The Differential Studies about Legal Identity and Consequences of Notarial Electronic Document with Secure Electronic Document

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Abstract
The electronic document includes data message that is reliable in the place of a claim or a defense. According to Civil Code and Electronic Commercial Laws of Iran and others countries, the electronic document includes three types of notarial electronic document, private electronic document with simple signature and private electronic document with Secure signature. In contrast to France and America legislators, Iran law does not have a precise definition about the notarial electronic document and it should advocate on paraphrases about observed traditional regulations on paper documents for explaining this document. This paper through analytic method studies the difference between the secure electronic document and the notarial electronic document in addition, explains the definition and types of electronic documents. It proceeds to Iran's requirement on this scope and then, it leads to the suggestions about the approval of regulations in relation to notarial electronic documents.

Keywords: electronic document, notarial electronic document, secure electronic document, simple electronic document

Introduction
There are many matters in relation to definition, types and derivatives of the document in Iran civil Cod and Registration of Documents and Landed Properties Law. To sum up, it can be said that the document is one of the most important evidences and instruments of persons along proving and ascertaining their rights. Based on legal basis of contracts and agreements, every contract is concluded with parties' offer and acceptance and contracting parties should notify their creation intention according to the contract or implement of transaction in a way that explains the intention. In the present legal order, one of the reasonable ways for notifying the consent in contracts is the attached signature of regulated documents between parties. Therefore, although a contract can be oral per se, it is so hard and impossible to prove the right and duty of oral object contract in more cases and it can be proved just through reliance on other evidences such as the document.

Free from mentioned preparations, the derived developments of modern emergent technology affect the document law and proportionally, they are followed by the possibility of law enactment and interpretation of technical rules. In this relation, the identity and the method of regulating and issuing documents have been changed. It is necessary to mention that the concept of electronic document is not only allocated to Electronic Commercial Law and Electronic Banking and it but also includes regulated private documents among persons and official registered documents by notary public's offices and other official agents. Thus, according to Registration Documents and Landed Properties Law aspect and in the framework of Civil Code for what is known in the public statement and custom literature to notary public's document, the phenomena of
electronic document have many usages for regulating contracts, agreements, unilateral obligations and all documents which are registered and executed in notary public's offices.

The major questions which are attempted to be answered in this study are:

• What is the concept of electronic document?
• What are the observed regulations on the subject of present electronic document? And in the silence and defect of law, are the foreign laws applicable?
• Are common regulations existed in relation to electronic documents in Iran and other countries’ law?
• Are the definitions which are about document as a general meaning and a notarial document as an especial one in Iran Civil Code and Registration Law, available and adaptive?
• Is the secure electronic document same the notarial document? If there is any difference, how much are their executor and evidential powers?

General Document

The word "document" means what is relied on, the documented proof (Moeen, 1996:1929). Dehkhoda interprets the document to "the support and what person relies on it" (Dehkhoda, 2006: 1715) and also, in the Ameed's Lexicon, the document is defined as something that "rely on it" (Ameed, 1995: 1468). In the legal definition of document, the lawyers have not taken the distance from its lexical definition so much and know it as every reliable support and guidance that "it can attract the other belief correctly; even it is written or oral, presumption and confession" (Katouziyan, 2005:275). Generally, the document is consistent with its historical background and it means every reliable support and guidance or pledge. But, what is known as a document in Iran Civil Code particularly consists of any writing that can be reliable including individual's written notification, expert's view, and local investigation minutes, laws texts, ordinance, etc. But in relation to an especial meaning or legal expression, the document includes "any writing which is reliable in the place of a claim or a defense" (Madani, 1997: 89). Therefore, the document definition in the legal expression with "be in writing clause" has been separated from general concept of the document. Civil Code knows written documents after confession at the second rank of evidences admissible in proving a claim at article 1258 and at the article 1284, the same law is appointed for the document definition: "By "document" is meant any writing which can be preferred to in connection with a claim or a defense".

Based on what has been said:

First, the especial concept of document which should be written has been separated from its general concept including movable evidence. Second, the other written evidence has been extracted from the document definition as an especial concept (Bahrami, 2014: 258). Therefore, the writhing will be considered as a document if it is regulated for creating act or notifying legal event. Also, be in writing, reliable at the place of a claim or a defense and having a signature, finger print or seal are the essential elements of a document.

It is possible to divide the documents according to being formal and substantive among documents by considered attention, enough accuracy based on elements and conditions of regulating documents and its evidential and executing authority from the document parties or the person who regulates it. According to the degree of credit which is given to documents and relying on the article 1286 of Civil Code, the documents are two kinds: notarial and private. The distinction and dissociation aspect of these two documents at the evidential and fixative authority of right, at the allegiance of formal regulation, according to formal and regulated formality, based on evidential authority and the possibility of assertion denial and ambivalence and according to the executing power and authority have been without any necessity to court's judgment. The notarial document

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definition in Civil Code includes the definition of this kind document in the Registration of Document and Landed Properties Law. Article 1287 of Civil Code has counted the certifications of notarial documents and the legislators of any document which is one of these matters accepted as the notarial document. The matters are as follows: a. documents which have been drawn up at the general department for Registration of Documents and Landed Properties, b. at the offices of notary's publics, c. before other official authorities, within the limit of their competency and in accordance with legal regulation. The notarial document in relation to the definition of Civil Code is different according to registration law and registered regulations. Based on registered regulations, the notarial documents include just the documents which are registered and regulated in the notary offices through observance of statutory regulations. In another words, the category of notarial documents which are registered at the mentioned offices will be valid (Bahrami, 2014: 164).

At France Law, basically the adjective of "notarial" at its general language designs a thing which is real and it is not possible to deny its accuracy and about presentation and confronting to a lie it cannot be denied. The Greek equivalent of "notarial" is "authentiksi" which adds another subsidiary element to this concept: the title of "notarial" is the one which performs ipso facto through its original identity and authority (Kainiya, 2009: 92). According to legal aspect, France Civil Code presents an obvious definition about the notarial document at article 1317 as follows: "a document of the record is one drawn up by a public officer entitled to draw up legal documents with the formalities required by law in the place where the document has been drawn up…"

Therefore, based on this article, the documents which have been regulated by official officer have a very especial position and when they are relied in the claims as evidences for proving them, it is not easy to defense against them and it is possible to challenge the person who is relied on the notarial documents.

According to the mentioned authorities at article 1319 of France Civil Code, the first provision of article 1319 is as follows: "A document of record proves the agreement contained therein as between the parties, their heirs, and the persons claiming through them". At this article, the relativity of documents has composed one of the principal attractions of the title of notarial document because this title gives an undependable reason to its possessors. According to article 1319 and 1329 of France Civil Code, the notarial document will be override as a decisive reason of a claim even on implied notifications if they have a direct connection with document contents. The Latin root of this title is Scripta publica probant se ipsa. This title is the one which hardly can be denied. Because, this fact is followed by the applying the obligatory method of registering the fault (Article 33 of New France Civil Procedure Code) (Kainiya, 2009:93)

The definition of Electronic Document in Iran, Uncitral and France Law

Against France Law, in the text of Iran Law the word "electronic document" is not seen. Therefore, for defining the electronic document, the observed traditional regulations on paper documents should be applied to comment and reach to new law definitions by composing these interpretations with new and present concepts in law. In another words, for the electronic document definition, first, it is necessary to consider the law concepts of traditional documents to refer to the applied identity of new tools in electronic transactions (Kainiya, 2011:106). Enter to the definition of electronic document needs to recognize and understand the concept of "data message". The data message is the heart of electronic commerce and the most important word contained in Electronic Commerce Law and it is a new word which is introduced through emersion of modern communication devices. In another words, all electronic evidences are as data messages. Thus, the document is also presented in the form of data message. The provision (a) of article 2 of Iran Electronic Commerce law act of 24/1/2004 has stated about data message definition as follows:
"Data Message: any representation of facts, information and concepts generated, sent, received, stored or processed by the use of electronic, optical or other information technology means." The word of "representation" which is contained in law text, is an ambiguous word in information technology and computer science and it is better the legislator to use "data" or "information" as in Uncitral Model Law on Electronic Signature (Uncitral, 2001, 2.c). Also, the data is a general concept and includes text, picture, voice, animation, code, etc. Besides all these prescriptions, the electronic writing is a data message and if the electronic document is equal according to its efficiency to paper documents, it is an electronic writing which is reliable in the place of a claim or a defense.

According to general documents law, three major elements of paper documents are: be in writing, being reliable in the place of a claim and a defense and having a signature. Therefore, the data message which has elements of a document with its especial definition is considered an electronic document. It means:

• It should be in writing
• It should be reliable in the place of a claim or a defense
• It should be signed

The element of "be in writing" of documents is described so that it is considered as a petition which complaints about any subjects. The subject of this petition can be anything which the writing is stamped on it; paper, wood, iron, stone or any material which can receive any stamp and it can be exhibit of the writing. It means it can be a material which the writing can be stamped (Hosseininejad, 1996: 63). In relation to this fact, the article 6 of Iran Electronic Commerce Law provides that "when the existence of a written document is legally deemed requisite, "data message" can be used as a replacement". In Uncitral Model Law on Electronic Signature, the term of be in writing is omitted from the concept of the writing and considers the data message as value as the writing concept. Also, in the first provision of article 6 of Uncitral Model Law on Electronic Commerce, it is stated that "where the law requires information to be in writing, that requirement is met by a data message if the information to be contained, there is accessible so as to be usable for subsequent references..." (Uncitral 1996: § 6.1) Relying to this article and according to extensive definition about sample law of data message, we reach to this main article that in the treatment with data message, no discrimination should be applied between paper documents and data message which is produced through electronic devices. In relation to this fact, for developing the electronic state, electronic commerce and offering electronic services and giving the originality to electronic documents and reducing paper documents, the provision (b) of Iran Fifth Development Plan provides: "the electronic document is considered as paper document subject to satisfy Secure condition of its originality of issuing and entirety". Through this definition the concept of be in writing in the cyberspace is recognized and data message has hold the same validity of writing in the un-cyberspace.

In relation to the reliability of data message in the place of a claim or a defense as the second element of documents, the article 12 of Iran Electronic Commerce Law provides: evidence and supporting document may be in the form of "data message". The evidential value of a "data message" can be no means and is repudiated solely due to its form and framework at any court or government office". Apparently, the word of "evidence" which is used in this article means that all five evidences of article 1258 of Civil Code, if they are in the form of data message, they should be accepted. However, the method of applying this article compared to each of the mentioned evidences needs more explanation. For affirming this matter, relying on provision 2 of article 9 of Uncitral Model Law on Electronic Commerce (1996) in relation to evidential value and authority of
data message, it can be said that existed information in data message has evidential value and for evaluating evidential value of data message, the applicability of certainty of the method which through it data message is generated, stored or sent should be considered. Also, certainty capability of the method should be considered and through which the information entirety is protected and the method which the sender's identity is defined and considers other related factors (Uncitral, 1996: §9.2).

But in relation to signature as the third element of documents, it should be said that "data message" through "originator" is composed or sent (Uncitral, 1996: §2.c) to receive by addressee (Uncitral, 1996: §2.d). Generally, in the process of generating, sending and receiving data message three persons are involved: originator, addressee and intermediary (Uncitral, 1996: §2.e). Also, composer and sender of data message sign it by electronic signature including any regular sign or in a logical way is attached to data message which is used for recognition of signer of data message (Kainiya, 2008: 3). The provision 1 of article 2 of this instruction of European Union Instruction in relation to electronic signature provides: "electronic signature means data in electric form which are attached to or logically is associated with other electronic data which serve as a method of authentication" (Directive, 1999: § 1.2). Based on article 7 of Iran Electronic Commerce Law, where the law requires a signature, an electronic signature may be sufficed, in the condition that the considered writing should be electronic.

Briefly, according to what has been said, the identity of the electronic document is data message and these documents have three elements of paper document including be in writing, being reliable in the place of a claim and a defense and having a signature.

France Law is the scout of legal system based on writing, pioneer in defining electronic document and notarial electronic document. France Law based on Act of 13th March 2000 defined the concept of writing in an abstractive form and knew it as a collection of signs regardless of its form and the method of transforming (Kainiya, 2009: 77). The provision 7 of article 2 of USA Uniform Electronic Transaction Act knows "the electronic document as the document to be created, generated, sent, communicated, received, stored, or otherwise processes or used by electronic means or in electronic form" (USA Uniform Electronic Transaction Act 1999: 2.7§). The Uncitral Model Law on Electronic Signature in the definition of data message as an electronic writing provides: "date message means information generated, sent, received or stored by electronic, optical or similar means including electronic data interchange (EDI), electronic mail, telegram, telex or telecopy and acts either on its own behalf or behalf of the person it represents" (Uncitral, 2001: §2.c). Also, the article 2 of Uncitral Model Law on Electronic Commerce has the same definition like Uncitral Model Law on Electronic Signature about electronic signature in data message definition: "date message means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy" (Uncitral, 1996: §2.a).

Therefore, based on the mentioned definition, the electronic document can be defined as "The electronic document is the writing generated, sent, received or stored by electronic and has the reliability in the place of a claim and a defense".

Types of electronic documents

Iran legislator has not come up with expressing types of electronic documents in Electronic Commerce Act 2002, but according to accepted classification in Civil Code about traditional documents, it is possible to divide electronic documents to two types, notarial and private and through studying Electronic Commerce Law, it can be claimed that private documents are also divided to two types, certain and uncertain.
Notarial Electronic Document: Against France legislator, Iran legislator has not presented any definition about notarial electronic document; we refer to existed laws in related to notarial documents necessarily. Based on article 1287 of Iran Civil Code, "documents which have been drawn up at the general department for registration of documents and landed properties, or at the offices of notary's publics, or before other official authorities within the limit of their competency and in accordance with legal regulation, are notarial". It is understood through this article that the notarial electronic document is regulated and registered before righteous official authorities by observing legal regulations and in another word, notarial electronic document is a notarial document which is registered and regulated electronically.

As it is said, based on Registration of Document and Landed Properties Law, for registering of notarial documents even in electronic form, the role of notary public is important and it cannot be omitted. Therefore, the regulation of documents before official authorities and under their jurisdiction district and being based on law gives the document formality not being electronic and non-electronic, because the notarial document receives all validity and advantages from official authorities' intervention and observance of regulations in its regulation. The official authority is an excellent observer and witness who is appointed by law for registering events, determining position, guiding persons and observing legal regulations and his signature eliminates every kind of ambivalence than the accuracy of occurrence of legal act and its attribution (Katouziyan, 2005:291). Also, France legislator with more obsession and attention has known the presence of notary public unavoidable even the document to be electronic or paper. (Reynis, 2007: 1411). Also, along recognizing notarial electronic document, at the end of first provision of article 1316-4 it is provided: "when the mentioned signature (electronic signature) is opposed by a public officer, it confers authenticity to the document" (Kainiya, 2011: 65). Therefore, France legislator is the first and only legislator who has recognized the electronic document (Kainiya, 2009: 62-3).

As Iran legislator at article 1287 of Civil Code defines the notarial document, France legislator provides the notarial document at article 1317 as follows: "An authentic document is one which has been received by public officers empowered to draw up such documents at the place where the document was written and with requisite formalities" (Code Civil français: §1317).

France Lawyers and legislators intelligently do not limit the use of the document to commerce documents through basing electronic field and expand its circle to notarial documents. France legislator has defined and recognized the notarial document in Act no 2000-230 of 13th March 2000 with accession of second provision to article 1317 of civil code (Kainiya, 2011: 64). This provision provides:" it (notarial document) may be drawn up on an electronic medium where it is established and stored in condition fixed by decree in Conseil d'Etat" (Code civil français). The end sentence of first provision of article 1316-4 of this act provides: " ...when it is opposed by a public officer, it confers authenticity to the document." (Code civil français: § 1316-4).

Also, France legislator at the end of second provision of article 1316-4 of mentioned act has handed to State Council for determining the situation and regulation of the notarial document and its protection (Code civil français: §1316-4). Also, France State Council in Act no 2001-272 of 30th March 2001 established the substructure of notarial document through defining the electronic signature and the condition of uncertain electronic signature and in continues; in Act no 2005-973 of 10th August 2005 particularly and expertly, proceeded to the method of executing notarial electronic document and its protecting (Kainiya, 2009:21-24).

It is necessary to mention that France State Council in the recent act predicts some technical and security conditions in relation to creating and protecting electronic documents in official authorities that the notary office should observe these conditions and provide this place for notary offices' authorities or any official authorities to regulate notarial documents based on the form
except paper base. It should be said that notary officers who present the services of electronic
certificate, also regulation and signers of notarial electronic documents, play the most important role
in the cyber and electronic world in France (Kainiya, 2009:61).

**Secure Electronic Document**

The electronic documents which are regulated without the presence of official authorities or
out of their capability scope are private electronic documents and they are not profited from
advantages and consequences of notarial documents. Therefore, a Secure electronic document is set
in the category of private electronic documents based on the quality of issuing, but according to Iran
Electronic Commerce Law, the characteristic of being safe brings several important features for the
electronic document such as issuing the document which is satisfied from attributed person and
there is a perfect certainty about its complete and unchangeable existence. Therefore, private
electronic document with a Secure signature or a Secure electronic document or a Secure data
message is a data message that the accuracy of issuing of its electronic signature by document signer
is affirmed by official authorities which is called "agencies for services of electronic signature
certificates" and is stored by a Secure information system and is available in case of necessity.

The Secure electronic signature and data message are "valid and reliable documents" in
article 14 of Iran Electronic Commerce Law by judicial or legal authorities and based on article 15
of same law to Secure data message and electronic signature provides: "the validity of a secure "data
message", secure electronic record and secure electronic signature may not be questioned or denied;
only a claim of forgery of a "data message" or a proof of its invalidity on a legal basis may be
considered". In other words, legislator for Secure data message and electronic signatures considers
the same legal consequences which are deliberated about notarial documents in article 1292 of civil
code. Certainly, this validity is not considered for these kinds of documents because the attribution
accuracy of electronic signature attached to Secure data message (Secure electronic document) is
affirmed to the signer from third authority (agency of electronic signature certificate). Establishing
agencies for electronic signature certificate is for parties' identity in electronic communication.
Along this matter, article 16 of Iran Electronic Commerce Law provides: "any "data message"
recorded and retained by a third party in accordance with the provisions of article 11 of this Law, is
deemed valid". Thus, the attributed accuracy of Secure data message and electronic signature to its
drawer and approval requirement from righteous official authority is a fact which is undeniable.
Therefore, one of the conditions for establishing a safe connection is receiving safety in relation to
signer's identity. For this purpose, an office which is called "services for electronic signature
certificate" is predicted in Iran Electronic Commerce Law and also in Uncitral Model Law on
Electronic Signature (2001).

**Simple electronic document**

Another kind of electronic documents is the document which is signed with simple electronic
signature. The simple electronic signature is a signature which does not have the conditions of
Secure electronic signature but is considered as the concept certificates of an electronic signature in
the provision (j) of article 2 in Iran electronic commerce law and provision (b) of article 2 in
Uncitral Model Law on Electronic Signature (2001) (Uncitral, 2001: §2.1). In another word, the
simple electronic signature can be interpreted as handed signature in private documents and any
certificate of it including a name of person attached to an electronic letter or a scanned signature in
an electronic document, or biometric signatures, etc. Of course, it is clear that the evidential value of
this kind signature is less than the Secure electronic signature, but it doesn’t mean that it does not
have any evidential value ever. Therefore, the simple electronic document is a category of electronic
documents which based on the lack of official authority's intervention in its regulation is one of

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private documents. On another hand, based on the lack of signature certificate by office of issuing mentioned certificates, it is not in the category of Secure electronic documents.

In relation to acceptability of simple electronic signature as a signature in electronic communications the predication of article 7 of Iran Electronic Commerce Law can be used that provides: "where the law requires a signature, an electric signature may suffice". Also, article 9 of Uncitral Model Law on Electronic Commerce (1996) provides from one side that the electronic signature including simple or Secure should not be notified as denied one and from the another side, the simple and Secure electronic signature have the evidential power that is evaluated based on the ability of security for method of creating the signature, protection, sending the message, protecting all information, sender's identity and other options.

In relation to evidential value of this kind of signature, against the Secure electronic signature, there is not any article which should be allocated to this matter in Iran Electronic Commerce Law. But article 13 of this law about evidential value of a "data message" provides: "In general, the evidential value of a "data message" depends on the methods used to guarantee its security such as selecting a security measure that corresponds to the subjects and purpose of the "data message" ". Through prediction of article 13 of Iran Electronic commerce Law, it can be understood that the evidential value of this kind of signature to the measure of security of used assured methods is based on the importance of the matter and the purpose of communicating data message. In another word, for determining the evidential value of simple electronic signature typically judge's intervention is determinant to consider every matter. According to the mutuality of handed signature consequences and electronic signature (regardless of being notarial or private) and the principal about "be in writing of data message", it can be concluded that the private data message is the private document. It means that as the handed signature in private documents is deniable and questionable and after proving its originality in court, according to article 1291 civil code, it possess the validity of notarial documents, also simple electronic signature is undeniable and unquestionable.

**Comparison between Secure Electronic Document and Notarial Electronic Document**

For studying the differences of these two documents, first, the issuing constitutions and then the method of issuing each kind of the document should be proceeded and finally, the position of each of them should be exposed. In this section, the issuing construction of notarial electronic document and Secure electronic document in Iran Legal System and other legal systems is studied.

- **The Constitution of Issuing Notarial Documents**

In Iran Law, the institution which is the administrator of regulating and registering for notarial documents is notary offices and for defining the notary offices, we can mention the article 22 of Notaries Public Manual in 1938 and article 1 of Notaries Association of 1976. Article 1 of Notaries Association of 1976 provides: "Bureau official documents of the ministry of justice and in accordance with applicable laws and regulations to regulate the registration of official documents of the organizations and duties of the office rules and regulations about it". But, after the victory of Islamic Republic of Iran revolution and change in Constitution Law, based on article 156 and 157 of this law at 1979 and reforming article 157 in 1990, duties of justice minister are assigned to head of judiciary. Therefore, based on article 1 of mentioned law, the notary has a legal personality and is considered as legal persons and public law. Of course, legal personality of notary is not an undependable personality and it is established by Registration of Documents and Landed Properties Organization and depends on judiciary.

Article 2 of Notaries Public Manuals 1938 about defining notary office provides: "A notary office is administrated by management and responsibility of a person who is called notary officer".

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Also, in article 2 of Notaries Association in 1976 about notary office provides: "Personal responsibility is the administration office official documents that comply with the provisions of the law and according to the Organization of Deeds and Properties has attached to appointed Minister of Justice Consultative Association of notaries and in accordance with the notification and called exordium". These articles include the followed cases:

- Administration of the Notary office is by notary officer;
- Determining and choosing of notary officer is by Organization of Deeds and Properties;
- For appointment of notary officer , the idea of Minister of Justice Consultative Association of notaries will be asked;
- The judgment of notary officer will be notified by Minister of Justice (in the present judicial Organs, the notary officer is appointed by head of Judiciary);

In relation to duties of Notaries, article 49 of Registered Law provides: "the responsibility of the offices are as follows:

- Signing the documents in accordance with the provisions of law;
- The education of registered documents to person who are certified in accordance with the provisions of a little education;
- Verifying the authenticity of signatures;
- Accepting and maintaining the integrity of their documents;

In France Law, the notary public is an official authority who is responsible to recognize the private documents and contracts. The first article of act 45-2590, 2nd November 1945 in relation to notary public provides: "Notaries are public officers, established to receive all acts and contracts to which the parties should or want to give the character of authenticity attached to acts of public authority, and to ensure the date, retain the deposit in and deliver large shipments" (Després 2008, pp. 22-83).

Therefore, in France, notary officers are controlled by ministry of justice and their appointment is applied through issuing notification. The notary officer in France has a public and official position that has the responsibility of regulating all documents and contracts and protecting document as deposit (Mohseni, 2014:109).

According to what has been said, the organ which is responsible for regulating notarial documents in Iran and France is the notary public. In Iran, the notary public is a legal and authority depends on the judiciary that is responsible for regulating and registering notarial documents which are handled independently without financial dependency on the political dominance. The notary public is a legal and civil center which is a relation between citizens and sovereignty and the most important duty of this organ is to guarantee and ensure the legal and economic security of society. The notary officer at the heat of this organ has the independent responsibility individually from government and dominant authorities and through regulating documents precisely, it has a sensitive role for preventing unjustified disputes and reducing people revocations to justice courts. Helping the insurance of society legal hygiene through stabilizing citizens' ownership in relation to their properties, recognizing contracts and agreements and receiving some government incomes are the other duties of this organ.

**Organs of Issuing Secure Electronic Documents**

In electronic commerce, exchange of documents electronically has a significant importance. Therefore, providing security and ascertaining the validity of appointment of a document to its legal and natural drawer persons is very important. According to Electronic Commerce Law, the electronic certificate generally includes official approval of a text, signing or any other electronic document from an organ which is appointed for this purpose through law and having expertise and dominance on legal standards. By applying digital signature method or the signature based on...
asymmetric encryption of entire document, confidentiality of information (necessarily) and the security of data are guaranteed. But, an important and unsolved problem is remained that is the guarantee of signer's identity. Actually, the most important effect of the signature is the relation of the document with whom the signature is related to legally. The Secure electronic or digital signature is not able to guarantee the signer's identity by itself. Therefore, creating a method for guarantee the signer's identity is necessary.

For defining the certificate, it can be said when registering of a relation or an electronic signature has been done in an organ which has its authority, the relation and signature are certificated officially and in this relation article 16 of Electronic Commerce Law provides that "any "data message" recorded and retained by a third party in accordance with the provisions of article 11 of this Law, is deemed valid". Therefore, the accuracy of appointment of Secure data message and Secure electronic signature to its sender or signer and the necessity of its approval from official and righteous third person is a fact which its importance is undeniable. The third authority in relation to Iran Electronic Commerce Law and Unictral Model Law on Electronic Signature (2001) is called "agencies for electronic signature certificate" or "agencies for electronic services" or "certificate authorities". According to article 31 of Electronic Commerce Law, "Certification Service Providers are established to provide electronic signature services nationwide. These services consist of generation, issuance, transmission, confirmation, dismissal and update of electronic signature certificates". Thus, the duty of electronic signature certificate offices is to determine signers' identity and consequently, authenticating the electronic information.

As it is interpreted from the ordinance of mentioned law, this ordinance is commonly suggested from Ministry of Commerce, Ministry of Communication and Information Technology, Ministry of Economy and Finance, Ministry of Justice and President Deputy Strategic Planning and Control. Although preparation and codification of related instructions has been done in Ministry of Commerce and after its complementarity, it has been affirmed by mentioned authorities.

The provision (c) of article 1 of this ordinance in defining electronic certificate provides: "Electronic data include information in relation to the center of issuing certificate, owner of certificate, date of issue and expiry, owner's public key and a serial number which are produced by the mediate center in a way that any person can rely on the accuracy of connection between public key and its owner".

It is predicted in construction 1999/93/CE at 13th December 1999 of Europe parliament and council for establishing agencies for issuing electronic certificate in Europe for affirming and approval of data which are attached by a signature and presenting the necessary certificate. Article 2 of this construction, the member states are permitted to establish the electronic services agencies of protecting the presented agencies based on mentioned conditions in construction. Based on this fact, the act of 2001-22007 30th March 2001 of France council in relation to definition of electronic certificate (provision 9 of article1) and valid electronic certificate (provision 10 of article 1) has counted the necessary condition for valid electronic certificate.

In Electronic Commerce Law, after defining these agencies, the related details for establishment of these agencies and their kind are devolve on ordinance at article 32. In this relation, as it is mentioned, an ordinance has been ratified by Council of Ministers at 2/9/2007 observed article 32 of Electronic Commerce Law as "Executive Ordinance of Article 32 Electronic Commerce Law". In addition to this ordinance, the Participation of Planning and Economy Affairs of Ministry of Commerce has published a document which is called" the Policy of Root Electronic Certificate" at 22/10/2007 that all kind of these agencies can be extracted and expressed from the combination of these two documents.

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The mentioned ordinance that actually is the application of article 32 of Electronic Commerce Law for determining and explaining the responsibilities and dispositions of establishment and this ordinance determines the execution of these agencies activities for presenting services for issuing electronic signature. In the other words, the main role and duty of ordinance is determining the legal qualified authorities in relation to issuing the electronic certificate and exposing their responsibilities and authorities. Also, policies and constructions of issuing certificates, substructures of public key and related definitions for used expressions in ordinance are considered by cabinet. Generally, in mentioned ordinance, four related and qualifies authorities for issuing electronic certificate have been established which have different duties and authorities as follows:

- The Council Certificate Electronic State Policy (Article 2 of Ordinance)
- The Electronic Root Certification Center (Provision (a) Article 4 of Ordinance)
- The Common Electronic Certificate Center (Provision (b) Article 4 of Ordinance)
- The Agency for Registering Electronic Certificate (Provision (b) Article 4 of Ordinance)

In Uncitral Law, article 9 of Uncitral Model Law on Electronic Signature (2001) provides just a general rule about these agencies and assigns all related details for establishing and the method of governing these centers to states laws. This article in relation to explaining the presented operation of electronic certificate services provides:

- Where a certification service provider provides services to support an electronic signature that may be used for legal effect as a signature, that certification service provider shall:
  (a) Act in accordance with representations made by it with respect to its policies and practices;
  (b) Exercise reasonable care to ensure the accuracy and completeness of all material representations made by it that are relevant to the certificate throughout its life cycle or that are included in the certificate;
  (c) Provide reasonably accessible means that enable a relying party to ascertain from the certificate:
    (i) The identity of the certification service provider;
    (ii) The signatory that is identified in the certificate had control of the signature creation data at the time when the certificate was issued;
    (iii) That signature creation data are valid at or before the time when the certificate is issued;
    (d) Provide reasonably accessible means that enable a relying party to ascertain, where relevant, from the certificate or otherwise:
      (i) The method used to identify the signatory;
      (ii) Any limitation on the purpose or value for which the signature creation data or the certificate may be used;
      (iii) That the signature creation data are valid and have not been compromised;
      (iv) Any limitation on the scope or extent of liability is stipulated by the certification service provider;
    (v) Whether means exist for the signatory to give notice pursuant to article 8, paragraph 1 (b), of this Law;
    (vi) Whether a timely revocation service is offered;
    (e) Where services under subparagraph (d) (v) are offered, provide a means for a signatory to give notice pursuant to article 8, paragraph 1 (b), of this Law and, where services under subparagraph (d) (vi) are offered, ensure the availability of a timely revocation service;
    (f) Utilize trustworthy systems, procedures and human resources in performing its services.
2. A certification service provider shall bear the legal consequences of its failure to satisfy the requirements of paragraph 1.

The Method of Issuing Documents

The method of issuing and registering formality of electronic and Secure electronic notarial document in Iran legal system and other legal systems are studied in this section.

a) the Formality of Registering Notarial Document

The formal and substantive conditions are provided in Iran legal system for registering and regulating of document. Regulating document in notarial printed papers, having stamp and the number of document papers, the necessity of seal and signature, number and date of document (article 55 of Iran Registering Documents and Landed Properties Laws), stipulation of document kind, written in Persian language (article 15 of Constitution of Islamic Republic of Iran), crossing out and obstructing document and books are forbidden (article 62 of Iran Registering Documents and Landed Properties Laws), expressing contracting parties' domicile (article 17, Ordinance of Notary Publics at 1939), writing in two copies (article 21 of Notary Publics Law at 1976), reading document and signing by contracting parties (article 65 of Iran Registering Documents and Landed Properties Laws), the necessity of registering all document contents (article 56 of Iran Registering Documents and Landed Properties Laws), etc., can be mentioned from formal regulation of regulating document.

It should be reviewed in relation to substantive conditions of document that although the notarial document is regulated and registered by official authority, some of substantive conditions of document are related to notary officer. Because he is an official authority for occurrence of contract and he is the person that the contract is concluded through his presence. Unilateral legal act is performed and confession is satisfied in his presence too. Therefore, his capacity and capability are necessary for regulating and registering the document. However, he is not obligor and oblige of the document, not acknowledger and acknowledge, not legatee and executor (Hamiti, 206:76). The notary officer based on article 1287 Civil Code and article 70 Registering Documents Law should be regulated by the Registering Documents and Landed Properties Organization or notary offices or by official authorities who have the validity for its regulation. Therefore, if the document is not regulated according to regulations or by official authorities and out of their authorities, it will be discharged from notarial document validity and also, the document which is registered based on regulations is notarial and all its content and attached signatures will be valid, unless it is proved that the document is forged (Adabi, 2009:174).

One of substantive conditions for regulating document is checking contracting parties' capacity by the notary officer. This condition means that contracting parties should be sane and mature. Article 190 Iran Civil Code mentions this condition briefly and in provision 2 confines "contracting parties' capacity" as one of the principal conditions for accuracy of contract. Other substantive conditions which are ascertained by notary officer are the contracting parties' will, ascertaining the contracting parties' ownership, contract legitimation and the lake of oppression with law, public order and good moral.

France is one of the progressive countries in the field of issuing the notarial documents in the world and provides especial regulations for issuing notarial documents. In this country, issuing the notarial documents has a significant importance and notary offices perform as government arms. Therefore, in France Legal System, the established laws related to registering and regulating document are because of Vantvz Laws from Jus Cogens and therefore, they cannot be ignored in regulating documents to proceed to regulating and registering documents and especial dispositions.
should be considered. Thus, regulating and registering of documents in France divides to two categories of conditions including substantive and formal ones like other countries such as Iran.

For issuing the notarial document, notary officers should receive first a contract which is registered officially according to law's judgment or parties' application and apply to register it officially. Based on article 1317 France Civil Code four conditions are necessary for the notarial (valid) document as follows:

- It should be issued by empowered public officer
- The public officer issues such documents at the place where it was written and with the requisite formalities
- It is established and stored in conditions fixed by decree in Conseil d'Etat
- Issuing the document should be in the range of empowered public officer's capability then, notary officer's mission has started. The services which are proceeding by him are composed through three dimensions:
  a. Truthfulness and honesty in regulating the document (being trustworthy and impartial)
  b. Observing legal regulation in regulating the document
  c. The commercial features of presented services (the method of presenting services for customers)

Therefore, the notary officer should observe some substantive regulations after ascertain persons' identity to issue the document with mentioned features and all his measures are limited to formal regulations in writing the document which are provided in Law.

b) The formality for registering secure electronic documents

As it is said the electronic certificate is the birth certificate that defines your real identity in cyber form for electronic affairs and the application of electronic certificate is actually using the electronic signature and information encryption. While in internet, if you intend an electronic communication with cyber identity, you can do business by trust on opponent party's electronic signature and introduce yourself through your electronic signature.

Generally, the electronic certificate is a document that:

d. It is issued and signed by a trustworthy person
e. It is based on an identity affirmation which is done by a center
f. It has a series of information and a person or organization's public key
g. Its capability is provided in the certificate
h. It has a specified and limited validity

Issuing the electronic certificate is performed by the agencies for issuing electronic certificate and through three methods including independent persons' certificate, dependent persons' certificate to government department and dependent persons' certificate to nongovernment department. The applicant of certificate after referring to notary office and being notified about the needed list of documents for issuing certificate will provide them and deliver to related officer. In the notary office, the applicant should fill and complete the application form of electronic certificate and notary officer should affirm it. Thus, the recognition section and ascertaining applicant's identity are done in the registering book. It will be backed to applicant if any defect and fault are seen in any part of the form. The registering officer checks the existed information based on registered information in the applicant form and if any contradiction is there, the applicant is asked to correct the form. If the process of identity ascertain is done successful, the smart card or token will be given to registering officers. They generate the applicant's electronic certificate in his presence and insert in smart card. Then, the electronic certificate will be delivered to applicant and he writes his name
and family name then signs it and pays the specified charge based on the schedule tariff and at the bottom of the form the date and time of issuing certificate will be written in by notary officer.

**Conclusion**

It is understood through mentioned matters that for regulating the electronic document, the legal systems are applied in two methods. Some countries like France and USA by approval or modification of rules expressly have accepted the electronic document as a writing which is generated, sent, received and stored by electronic devices and is reliable in the place of a claim and defense and have approved some rules for regulating it. But in some countries like Iran, for doing such an important action, it is necessary to apply for interpreting the traditional regulations which observe paper document law and combining with modern conceptions of Electronic Commerce Law.

In relation to the equality of electronic document function with paper document based on provision (a) of article 9 of Uncitral Model Law on Electronic Commerce, also provision (b) of article 48 of the fifth Development Plan of the Islamic Republic of Iran and article 6 of Iran Electronic Commerce Law, it can be concluded that the electronic document has triple aspects of paper document: be in writing, reliable in the place of a claim and a defense and signing and according to this aspect it is equal to traditional documents functionally. Therefore, it can be said that wherever a document is necessary, it can be replaced by the data message which can be used as the document. For affirming this statement, Article 12 of the same law has clarified that "Evidence and any supporting document may be in the form of "data message". The evidential value of a "data message" by no means is repudiated solely due to its form and framework at any court or government office".

Based on the accepted categories in Civil Code about traditional documents, the electronic documents can be divided to two kinds of notarial and private electronic documents and through studying Electronic Commerce Law, the private documents can be divided to certain and uncertain private documents.

In Iran Law, the notarial electronic document is an official document which is regulated and registered electronically and the private electronic document with the Secure signature or Secure electronic document is a data message which its accuracy of issuing electronic signature through signatory is affirmed by an official authority that is called the "agency for issuing electronic signature certificate" in Iran and is stored by a Secure information system and it will be available when it is needed while this authority does not have any supervision on the document contents, ascertaining capacity, contracting parties' identity, etc. Also, this certificate affirms just the signatory's identity and belonging of used public key in the signature, but can this certificate prove who uses these keys in the issuing the Secure electronic document? Is it possible to prove that the signatory will use them in which cases? It seems all these answers are negative. It can be concluded from what has been stated that there should be a difference between the notarial document and the document with Secure electronic signature. Because the notarial document even in electronic form or non-electronic form has more legal and executive validity. The notarial document receives its all validities and advantages through official agent's intervention in its regulation. The official authorities are a privileged witness and observer who are assigned by Law for registering events, ascertaining post, guiding persons and observing legal regulations and their signature spoil any doubt about the accuracy in relation to happening legal act and its attribution. Therefore, although the document with a Secure electronic signature has a complete validity and can be invoked, the executive capability without referring to court is also allocated to the notarial document and
undoubtedly, it does not have the high position of notarial document based on executive and evidential power.

The other point is that the electronic notarial document is the notarial document which is endowed with executive power. But generalizing this power to Secure electronic document needs legislator's stipulation on special cases and the principal affirms this subject that the Secure electronic document lacks the executive power.

Unfortunately, it should be said that Iran law is silent in the field of electronic notarial document and developed countries such as France and USA have developed in recognizing and using this kind of document that it is recommended Iran legislator to use these achieved suitable experiences in this field.

Finally, it should be mentioned that the legal establishment of Secure electronic document has been for creating security and mental calmness for exchanging documents and contracts in electronic commerce. Thus, based on the quality of issuing, this kind of document will be placed in the category of private documents. But the notarial documents have consequences and legal security based on economic development and notary offices are the arms of the judiciary and devices for reducing the claims.

**Recommendations**

A plan has been applied in France legislation in relation to give effect to an electronic document and especially, a notarial electronic document is used that can be applied as a suitable method in legislative. The related legislator instead of approving many cases with technical unusual expressions for legal society and public, just contents to add short provisions to existed article of Civil Code in relation to documents and then through regulation state ordinances provides supporting of electronic documents and thus, first, to evaluate the legal gap and secondly, to provide the simple understanding and attracting this modern phenomena in its own society legal dictionary. In the other words, France legislator by approving the necessary legal articles specially in provision (b) article 1317 Civil Code, has defined the electronic document, has accepted it and through codification of related ordinances has provided the base for applying and learning the electronic documents in different fields such as the scope of regulated notarial documents in notary offices. In return, Iran legislator has codified the related law to electronic commerce based on electronic signature law through Uncitral Model law on Electronic Commerce and even it has explained the conditions and consequences of Secure data message (document). But in relation to electronic notarial document, it has not taken any position yet. Therefore, it is necessary that in Iran where there is same written law as France, instead of translating and adapting Uncitral Model law, its method of legislation should be sampling and the set of applying and expanding these methods should be provided by correction related expressions in documents in Civil Code and accepting electronic documents in addition to affirming these documents validity in the official and judicial authorities through regulation an executive ordinance. It is so that all these options (6 to 25) are approved with scientific objections and unusual technical words independently. Nowadays, opposite Electronic Commerce Law, we experience the legal gap in the field of electronic notarial document in our country as far as for defining and accepting the validity of this kind documents which provides the acceleration of services besides formality and crystallization of contracts and we have to refer to traditional regulations of documents in Civil Code and Registration Law through incorporation their concepts with inserted definitions in Electronic Commerce Law and attempt to defines the definition of electronic notarial document. Therefore, although Iran Law has many similarities with France Law especially in registration affairs and notary offices, it seems that our country not only lacks the necessary regulations in this field but also it has not provided the
necessary base for approving the electronic notarial document. Thus, it seems that lawyers, the judicial, Registering Documents and Landed properties Organization, Association of Notaries Public Assistants for creating a necessary base, recognition and achieving to this important technology for developing state registering system to it and suggesting legal articles to the legislative power in the field of electronic documents and specially electronic notarial documents, backup regulation for accepting this kind of documents as evidence in official and judicial authorities, regulating the method of expertise and principal of criminal procedure. And finally, a big step should be paced toward applying and learning electronic documents with regulating and approving ordinance and notifying instruction.

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