

LEGAL CERTAINTY ON THE APPLICATION OF ELECTRONIC CERTIFICATES AS PROOF OF CONTROL OF LAND RIGHTS IN INDONESIA

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Abstract

This study aims to review; 1) What is the Legal Certainty for the Application of Electronic Certificates as Proof of Land Tenure in Indonesia? 2) How is the Electronic Certificate Arrangement as Proof of Land Tenure in the Land system in Indonesia? The research method used is evaluative descriptive research. Evaluative research is basically centered on final recommendations that affirm that an object of evaluation can be maintained, improved, improved or even dismissed in line with the data obtained. The results showed that; 1) Legal Certainty on the Application of Electronic Certificates as Proof of Land Tenure in Indonesia is interpreted by: Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning land certificates is in the form of laws and regulations, Has been based on facts that have been analyzed in the consideration section, Has been formulated in a clear way, where the Ministerial Regulation is prepared in a structured manner in accordance with the rules of drafting laws and regulations, this Ministerial Regulation is not easily changed considering its relevance to current conditions. 2) Regulation of Electronic Certificate as Proof of Land Tenure in the Land system in Indonesia as follows: Electronic certificate regulations as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning The land certificate is in accordance with the land law system in Indonesia, namely Law No. 5 of 1960 concerning Basic Regulations of Agrarian Principles, Law Number 11 of 2020 concerning Job Creation and Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 7 of 2019 concerning the Second Amendment to the Regulation of the Minister of Agrarian State / Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 1997 on land registration; Regulation of the Minister of Spatial Planning of the Head of the National Land Agency Number 1 of 2021 concerning Electronic Certificates in which it is explained about the Land Registration Procedure to obtain an Electronic Certificate including: Electronic Certificate Issuance is carried out with land registration for the first time Then Electronic Certificate Issuance through Media Transfer and then Electronic Certificate Issuance in the context of data maintenance, then an implementing regulation is issued from The above regulations are Government Regulation Number 18 of 2021 concerning management rights, land rights, flats, and land registration, where the implementation provisions have been regulated in article 84 paragraph (1) which states that the implementation and implementation of land registration can be carried out electronically, meaning that the procedure for analog and electronic land registration is not much different from its implementation to the process of issuing certificates both in the form of Analogues and Electronics.

Keywords: Legal Certainty, Application of Electronic Certificates, Proof of Land Rights Tenure.

INTRODUCTION

Background

Agrarian resources or natural resources in the form of the earth's surface called land, in addition to providing many benefits but also giving birth to cross-sectoral problems that have economic aspects, socio-cultural aspects, political aspects, defense and security aspects and even legal aspects. As a source of natural wealth found on land, it can be understood if land is believed to be a concrete form of one of the basic capitals of national development.

Land then becomes one of the objects of regulation that is quite complex in the land law system in Indonesia, both in terms of acquisition, management to dispute resolution that sometimes arises from ownership of land rights. Regulation regarding the ownership of land rights in Indonesia has been regulated since 1960, namely through Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles called UUPA.¹

Land is also under human control and management constitutionally stated in the Constitution of the Republic of Indonesia, namely the Constitution of the Republic of Indonesia Year 1945 in article 33 paragraph (3) which states that: Earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people²

The existence of land provisions in Indonesia certainly aims to change the fate of Indonesian citizens in relation to the control and ownership of land rights and to prevent misuse of land rights that do not belong to them. One of the basic things related to the UUPA regulations is related to land rights which include property rights, business use rights, building use rights, rental rights, use rights, land clearing rights and other rights stipulated by the UUPA. The acquisition of the above rights then needs to be registered with the National Land Agency (BPN) to obtain a certificate which is a guarantee of legal certainty of ownership of land rights. The mechanism for obtaining a certificate of land rights is regulated through Government Regulation Number 24 of 1997 concerning Land Registration.³

Based on statistical data from the Ministry of Agrarian and Spatial Planning / National Land Agency (ATR / BPN) until now there have been 72,315,659 land certificates that have been registered with a total area of 30,960,765 Ha, whose distribution consists of property rights of 66,011,341 certificates of business use rights of 15,770 certificates, building use rights of 5,320,176 certificates, use rights of 800,246 certificates, management rights of 5767 certificates and waqf land of 162,338 certificates. The data proves that various government programs related to the acceleration of national land registration have borne fruit, both through sporadic land registration and through the Complete Systematic Land Registration Program (PTSL) program. Of course, the implementation of land registration in order to obtain proof of rights in the form of certificates of land rights in the form of sheets of paper where the last form used is a green sheet of paper containing physical data and juridical data that pours the registration or certificate number, type of right, name of the right holder and letter of measurement so that through the certificate can be known the owner of the land and the area and form of the land parcel and records of changes or encumbrance of rights to the parcel of land. The certificate data is also stored at the Land Office in the form of a Land Book which

pours juridical data and a Letter of Measure which pours physical data on the land parcel. This has been going on for a long time since the enactment of the UUPA in 1960.⁴

However, even so, the ownership of land certificates as evidence of control over land rights is undeniably still a gap in the guarantee of legal certainty that has the potential to harm the people, such as the occurrence of forgery of land certificates, double land certificates or overlapping land certificates and the rise of land mafias so that various land disputes occur that ultimately harm the community, such as the recent one that occurred around December 2021 in the Cakung area of Jakarta North, there is a land mafia that forges authentic deeds and/or forgeries PT Salve Veritate letters involving employees to retirees of the National Defense Agency (BPN). This means that the certificate of land rights no longer guarantees legal certainty for the community.⁵

Related to these problems, the Government made new breakthroughs along with the development of the era in the era of the industrial revolution 4.0 which was able to keep pace with the increasingly complex dynamics of society, otherwise there would be legal stagnation which is known that the law will always lag behind the times. So that on January 21, 2021, a year ago, the Minister of ATR / BPN Regulation Number 1 of 2021 concerning Electronic Certificates was issued in which the Ministry of Agrarian and Spatial Planning (ATR) of the National Land Agency (BPN) was issued.⁶

The presence of this regulation then became a hot discussion in the community with various different responses. Some communities accept this plan as a form of modernization of land services which is expected to provide security, legal certainty and legal protection to land rights holders but not a few communities respond a priori to this plan as a very hasty plan and has not been supported by mature readiness that allows conditions of insecurity of land registration data and can lead to uncertainty of land rights. One of the mature readiness is for ordinary people who do not understand about electronic certificates, then the application of effective electronic certificates first urban or rural areas or government land / land first or community land and other possibilities that occur related to the existence of electronic certificates of land rights.⁷

Problem Statement

- 1) What is the Legal Certainty for the Application of Electronic Certificates as Proof of Land Tenure in Indonesia?;
- 2) How is the Electronic Certificate Arrangement as Proof of Land Tenure in the Land system in Indonesia?

THEORETICAL FRAMEWORK

The main theory or *Grand Theory* that is the basis of the analysis knife in this study is the Theory of Banking Law. The definition of a bank according to Law No. 10 of 1998 concerning amendments to Law No. 7 of 1992 concerning banking is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit

and/or other forms in order to improve the standard of living of many people.⁸ And explained in Law Number 21 of 2008 which states that banks with conventional principles are banks that carry out their business activities conventionally whose activities provide services in payment traffic. In carrying out its activities, conventional commercial banks apply two methods, namely setting interest on selling prices and purchase prices on their products or known as spread based, and applying fees in other services known as fee based.⁹

Furthermore, *Middle Theory* in this study uses the Hierarchy Theory of Legislation. Hans Kelsen in the "General Theori of Law and State" translation of the general theory of law¹⁰ and state elaborated by Jimly Assihiddiqie¹¹ under the title Hans Kelsen's theory of law among other things that legal analysis, which reveals the dynamic character of the system of norms and the functions of basic norms, also reveals a further peculiarity of law: law governs its own formation because one legal norm determines the way to create another legal norm, and also to some degree, determine the content of the other norms. Because, one legal norm is valid because it is made in a way determined by another legal norm, and this other legal norm is the basis for the validity of the first legal norm. Legal protection is all efforts that can ensure legal certainty, so as to provide legal protection to the parties concerned or who take legal action.¹² Legal protection is a protection given to legal subjects in the form of legal instruments both preventive and repressive, both written and unwritten. In other words, legal protection as an illustration of the function of law, namely the concept where law can provide justice, order, certainty, expediency and peace.¹³

Legal protection aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand. Legal interests are concerned with human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection is born from a legal provision and all legal regulations provided by the community which is basically an agreement of the community to regulate behavioral relations between members of the community and between individuals and the government that are considered to represent the interests of the community.¹⁴

Legal protection for every Indonesian citizen without exception, can be found in the Constitution of the Republic of Indonesia Year 1945 (UUDNRI 1945), for that every product produced by the legislature must always be able to provide legal protection guarantees for everyone, even must be able to capture the aspirations of law and justice that develop in society. This can be seen from the provisions governing the existence of equal legal position for every citizen.¹⁵

RESEARCH METHODOLOGY

1. Types of Research

This study was prepared using an evaluative descriptive research type. Descriptive research, is a systematic, factual and accurate picture or painting of phenomena or relationships between the phenomena investigated. The approach used in the study is an evaluative approach, where

the author intends to collect data on electronic certificates as evidence of land tenure. Evaluative research in its course is centered on final recommendations that affirm that an object of evaluation can be maintained, improved, improved or even dismissed in line with the data obtained. This research was carried out to obtain data and produce conclusions in the field¹⁶

2. Research Data Sources

Data sources in this study are divided into two parts, namely primary data sources and secondary data sources. A primary data source is a data source that directly provides data to the data collector; While secondary data sources are data sources obtained by reading, studying and understanding through other media sourced from literature, books, and documents¹⁷.

The primary data sources in this study were interviews and observations. The results of interviews with informants that have been specified in the research plan have been carried out at the time of the study.

Secondary data sources are: from scientific journals and books to support the research process.

3. Data Collection Techniques

This data collection method with literature research or commonly called literature study, this method is carried out to obtain secondary data both in the form of primary legal material and secondary legal material. After the inventory, a review is carried out to make the essence of each regulation concerned. Data is collected by studying literature sources in the form of literature books, laws and regulations, and collecting existing data in the form of data that is directly related to the research conducted.¹⁸

4. Data Analysis

The research technique in this study is descriptive analytical, where the analysis is carried out critically. The data collected in this study will be analyzed descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic / verstelen*).¹⁹

RESEARCH RESULTS

Legal Certainty on the Application of Electronic Certificates as Proof of Land Tenure in Indonesia

Land certificates in the form of physical documents or so-called analog certificates, in its development until now there are still various problems, namely even though it has received recognition in the UUPA, this certificate does not guarantee the legal certainty of the owner because in its own regulations it provides an opportunity where as long as there are other parties who feel they own land can sue the party whose name is listed in the certificate civilly to the General Court, or sue the Head of BPN/Head of the Land Office concerned to the Negara Administrative Court, or a lawsuit involving the technical administration of its issuance.²⁰

Based on Article 32 paragraph (1) of Government Regulation Number 24 of 1997, the publication of land registration adopted is a negative publication system, namely certificates are only strong evidence letters and are not absolute proof rights (Sutedi, 2007). This means that the physical data and juridical data listed in the certificate have legal force (Permana et al., 2014).

Furthermore, Article 32 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration has weaknesses, namely that the state does not guarantee the correctness of the physical data and juridical data presented and there is no guarantee for the owner of the analog certificate because at any time it will get a lawsuit from other parties who feel aggrieved by the issuance of the certificate.²¹

Based on statistical data from the Ministry of Agrarian and Spatial Planning / National Land Agency (ATR / BPN) until now there have been 72,315,659 land certificates that have been registered with a total area of 30,960,765 Ha.

Based on these data, it proves that various government programs related to the acceleration of national land registration have produced results, both through sporadic land registration and through the Complete Systematic Land Registration Program (PTSL) program.

However, in fact, the certificate of land rights which is the result of various government programs is undeniably still leaving loopholes in terms of guaranteeing legal certainty that has the potential to harm the community, such as several cases that occur, namely cases of forgery of land certificates, cases of double land certificates or overlapping land certificates and the rise of land mafias are the causes of various land disputes that will eventually detrimental to society. This means that land rights certificates no longer provide legal certainty for the community (Alimuddin, 2021). And this is what is noted that land certificates in physical form do not guarantee legal certainty.²²

Then along with the times, in this technological era, the Government through the Ministry of Agrarian Affairs Head of the National Land Agency made a new breakthrough that was able to keep pace with the development of technology that was all digital, more effective and efficient and more modern because when there is a change in society, of course, the legal needs of the community also want a change, especially in the land sector and this can no longer be prevented.

In addition, in order to realize the modernization of land services, the Government through the Ministry of Agrarian Affairs of the National Land Agency implements electronic-based land services, up to the documents produced in the form of electronic documents.

The launch of electronic land certificates began in 2021 with the issuance of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 1 of 2021 concerning Electronic Certificates, signed by Agrarian Minister Sofyan Djalil on January 12, 2021. This policy is in order to further implement the provisions in the Job Creation Law (Law No. 11 of 2020 in the Land cluster, that land sector services are transferred in electronic form including electronic proof of rights documents).

As we all know that the institution of land registration in Indonesia only emerged after the issuance of Government Regulation No. 10 of 1961 which regulates Land Registration. The Belaid is an implementation of the provisions of Article 19 of the UUPA. The implementation of land registration is carried out through land registration for the first time and maintenance of land registration data. The first Land Registration was land registration for land parcels that had never been registered according to PP 10 Th 1961 or PP 24 Year 1997. Meanwhile, the maintenance of land registration data is land registration so that the data stored in the Land Office is in accordance with the data in the field (accurate).²³

As a result of the process of land registration activities, the issuance of a proof of rights document that serves as a strong evidentiary tool (Article 19 paragraph (2) letter c). The document of proof of land ownership rights is called a Certificate, which contains a copy of the Land Book and Measuring Letter sewn together with a cover paper whose form is determined by the Minister (Article 13 paragraph (3) PP No.10 of 1961). PP 24 of 1997 specifies that certificates of land rights, HPL and land endowments can be in the form of one sheet of documents containing physical data and juridical data required.²⁴

However, until now the analogous certificate that is still valid is a land certificate as regulated in PP 10 of 1961. Even though the Ministry of Agrarian and Spatial Planning / National Land Agency (ATR / BPN) has implemented electronic services during 2019-2020. There are four services that have been integrated into electronic services such as Electronic Right of Liability (HT-el), Land Registration Certificate (SKPT), Land Certificate Checking and Land Value Zone Information (ZNT).²⁵ There are 4 (four) things related to the meaning of legal certainty, namely:

- 1) That the law is positive or in the form of legislation (*gesetzliches recht*), this law is based on facts (*tatsachen*), not a formulation of judgment that will later be made by the judge, the fact must be formulated in a clear way so as to avoid errors in meaning and easy to apply, the positive law must not be changed frequently. This interpretation is basically not in terms of limiting a rule from legal stagnation, but as long as at the level of application of this regulation its implementation is still effective in society and in accordance with the times, the regulation has no urgency to be changed. The Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates has clearly been a positive law which since its enactment on January 12, 2021 has been classified as a hierarchy of laws and regulations in Indonesia as stipulated in Law Number 15 of 2019 concerning amendments to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. The position of Ministerial Regulations formed after the enactment of the law, whether formed on the basis of orders of higher laws and regulations or those formed on the basis of authority in certain areas of government affairs vested in the minister, qualifies as legislation.

- 2) The formulation of laws based on facts (tatsachen). The facts in question are related conditions that then background the urgency of forming laws and regulations, this can then be known by referring to the considerations of the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates. In the weighing section, it is explained that to realize the modernization of land services in order to improve indicators of ease of doing business and public services to the community, it is necessary to optimize the use of information and communication technology by implementing electronic-based land services, where the results of land registration activities are published in the form of electronic documents. So in this case it can be seen that the current condition of land services still requires improved services to the community which requires synergy with the use of information and communication technology. Where technological and information progress is one indicator of the modernity of a country.
- 3) That fact should be formulated in a clear and easy-to-apply way. Clear in the sense that it does not cause doubts (multiinterpretation) and logical so that it becomes a system of norms with other norms that do not clash or cause norm conflicts. Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates is prepared in a structured manner in accordance with the technique of drafting regulations, starting from the title, the preamble consisting of phrases with the grace of God Almighty, the position of the framer of the regulation, namely the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia, Consideration as explained above, the legal basis where in this regulation consists of 14 legal bases, after which the preamble is closed with a dictum. Furthermore, it enters the torso section consisting of general provisions (Article 1), regulated subject matter (Articles 2-19), transitional provisions (Article 20) and closing provisions (Articles 21-22). After the description of the torso of the ministerial regulation enters the concluding part as well as the appendix. In the appendix in detail, examples of electronic document formats consisting of measuring drawings, spatial drawings, land plot maps, spatial maps, measuring letters, floor plans, spatial measuring letters and electronic certificates (e-certificates) are presented.
- 4) That positive law must not change often. This interpretation is basically not in terms of limiting a rule from legal stagnation, but as long as at the level of application of this regulation its implementation is still effective in society and in accordance with the times, the regulation has no urgency to be changed. Regarding the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates, which at the application level is still at the preparation stage to be immediately applied to the general public, of course, in a long time this regulation will not be changed.

Apart from the theoretical meaning that refers to the theory of legal certainty, it is further necessary to understand that in the end the output of a regulation must be able to guarantee legal certainty for the community if in the future problems arise related to the output of the regulation. As is the case with analogous certificates where legal certainty for parties holding proof of land rights in the form of certificates has been guaranteed by law²⁶.

Electronic Certificate Arrangement as Proof of Land Tenure in the Land System in Indonesia

Based on the provisions mentioned above, the author argues that electronic documents can be categorized as formal and material requirements of electronic documents in order to have evidentiary value, namely first, in the form of electronic information created, forwarded, sent, received or stored, which can be seen, displayed and / or heard through a computer or electronic system, including writing, sound, images and so on that have meaning or meaning or can be understood by people who are able to Understand. The second value is declared valid if it uses or comes from an electronic system in accordance with the provisions stipulated in the Law. The third evidentiary value is considered valid if the information contained therein can be accessed, displayed, guaranteed to be intact, and can be accounted for so as to explain a situation.²⁷

Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, as a technical rule of the ITE Law, contained in Article 1 Numbers 4 and 5, is explained as follows: Article 1 Number 4, Electronic System Operator is any Person, state operator, Business Entity, and community that provides, manages, and/or operates Electronic Systems individually or jointly to Electronic System Users to personal needs and/or the needs of others; Article 1 Number 5 Electronic System Operator Public Scope is the implementation of Electronic Systems by State Organizing Agencies or institutions appointed by State Organizing Agencies.

This regulation is regulated regarding electronic system operators, where there are electronic system operators of the public scope which are State organizing agencies or institutions appointed by State organizing agencies. So in this case, the administration of the State based on an electronic system can be applied to various aspects of the field of government, including in the land sector, even specifically can be applied to the mechanism of the land registration system and its output.²⁸

In addition, for the public who must also know that in electronic certificates there is an Electronic Signature or called TTE, where analog certificates of document signing need physical presence, but through certified TTE their presence is no longer needed, Then related to the issue of protection and validity of TTE signatures, the Ministry of Communication and Information Technology (Ministry of Communication and Information) already has rules regarding the use of TTE, namely in the Republic Law Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. TTE will be declared valid if issued by the Indonesian Electronic Certification Operator (PSrE) and recognized by the Ministry of Communication and Information. This

certified TTE has the legal force equivalent to wet signatures and the validity and authenticity of the signature can be accounted for. This certainly supports productivity and digital or online work systems during a pandemic. Then if the community wants to have a certified TTE, it must meet the criteria set by the government or as stated in Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions Article 60 paragraph (3), namely:

Certified Electronic Signatures must meet the validity of legal force and legal consequences of Electronic Signatures, using Electronic Certificates made by Electronic Certification Providers (PSrE) Indonesia and made using certified Electronic Signature Making Devices.

With a certified TTE, services, especially in the administrative sector, will become easier, and can even save budget because there is no need to spend money sending documents, file printing costs, travel costs, to reduce the intensity of the signing process time because this digital innovation has become a solution.²⁹

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates: Electronic land registration leads to the issuance of electronic proof of ownership of land rights. Regarding the issuance of electronic certificates, it is regulated in article 6 of the Minister of ATR / BPN No. 1 / 2021 concerning Electronic Certificates. This also applies to Law No. 11 / 2020 concerning Job Creation which regulates the land sector as well.³⁰

Therefore, juridically the rules of the Electronic / Digital Certificate or what is called e-Certificate have a legal position, namely the legal position in terms of the Criminal Procedure Law and the legal position in terms of the Civil Procedure Law, with the following explanation:

1) Reviewed from the Code of Criminal Procedure

Law enforcers such as Police, Prosecutors and Judges, have the authority to enact and empower the law, what is formulated in the law is the center of reference in carrying out their duties.

Matters related to proving e-certificate documents recognized in the criminal procedure law are contained in article 184 paragraph (1). Which states that valid evidence is: witness statements, expert statements, letters, instructions and statements of the defendant. In the criminal procedural law evidentiary system that adheres to the *stelsel negatief wettelijk*, only legally valid evidence can be used for evidence.

Article 184 paragraph (1) has determined in a limited way the legal evidence, in connection with the advancement of the technological era, has made a new social order and value system, where the government issued a policy to replace paper land certificates into electronic certificates in the form of electronic documents. Thus bringing influence in the legal order and criminal justice system.

With the enactment of regulations on land e-certificates, there are new arrangements on evidence in the form of electronic documents. As long as the electronic certificate comes from an electronic system operating reasonably meaning that there is an identity code that explains the details of ownership of land rights, then the Judge must accept the electronic evidence in

the trial. Article 5 of the Regulation of ATR/BPN expressly states that the recognition of e-certificates is a valid means of proof for the trial. This is a new breakthrough in the development of evidence in Indonesian law of evidence. Thus, this evidence can be used as a force for resolving land disputes in court.

2) Reviewed from the Civil Procedure Law

Civil procedural law regulates all provisions that provide an opportunity for legal subjects to be able to regain their rights without violating the law. One of the processes in civil procedural law is evidence.

Civil procedural law in Indonesia is regulated in two Dutch heritage law products, namely: HIR (Herziene Indonesische Reglement) and R.Bg (Rechtsreglement voor de Buitengewesten). The regulation of evidence in Article 1866 HAP is in line with Article 164 HIR and Article 284 B.Bg which explains 5 (five) types of evidence that can take the form: writing, testimony, oath, confession, and allegation.

Under the civil procedural law, a decision can be taken by a judge if it is based on the availability of valid evidence. The tool that is considered valid refers to those that have been stipulated in H.I.R and R.Bg. However, currently, the regulation of evidence has developed considering the beginning of the use of digital documents as valid legal evidence. In this case, the arrangement of electronic certificates produced with digital poses from registration to issuance. Moreover, the 2021 agrarian ministerial regulation has explained that land e-certificates can be used as valid legal evidence as article 5 of the ministerial regulation provides legal force to be used as valid evidence in procedural law and the addition of a new type of evidence in court, namely e-certificates.

The transfer of written data to electronic data has been regulated in advance by Government Regulation Number 18 of 2021 that land registration can be carried out electronically. That e-certificates are open evidence and can be used in trials. This can then be juxtaposed with Article 137 HIR which states "Parties may demand to see the affidavits of their opponents and vice versa, which papers are submitted to the Magistrate for that purpose".

To maintain the principle of openness of evidence at trial, the provisions of article 137 HIR must also be applicable to electronic certificates when the opposing party requests to be shown.

Electronic certificates in the form of electronic documents can be categorized as electronic evidence that has evidentiary power that is equated with letter/writing evidence made on paper and its printouts as a form of valid proof. This is a reference to the legitimacy of the position of the e-certificate to be used as evidence in court as long as the data stored in the electronic system has not changed (guaranteed its integrity) according to what is in the land book.

The development of the world that all demands practicality so as to create various conveniences through the use of electronics makes written / letter evidence increasing, with the use of electronic documents. For evidentiary purposes, the Minister of ATR/BPN' Article 5 Paragraph (2) explains that electronic certificates can be accessed through an electronic system in the event of a dispute in the Court as stipulated in Article 1866 BW.

Recognition of the use of electronic evidence in court is also regulated in Article 6 of Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions which states that: The use of electronic evidence can be carried out as long as the evidence can be obtained and shown through an electronic system, guaranteed its integrity, can be accounted for, thus explaining a legal event.

From this description and the author's observations, it can be said that the application of electronic certificates has begun to run but there are still some who are not fully sure, and for now, the existence of analog certificates is still recognized. The application of electronic certificates based on rules that accommodate it to be said to be a digital data system is a necessity. Especially now that some people have made various transactions digitally. The step of certifying or legalizing land and digitizing it is a step to update the system from analog to digital. In terms of the process, the application of digitalization will start from government land and then business entities that will be withdrawn, then validated and stored in an electronic file system. Then it can be printed anywhere by the owner when needed.

So it can be said that any form of a copy of the land book either in analog or digital form based on the laws and regulations that accommodate it has the same legal force, namely as evidence of land rights and evidence in court in the event of a dispute in the future.

CONCLUSION

Based on the results of research and discussion, several things can be concluded as follows:

- 1) Legal Certainty for the Application of Electronic Certificates as Proof of Land Tenure in Indonesia is interpreted by: Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning land certificates in the form of laws and regulations; It has been based on facts that have been analyzed in the consideration section; It has been formulated in a clear way, where ministerial regulations are prepared in a structured manner in accordance with the rules of drafting laws and regulations; This Ministerial Regulation is not easily changed given its relevance to current conditions; Legal certainty is also related to evidence, namely electronic/digital certificates as valid legal evidence and is an extension of valid evidence as regulated in the applicable event law in Indonesia
- 2) Electronic Certificate Regulation as Proof of Land Tenure in the Land system in Indonesia as follows: Electronic certificate regulations as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning land certificates are in accordance with the land law system in Indonesia, namely Law No. 5 of 1960 concerning Basic Regulations of Agrarian Principles, Law Number 11 of 2020 concerning Job Creation and Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 7 of 2019 concerning the Second Amendment to the Regulation of the Minister of Agrarian State / Head of the National

Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration; Regulation of the Minister of Spatial Planning of the Head of the National Land Agency Number 1 of 2021 concerning Electronic Certificates in which it is explained about the Land Registration Procedure to obtain an Electronic Certificate including: Electronic Certificate Issuance is carried out with land registration for the first time Then Electronic Certificate Issuance through Media Transfer and then Electronic Certificate Issuance in the context of data maintenance, then an implementing regulation is issued from The above regulations are Government Regulation Number 18 of 2021 concerning management rights, land rights, flats, and land registration, where the implementation provisions have been regulated in article 84 paragraph (1) which states that the implementation and implementation of land registration can be carried out electronically, meaning that the procedure for analog and electronic land registration is not much different from its implementation to the process of issuing certificates both in the form of analog and Electronics.

Footnotes

- 1) Budi Harsono, 1997. Indonesian Agrarian Law, Jakarta: Djambatan, p. 2.
- 2) Herman Hermit, 2004. How to Obtain Land Certificates for Property Rights, State Land, and Local Government Land, Jakarta: CV. Mandar Forward. p 33
- 3) Supriadi, 2007. Agrarian law, Jakarta: Sinar Grafika, p. 93.
- 4) Kartini Muljandi and Gunawan Widjaja, 2007. Land Rights, Jakarta: Kencana, p. 14.
- 5) Sutedi, Adrian, 2006. Transfer of Land Rights and Registration, Jakarta: Sinar Grafika.
- 6) Oh mysternacle. M. Hanafi, Risk Management (Yogyakarta: Unit Publisher and Printing Sekolah Tinggi Ilmu Manajemen YKP, 2006), p.1.
- 7) Soejkanto, Soerjono, 1983. Indonesian Customary Law, Jakarta : Rajawali, p.25
- 8) Cashmere Business Feasibility Study (Revised Edition) (Jakarta: Prenada Media Group, 2015), p. 32.
- 9) D. Hardianti and M. Saifi, "Comparative Analysis of Financial Performance of Conventional Commercial Banks and Sharia Commercial Banks Based on Bank Financial Ratios: A Study on Conventional Commercial Banks and Sharia Commercial Banks Registered and Supervised by the Financial Services Authority (OJK) for the 2013-2016 Period.," Journal of Business Administration 60, no. 2 (2018): 10–18.
- 10) Hans Kelsen, General Theory of Law and State The original title (Theory of Law and State) was translated by Muttakin Apostle (Bandung: Nusamedia, 2010), p. 179.
- 11) Jimly Asshiddiqie, Hans Kelsen's Theory of Law (Jakarta: Press Constitution, 2009).
- 12) Koentjaraningrat Koentjaraningrat, "Legal Anthropology," Indonesian Anthropology, 2014, <https://doi.org/10.7454/ai.v0i47.3271>.
- 13) Satjipto Rahardjo, Legal Studies (Bandung: Citra Aditya Bakti, 2000), p. 121.
- 14) Ibid, p. 35.

- 15) Philip M. Hadjon, Protection of the People for the People in Indonesia (a study of its principles, its handling by the courts within the general judiciary and the establishment of the State Administrative Court) (Surabaya: PT. Bina Ilmu, 1987), p. 38.
- 16) Peter Mahmud Marzuki, Legal Research, Cet.2, (Jakarta : Kencana, 2008). p. 29 .
- 17) Sugiyono. Kombinas Research Methods (Mix Methods). Bandung: Alfabeta. 2015, p 137.
- 18) S. Nasution and M. Thomas, Guidebook for Making Thesis, Thesis, Dissertation and Papers, Jemmars, Bandung, 1988, p. 58.
- 19) Sugiyono, "Quantitative, Qualitative and R&D Research Methods," 26th (Bandung: Cv. Alfabeta, 2018), p. 34.
- 20) Ayi Ahadiat. Strategic Management: Multiperspective Theoretical Review. (Bandar Lampung: Research Institute of Universitas Lampung, 2010), p. 14
- 21) Alimuddin, N. H. (2021). Implementation of Electronic Certificates as a Guarantee of Legal Certainty of Land Rights Ownership in Indonesia. SASI, 27(3), 335–345. p. 62.
- 22) Fauzian, R. (2021). Electronic certificates guarantee legal certainty. <https://www.medcom.id/properti/news-properti/3NOq35Xk-sertifikat-elektronikmenjamin-kepastian-hukum>, retrieved on February 28, 2022, at 20.30 WIB
- 23) Judge, A. R. (2021). Juridical review of the procedure for issuing electronic certificates as authentic evidence of control over land rights. Mount Rinjani University. P 44
- 24) Hartanto, A. (2009). The problem of buying and selling land has not been certified. Jakarta, Laksban Media Tama. p 33
- 25) Lawalata, S. H., Matuankotta, J. K., & Uktolseja, N. (2021). Consignment/custody of money as a form of compensation for the transfer of land rights. PAMALI: Pattimura Magister Law Review, 1(1), 16–29
- 26) Permana, I., Satya, G. A. D., & Sudarsana, I. K. S. (2014). Legal certainty of land title certificates as proof of ownership of land parcels. In Kertha Semaya Journal, 2(5)
- 27) Purwaningdyah, M. W., & Wahyudi, A. (2014). Basic concepts of land administration and administration. Module.
- 28) Rizky Dawn Ramadhan. (2021). The Rise of Land Mafia Cases, Ahmad Sahroni: It Must Be Eradicated Thoroughly and the Police Need to Work Optimally. <https://depok.pikiranrakyat.com/nasional/pr-093312258/marak-kasus-mafia-tanah-ahmad-sahroni-harusdibasmi-hingga-tuntas-dan-polisi-perlu-bekerja-maksimal?page=>.
- 29) Silviana, A. (2021). The Urgency of Electronic Land Certificate in the Legal System of Land Registration in Indonesia. Administrative Law and Governance Journal, 4(1), 51–68
- 30) Sinaga, N. A. (2021). Guarantee of Legal Certainty of the Deed of Granting Liability Rights to Electronic Registration of Dependent Rights that Exceeds the Term Provisions Related to Creditor Protection. Journal of Familiar Champions, 6(4), 168– 182.

Bibliography

- 1) Alimuddin, N. H. (2021). Implementation of Electronic Certificates as a Guarantee of Legal Certainty of Land Rights Ownership in Indonesia. SASI, 27(3), 335–345.
- 2) Ayi Ahadiat. Strategic Management :Multiperspective Theoretical Review. (Bandar Lampung: Research Institute of Village University, 2010).
- 3) Budi Harsono, Indonesian Agrarian Law, Jakarta: Djambatan, 1997.

- 4) D. Hardianti and M. Saifi, "Comparative Analysis of Financial Performance of Conventional Commercial Banks and Sharia Commercial Banks Based on Bank Financial Ratios: A Study on Conventional Commercial Banks and Sharia Commercial Banks Registered and Supervised by the Financial Services Authority (OJK) for the 2013-2016 Period.," *Journal of Business Administration* 60, no. 2 (2018): 10–18.
- 5) Fauzian, R. (2021). Electronic certificates guarantee legal certainty. <https://www.medcom.id/properti/news-properti/3NOq35Xk-sertifikat-elektronik-menjamin-kepastian-hukum>, retrieved on February 28, 2022, at 20.30 WIB
- 6) Judge, A. R. Juridical review of the procedure for issuing electronic certificates as authentic evidence of tenure of land rights. Mount Rinjani University. 2021.
- 7) Hans Kelsen, *General Theory of Law and State The original title (Theory of Law and State) was translated by Muttakin Apostle* (Bandung: Nusamedia, 2010).
- 8) Hartanto, A. Problems of Buying and Selling Uncertified Land. Jakarta, Laksban Media Tama. 2009.
- 9) Herman Hermit, How to Obtain Land Certificates for Property Rights, State Land, and Local Government Land, Jakarta: CV. Mandar Forward. 2004.
- 10) Jimly Asshiddiqie, *Hans Kelsen's Theory of Law* (Jakarta: Press Constitution, 2009).
- 11) Kartini Muljandi and Gunawan Widjaja, *Land Rights*, Jakarta: Kencana, 2007.
- 12) *Cashmere Business Feasibility Study (Revised Edition)* (Jakarta: Prenada Media Group, 2015).
- 13) Koentjaraningrat Koentjaraningrat, "Legal Anthropology," *Indonesian Anthropology*, 2014, <https://doi.org/10.7454/ai.v0i47.3271>.
- 14) Lawalata, S. H., Matuankotta, J. K., & Uktolseja, N. (2021). Consignment/custody of money as a form of compensation for the transfer of land rights. *PAMALI: Pattimura Magister Law Review*, 1(1), 16–29
- 15) Oh mysternacle. M. Hanafi, *Risk Management* (Yogyakarta: Unit of Publishing and Printing of YKP College of Management Sciences, 2006).
- 16) Permana, I., Satya, G. A. D., & Sudarsana, I. K. S. Legal Certainty of Land Title Certificate as Proof of Land Ownership. In *Kertha Semaya Journal*, 2(5). (2014).
- 17) Peter Mahmud Marzuki, *Legal Research*, Cet.2, (Jakarta: Kencana, 2008).
- 18) Philip M. Hadjon, *Protection of the People for the People in Indonesia (a study of its principles, its handling by the courts within the general judiciary and the establishment of the State Administrative Court)* (Surabaya: PT. Bina Ilmu, 1987).
- 19) Purwaningdyah, M. W., & Wahyudi, A. Basic concepts of land administration and administration. Module. 2014.
- 20) Rizky Dawn Ramadhan. (2021). The Rise of Land Mafia Cases, Ahmad Sahroni: It Must Be Eradicated Thoroughly and the Police Need to Work Optimally. <https://depok.pikiranrakyat.com/nasional/pr-093312258/marak-kasus-mafia-tanah-ahmad-sahroni-harusdibasmi-hingga-tuntas-dan-polisi-perlu-bekerja-maksimal?page=>.
- 21) S. Nasution and M. Thomas, *Guidebook for Making Thesis, Thesis, Dissertation and Papers*, Jemmars, Bandung, 1988.
- 22) Satjipto Rahardjo, *Legal Studies* (Bandung: Citra Aditya Bakti, 2000).
- 23) Silviana, A. (2021). The Urgency of Electronic Land Certificate in the Legal System of Land Registration in Indonesia. *Administrative Law and Governance Journal*, 4(1), 51–68

- 24) Sinaga, N. A. (2021). Guarantee of Legal Certainty of the Deed of Granting Liability Rights to Electronic Registration of Dependent Rights that Exceeds the Term Provisions Related to Creditor Protection. *Journal of Familiar Champions*, 6(4), 168–182.
- 25) Soejkanto, Soerjono, *Indonesian Customary Law*, Jakarta: Rajawali, 1983.
- 26) Sugiyono. *Kombinas Research Methods (Mix Methods)*. Bandung: Alfabeta. 2015.
- 27) Sugiyono, "Quantitative, Qualitative and R&D Research Methods," *26th* (Bandung: Cv. Alfabeta, 2018).
- 28) Supriadi, *Agrarian Law*, Jakarta: Sinar Grafika, 2007.
- 29) Sutedi, Adrian, *Transfer of Land Rights and Registration*, Jakarta: Sinar Grafika. 2006.