

## Eligibility of Electronic Signature when Applying Home Ownership Credit (KPR) at the Bank According to Civil Law

**Denny Yanuar Setyo Laksono\***

### Abstract

Home Ownership Credit (KPR) is an important thing in making it easier for people to have housing for those who have small and medium economic income. Housing loans are one of the Bank's products that are related to the level of demand for housing, in this case following the interest rates that affect housing demand. Therefore, innovation is needed to make it easier for people to have housing. The Bank's innovation is to use electronic signatures as a more efficient form of transaction. This research is a juridical-normative research using a statutory approach. The legal issue that is used as a problem formulation is divided into two, namely whether the electronic signature at the time of submitting a Home Ownership Credit (KPR) at a bank is valid according to civil law and whether the impact of an application for a Home Ownership Credit (KPR) agreement made using an electronic signature. The results of this research are electronic signatures or electronic transactions on applications for Home Ownership Credit (KPR) are basically related to an engagement or a legal relationship in accordance with Law No. 11 of 2008 concerning electronic information and transactions and the third book of the Civil Code on Engagement. The impact resulting from the change of Signatures in front of Notary Officers to become Electronic Signatures has the same legal force to bind one another in accordance with Law No. 4 of 1996 concerning Mortgage Rights to Land and objects related to Land and Law No. 11 of 2008 concerning Electronic Information and Transactions, the regulation stipulates that Electronic Signatures are Legitimate according to Civil Law.

### Keywords

Civil Law; Home Ownersip Credit; Electronic Signature.

---

\* Faculty of Law, Airlangga University

**Correspondence:** Denny Yanuar Setyo Laksono, Faculty of Law, Airlangga University, Surabaya, Indonesia. E-mail: dennyyanuar13390@gmail.com

## Introduction

The development in the world of enterprise and business is currently experiencing very rapid development. This development creates very fierce competition. In the banking sector, the industry is the fastest growing industry, both in terms of business volume, mobilization of public funds and provision of credit. This was due to changes in government regulations in the banking sector in 1983. As a result, banks had to be more creative and innovative in creating new products in accordance with market conditions and seeking large sources of funds from the public. In order to meet the people's need for housing, the role of banks is very much needed in providing funds and providing initiatives in the housing development business. The existence of the Home Ownership Credit (KPR) system is very much needed by people whose economic income is in the small and medium levels. Various efforts have been made by the government for the construction of livable housing.

Development which is financed through credit facilities is a program from the bank to meet the community's need for housing for living place, whether for low, middle and high income earners. The level of dependence of home buyers today is closely related to the level of demand for houses, increasing bank interest rates will greatly affect housing demand. Various attempts have been made by banking institutions to be competitive in the competition for mortgage interest rates. This provides an opportunity to maximize housing loans disbursed by the banking sector to purchase homes for families. Home ownership loans at banks are generally in demand by consumers who cannot afford to buy a house in cash and only have the ability to pay down payments, so they need to be assisted with a Home Ownership Credit.

Prospective debtors must know about the arrangements for applying for credit both in terms of administrative requirements and other requirements which are technically feasible to be granted must really be fulfilled, so that the credit granting process can be carried out such as: ID Card, family card, copy of bank statement for the last 3 months, tax ID number, income, salary / income slip and other technical matters of the bank in the form of verification, which is carried out by officers from the data presented and in the field. In banking practice, it can also be concluded that for the delivery of money, an agreement of will is required. The signing of a meaningless credit agreement, of course, is accompanied by the transfer of money (credit) from the bank and the receipt of money (credit) by the credit applicant (Badrulzaman, 1978).

Credit agreement is a means of obtaining credit. Credit recipients are bound by certain conditions. After the credit agreement is signed, there is still the possibility that the credit will not be disbursed, due to certain considerations. If this happens, it means that a new agreement has not been reached for the realization of the credit, and in this case the credit recipient is not entitled to claim compensation. So that if each party does not fulfill its obligations, the bank will not disburse the credit and the credit applicant will not use the credit. So the two of them did not make demands on each other.

In general, the bank has prepared a credit agreement in the form of a standard agreement, the contents of which have been written in the draft written promises, then formulated in the form of an agreement form and a number of addendum or additional rules, so what happens is that the creditor puts in the form of a tangible agreement regarding the KPR agreement with the stipulated articles, with the exception of the title of the KPR agreement, comparison or identity, legal basis, and the position of the parties that will enter into a bank credit agreement. Indeed, many customers do not know the contract law and credit law, so when facing such a contract and after reading the contents and they think it is appropriate, they immediately agree and sign it. The agreement is one of the conditions for the validity of the agreement, in Article 1320 of the Civil Code it is deemed fulfilled.

Customers as debtors must carry out a whole series of procedures for lending which aim to provide the required credit facilities. General lending procedures are: credit application, file, recording, completeness and application for credit, credit form list. In this case each credit document from the customer consists of a customer application letter that is fully and legally signed, a list of forms provided by the bank and a list of attachments required. All these requirements must be completed by the customer. Meanwhile, not all customers can complete these documents due to various customer activities. Customers often cannot attend directly to the intended bank. Therefore, customers use existing technology to facilitate transactions in applying for housing loans (KPR). The rapid development of information and telecommunication technology has resulted in a more diverse range of existing telecommunication facility services as well as increasingly sophisticated information technology products capable of integrating all information media (Wibowo, et. al, 1999).

Computers, as a human aid supported by developments in information technology, have helped access to public networks in transferring data and information. With increasingly developed computer capabilities and access, banking transactions are also carried out within the communication network. Public networks have advantages over private networks in their cost and time efficiency. This has made the banking world use electronics as a solution to facilitate customer service, due to the nature of the public network that is easily accessible by any person or company which is implemented with an electronic system.

Electronic systems are used to explain the existence of an information system which is the application of information technology based on telecommunications networks and electronic media, which functions to design, process, analyze, display, and transmit or disseminate electronic information. Information systems, technically and in management, are actually the embodiment of the application of information technology products into an organization and management form, in accordance with the characteristics of the needs of the organization and in accordance with the purposes for which they are intended. On the other hand, technical and functional information systems are integrated systems between humans and machines, which include

hardware components, software, procedures, human resources, and information substances, which in their use include input, process, output, storage, and communication.

Transactions via electronic media are non-face (without face to face), non-sign (not using the original signature) and without territorial boundaries (a person can conduct electronic transactions with other parties even though they are in a different country) by using information technology. However, the security aspect of transactions using electronic media has begun to be paid attention. In fact, cyber activities are no longer simple, because their activities are no longer limited by the territory of a country. In addition, the validity of a document that is signed with electronic media is a very important factor, considering that electronic information is not only accommodated in the Indonesian legal system in a comprehensive manner, but it also turns out to be very easy to forge and to be sent around the world in seconds. Thus, the resulting impacts can be quite complex and complex.

Since 1999 this Draft Law (RUU) has been discussed by the competent Legislature, finally Indonesia has a legal rule to regulate the matter with the issuance of Law Number 11 of 2008 concerning Electronic Information and Transactions which was passed on April 21, 2008. Based on Article 18 juncto Article 7 juncto Article 11 of Law Number 11 of 2008 concerning Electronic Information and Transactions, the validity of the electronic document signed by electronic media is the same as the validity of an authentic deed made by an authorized public official.

The above rule is contrary to Article 1 paragraph (7) of Law Number 30 of 2004 on the Notary's Office, which means that the notary certificate is an authentic certificate made by or before the Notary in accordance with the form and procedures set out in this Law. Whereas the meaning of an authentic certificate based on Article 1868 of the Civil Code is a certificate in the form prescribed by Law, made by or in the presence of public officials in authority for it at the place where the certificate was made.

Electronic documents signed through electronic media can be categorized as written evidence. However, there is a legal principle that makes it difficult to develop the use of electronic documents or electronic signatures, namely the requirement that these documents be visible, sent and stored in paper form.

Based on the description in the background, this research is interesting to do with the aim of answering the main problems, namely (1) is the electronic signature when applying for a Home Owner Credit (KPR) at a bank is legal according to civil law? (2) What is the impact of an application for a Home Ownership Credit (KPR) agreement made using an electronic signature?

## Research Methods

The approach method used in this study is a normative juridical approach. The normative approach in this case, is intended as an effort to bring the problem under investigation to the normative nature of law. The normative approach includes legal principles and regulations. The legal approach used in this study is statue approach. Statue approach is the approach of laws and regulations in which an approach using legislation and regulation approaches needs to understand hierarchy and the principles in statutory regulations (Marzuki, 2017). This study is legal research. Bruce and Ruth Talbot-Strokes argue that legal research is carried out to introduce a particular legal problem or legal issue (as cited in Susanti, et. al, 2014).

## Discussion

### 1. Applying For Home Ownership Credit (KPR) At Bank Using an Electronic Signature

Electronic signature, according to Article 1 number 19 of Government Regulation Number 82 of 2012 concerning Electronic Systems and Transactions, is a signature consisting of electronic information that is embedded, associated or related to other Electronic Information that is used as a verification and authentication tool. Based on this understanding, there are several things that must be considered in the use of electronic signatures (Devina, 2019), including:

- 1) The existence of Electronic information that is embedded, associated or related to other Electronic Information. Article 1 number 1 of Law Number 11 Year 2008 concerning Electronic Information Technology states that Electronic Information is Electronic Information is one or a set of electronic data, including but not limited to writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or one of a kind, letters, signs, numbers, access codes, symbols, or processed perforations that have meaning or can be understood by those who are able to understand them. Any Electronic Information that is created, transmitted, sent, received, or stored in analog, digital, electromagnetic, optical, or the sort, which can be seen, displayed, and/or heard through a computer or Electronic system, including but not limited to writing, Sounds, pictures, designs, photographs or the sort, letters, signs, numbers, Access Codes, symbols or perforations that have meaning or meaning or can be understood by those who are able to understand them are referred to as electronic documents. Electronic Information and/or Electronic Documents and/or their printouts are valid legal evidence, as long as the information contained therein can be accessed, displayed, guaranteed its integrity, and can be accounted for so as to explain a situation.
- 2) As a verification and authentication tool.

Electronic Signature serves as an authentication and verification tool for:

- a. Signer Identity; and
- b. Integrity and authenticity of Electronic Information.

Electronic signatures or transactions which are carried out electronically are basically an engagement relationship or legal relationship made using electronics as stated in Article 1 number 2 of Law Number 11 of 2008 concerning electronic information and transactions namely electronic transactions are legal acts carried out using computers, computer networks, and / or other electronic media. In its current development, it is necessary to know that electronic transactions that are currently being discussed as "online contracts" are actually legal agreements or relationships that are carried out electronically by integrating the networking of a computer-based information system with a communication system based on telecommunication-based networks and services, which is further facilitated by the existence of a global Internet computer network (network of network). Therefore, the terms of the validity of an agreement will also depend on the essence of the electronic system itself. Thus, it can only be said to be valid if it can be guaranteed that all components in the electronic system can be trusted and / or operate properly (Makarim, 2004).

In the field of communication science or communication system technology, the existence of transactions is understood as an alliance or legal relationship between parties that is done by exchanging information to conduct trade. Therefore, most technicians will understand it in accordance with the basic rules in the aspects of communication security, namely must be confidential, integrity, authority, authenticity and non-repudiation (Makarim, 2004).

With the emergence of Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) provides two important things, namely, first, the recognition of electronic transactions and electronic documents in the framework of the legal agreement and the law of proof, so that the legal certainty of electronic transactions can be guaranteed and secondly, the classification of the actions which are classified as violations of the law related to misuse of IT (Information Technology) accompanied by criminal sanctions (Putra, 2014). If we look at Article 5 Paragraph (1) of Law No. 11/2008, Electronic information and / or Electronic Documents and / or their printouts are valid legal evidence. This is an extension of valid evidence in accordance with the applicable procedural law in Indonesia.

Banking credit is the provision of loan facilities. Cash loans are credit facilities provided by banks to customers that do not require special conditions for withdrawal (Sobana, 2016). Consumption Credit, namely credit provided to the public like the credit value depends on the value of the goods purchased, the source of return is not from the purchased goods, but from the income / profession concerned and credit assessment is much emphasized in the assessment of collateral, one example of consumption credit, namely Home Ownership Credit (Asikin, 1995). A credit agreement is a principal agreement (principal) that is real in nature, an agreement of an event in which two people or two parties promise each other to do something or an



agreement made by two or more parties, each agrees to obey what is stated in the agreement (Hermansyah, 2005). The source of the alliance is an agreement because through the agreement the parties have the freedom to make an alliance in accordance with the principle of freedom of contract or called contract *vrijheid* (Hariri, 2011).

An engagement is a legal relationship relating to assets carried out by two or more people or as parties who are legally binding, one of which is entitled to something and the other party is obliged for something (Hariri, 2011). As stipulated by Article 1233 BW, that the engagement that takes place in the life of the community is predictable, if it is not based on law, it means that it originates from an agreement or contract. In fact, if we look closely at it, it is evident that the agreements originating in the agreement dominate legal relations that occur in social life (Isnaeni, 2014). The terms of the validity of the agreement, the rules are in Article 1320 BW as follows.

- a) Their agreement which binds itself;
- b) The ability to make an engagement;
- c) A certain subject matter;
- d) A cause that is not forbidden.

By qualifying for the validity of the agreement as a source of alliance, based on Article 1338 BW that all agreements made in accordance with the law apply as law to those who make them. The agreement may not be revoked except by agreement of both parties, or for reasons specified by law. Agreements must be executed in good faith. As a result, the agreement has binding power equal to law for the parties (Isnaeni, 2014).

## **2. Impact of a Home Owner Credit Application Agreement (KPR) Using an Electronic Signature**

Basically, the Home Owner Credit (KPR) Application Agreement is a Sale and Purchase Agreement in which one party binds itself to hand over the object, while the other party binds itself to submit an agreed price (Isnaeni, 2015). The sale and purchase that has taken place between the two parties, immediately after the people have reached an agreement regarding the goods and the price, even though the goods have not been delivered and the price has not been paid in accordance with what is contained in Article 1458 of the Civil Code.

One of the reasons for the increase in the provision of KPR by banks is that there are still many people who need houses while most of these people cannot afford to buy houses in cash. Finally, the credit system through KPR became an option. There are still many people who need houses, which is an opportunity for banks to market as many KPR as possible. Seeing the opportunities that exist, each bank inevitably competes with each other to offer various facilities for credit to consumers, for example in terms of offering interest rates, credit approval processes, and also services (Krisnawati, et. al, 2009).

In this case, the application for a Home Owner Credit (KPR) must use several letters including a Power of Attorney to provide Mortgage Rights (SKMHT) and Deed of Assignment of Mortgage Rights (APHT) in the elucidation of law No. 4 of 1996 concerning Mortgage Rights on Land and objects related to Land as stated in article 7 states that the Mortgage continues to follow the object in the hands of whoever the object is located and Article 15 which states that the power of attorney to impose the Mortgage must be made with a notary deed or a PPAT deed. Granting a Mortgage as collateral for debt, apart from starting with an agreement to provide a Mortgage as collateral for debt repayment, must also be attended and carried out by the Insurer (Debtor) in front of the Land Deed Making Officer (PPAT). Regarding the method of granting Mortgage Rights, this is done by making a Deed of Granting Mortgage Rights (APHT). In granting Mortgage Rights, the mortgage provider must be present before the PPAT. However, due to some reasons for not being able to attend alone, then the granting of Mortgage Rights can designate another party as proxies, with a Power of Attorney to Impose Mortgage Rights (SKMHT), in the form of an authentic deed (Usman, 2018).

Several banks have provided services that are more efficient in serving their customers in order to improve service quality, so some banks use electronic signatures based on article 18 paragraph 1 of Law No. 11 of 2008, namely Electronic Transactions as outlined in Electronic Contracts binding on the parties juncto Article 7 states that Every person who declares rights, strengthens existing rights, or rejects the rights of others based on the existence of Electronic information and / or Electronic Documents must ensure that the Electronic Information and / or Electronic Documents that exist in them come from an Electronic system that meets the requirements based on the Laws and Regulations Juncto Article 11 states that Electronic signatures have legal force and legal consequences as long as they meet the requirements. The regulation states that the electronic signature has the same legal force as the power of proof of an authentic deed made by a Notary or PPAT.

## Conclusion

In essence, the submission of a Home Owner Credit Agreement (KPR) at the Bank through an electronic signature is legal according to civil law because it fulfills the elements of an electronic engagement and transaction in accordance with the prevailing laws and regulations, therefore the application for a Home Owner Credit (KPR) at a Bank can be deemed valid according to civil law. The Home Owner Loan application agreement using an Electronic Signature can have an efficiency impact on customers and signatures using notary deeds and electronic signatures have the same legal force and are binding on one another.

## References

### Books

Asikin, Z. (1995). Pokok-Pokok Hukum Perbankan di Indonesia. Jakarta: Raja Grafindo Persada.



- Badruzaman M. D. (1978). *Perjanjian Kredit Bank*. Bandung: Alumni.
- Hariri, W. M. (2011). *Hukum Perikatan*. Bandung: Pustaka Setia.
- Hermansyah. (2005). *Hukum Perbankan Nasional Indonesia*. Jakarta: Prenada Media Group.
- Isnaeni, M. (2014). *Seberkas Diorama Hukum Kontrak*. Surabaya: Revka Petra Media.
- Isnaeni, M. (2015). *Perjanjian Jual Beli*. Surabaya: Revka Petra Media.
- Marzuki, P. M. (2017). *Penelitian Hukum*. Jakarta: Kencana.
- Makarim, E. (2004). *Kompilasi Hukum Telematika*. Jakarta: Raja Grafindo Persada.
- Susanti, D. O. & Efensi, A. (2014). *Penelitian Hukum (Legal Research)*. Jakarta: Sinar Grafika.
- Sobana, D. H. (2016). *Hukum Perbankan di Indonesia*. Bandung: Pustaka Setia.

**Journal articles:**

- Devina, A. (2019). "Penggunaan Tanda Tangan Elektronik dalam pengajuan Pembiayaan Berdasarkan Prinsip Syariah. Vol. 5 No. 1. *Jurnal Akutansi Bisnis dan Ekonomi*.
- Putra, S. (2014). "Perlindungan Hukum Terhadap Konsumen dalam Transaksi Jual-beli melalui e-commerce". Vol. 4 No. 2. *Jurnal Ilmu Hukum*.
- Krisnawati, Y. & Kirbrandoko, Djamaluddin, MD. (2009). "Analisis Persepsi Developer terhadap Produk Kredit Pemilikan Rumah (KPR) Bank XYZ Cabang Bogor". Vol. 6 No. 1, *Jurnal Manajemen & Agribisnis*.
- Usman, R. (2018). "Kewenangan Notaris dalam Memuat Surat Kuasa Membebaskan Hak Tanggungan dengan Akta", Vol. 5 No. 3. *Jurnal Legislasi Indonesia*.

**Websites:**

- Wibowo, A. M., Makarim, E., Yuristiawan, H., Aulia, M., Sundoro, E., Helena, L., Faraytody, L. & Gaby, P. (1999). *Kerangka Hukum Digital Signature dalam Electronic Commerce*. Available at: <http://ftp.gunadarma.ac.id/idkf/idkf-wireless/aplikasi/hukum/kerangka-hukum-digital-signature-dalam-e-commerce-1999.rtf>. [Accessed Oktober 2. 2020].