

## Client Alert

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## Indonesia: Use of Electronic Signatures during COVID-19

Since the COVID-19 coronavirus was first reported in December last year, countries around the world have sought to impose travel bans, quarantine citizens and isolate the infected in an attempt to stop the spread of the new virus.

The recent increase of COVID-19 cases in Indonesia raises concerns for everyone in the country. Some HHP clients in Indonesia are now working remotely and facing unprecedented difficulties in executing various documents and dealing with filing formalities where electronic signatures are not permissible.

### Implications for Clients

Due to the disruption caused by COVID-19, clients are unable to attend physical meetings. The situation poses a clear and direct challenge to the ability of most, if not all, clients to implement global and local transactions, effect corporate changes, meet regulatory deadlines, and continue any legal action.

The following outlines several key points on using electronic signatures in Indonesia particularly during this COVID-19 situation. The Indonesian government's response to the outbreak is evolving rapidly. It is important to check regularly for updates.

### What the Regulations and the Ministry say

Under Indonesian law, a wet signature is not necessarily required for a valid contract. Contracts are generally valid if legally competent parties reach an agreement, whether they agree verbally, electronically or in a physical paper document provided that the basic requirements of a contract under the Indonesian Civil Code are fulfilled (i.e., consent, competency, certainty and permissible cause). Law No. 11 of 2008 as amended by Law No. 19 of 2016 on Electronic Information and Transactions ("**EIT Law**") confirms that electronic signatures are valid and acceptable. In addition, Government Regulation No. 71 of 2019 on Implementation of Electronic Systems and Transactions ("**GR 71**") provides that there are two types of electronic signature: certified and uncertified. The main difference between these signatures is that the certified electronic signature has stronger evidentiary value, e.g., during a court proceeding where the parties need to prove that the electronic signature is authentic.

For an uncertified electronic signature, during a court proceeding, the parties must be able to prove that the electronic signature solution can



provide electronic records that are admissible as evidence to support the existence, authenticity and valid acceptance of a signed document. It is easier to prove the authenticity of a certified electronic signature than an uncertified electronic signature, particularly ones from locally certified providers since the Ministry of Communication and Informatics (“**MOCI**”) can guarantee the authenticity of the electronic signatures. So the MOCI suggests using certified signatures from a locally certified electronic signature provider.

### Certified Indonesian electronic signature providers

The MOCI has certified three private Indonesian electronic signature providers:

- (a) [Priwld](#)
- (b) [Vida](#)
- (c) [Digisign](#)

Clients can easily access websites of the certified private electronic signature providers and obtain further information on how to register and use the signature. Usually people download the application first and follow the simple guidelines in the application to register and purchase the certified electronic signature services.

### Certified foreign electronic signature providers

GR 71 acknowledges foreign electronic signature providers. However, GR 71 requires foreign electronic signature providers to be registered in Indonesia. Under the elucidation of GR 71, this registration does not require establishment of a business entity by the foreign electronic signature providers. Further details of the registration procedure will be set out in a ministerial regulation.

## **Enforcement**

### Enforcement in Indonesia

Although electronic signatures are now technically regulated, most courts and government institutions in Indonesia will still only accept original documents with wet signatures.

In general, documents that require a wet signature are those that will be submitted to officials. The following are some documents that must be executed by a wet signature:

- corporate documents (e.g., shareholders’ resolutions that are required to be stated in a notarial deed form)



- documents that are signed in a notarial deed form (e.g., share acquisition deed)
- human resources related documents
- intellectual property rights transfer documents
- real property transfer contracts and deeds

While there is no specific restriction on the types of document that can be signed using an electronic signature, in practice, the Indonesian courts have been slow to accept the concept. Most parties and government agencies in Indonesia still refer to and require manually (wet) signed hardcopy documents. Currently for contracts or documents that may be disputed, the best practice is to obtain a wet signature.

### *Electronic signatures by foreign providers*

It is valid to use electronic signatures provided by foreign providers (e.g., DocuSign). However, these signatures are considered as uncertified electronic signatures. Indonesian law recognizes both uncertified and certified electronic signatures. As noted above, the difference is more on the evidentiary value.

In practice, parties can use electronic signatures by foreign providers to create valid contracts and documents of any kind that are not subject to a specific statutory form requirement. Popular use cases include commercial agreements between corporate entities (e.g., NDAs, procurement documents and sales agreements), consumer agreements (e.g., new retail account opening documents) and lease agreements.

### **Practical Actions to Consider**

During the COVID-19 situation, clients can consider taking the following actions:

- (a) using electronic signatures for executing documents that are only being used internally and are not going to be submitted to courts and government institutions in Indonesia
- (b) using electronic signatures from certified providers in Indonesia or that have been registered in Indonesia
- (c) discussing with relevant notaries the possibility of executing certain documents with electronic signatures (e.g., statement letter and power of attorney), and leniency related to doing so
- (d) monitoring new announcements and policies from government authorities on execution formality for submission or filing

Some Indonesian notaries are fine with the use of electronic signatures on statement letters from companies during this COVID-19 situation. But until



today there is no update from government authorities on the use of electronic signatures for submission or filing to authorities.

## Conclusion

Generally, contracts can be signed using electronic signatures. It is recommended to use certified electronic signatures in Indonesia. For documents that still require a wet signature, clients can discuss with their counterparties and the notary how to handle the execution of documents. Again, it is important to check regularly for updates.

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