signature/E-Seal Services in Indonesia?

Under the Regulation, an e-signature/e-seal with certification can only be produced by an Indonesian certified e-signature provider. To be able to legally produce an e-signature/e-seal with certification, an Indonesian certified e-signature provider must be registered with the Ministry of Communications and Informatics ("**Ministry**") and certified by an e-signature certification agency (*lembaga sertifikasi penyelenggara sertifikasi elektronik*).

As at the date of this client update, there are six Indonesian certified e-signature providers registered with the Ministry:

1. the Electronic Certification Centre of the National Cyber and Code Agency (*Balai Sertifikasi Elektronik Badan Siber dan Sandi*);
2. the National Mint (*Perusahaan Umum Percetakan Uang Republik Indonesia*);
3. the Technology Assessment and Implementation Agency (*Badan Pengkajian dan Penerapan Teknologi*);
4. PT Privy Identitas Digital;
5. PT Indonesia Digital Identity; and
6. PT Solusi Net Internusa.

The Regulation recognises the service of a foreign e-signature provider and the e-signature/e-seal issued by it, provided that the foreign e-signature provider has registered itself with the Ministry. However, any e-signature produced by a foreign e-signature provider is considered as an e-signature without certification.

How Does the Court View an E-Signature/E-Seal?

Based on our knowledge, we are not aware of any case laws in Indonesia that specifically address the issue of the legality of a document signed by an e-signature. However, the Supreme Court recently issued a regulation and decree on electronic courts (e-court) as part of its effort to help reduce issues related to the inefficiency of court proceedings in Indonesia.

Both the Supreme Court regulation and decree allow for case dossiers (including any documents that require signing) to be submitted electronically through the e-court system. After that, the court decision/ruling will be digitally signed and then conveyed by the panel of judges through the e-court system.

In light of the foregoing, it is safe to say that courts in Indonesia have generally accepted the use of e-signature/e-seal.

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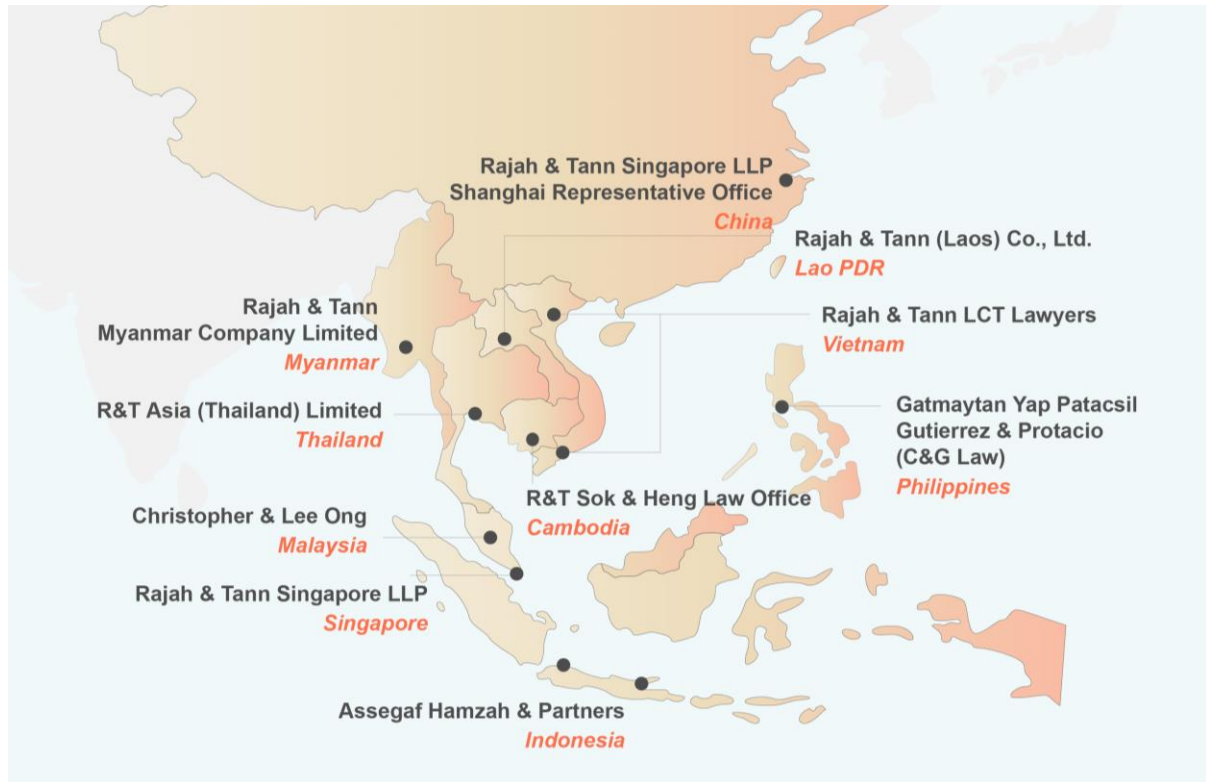
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