



The Process of Proving Evidence of Electronic Certificates of Land Rights in Civil Cases Trials at the District Court

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ABSTRACT

The legal procedures for proving electronic certificates of land rights in district courts have not yet been regulated in Law number 11 of 2008 concerning Electronic Information and Transactions or 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. However, the rules do not yet exist. However, suppose later there is a case. In that case, the judge must still accept the case to be tried and decided, based on the assumption that the judge is considered to know the Law (*ius curia novit*) in order to achieve a simple, fast, and low-cost trial by applying the use of electronic certificates land rights as a reserve. At the same time, the primary evidence is a physical certificate of land rights. However, suppose it is used as the primary evidence. In that case, the proof method is by opening the electronic document data together before the litigants using a computer device connected to the internet in Court during the evidentiary event. The evidentiary strength of the electronic certificate of land rights as evidence at the Class IA Jayapura District Court trial is the same as the physical certificate of land rights, namely having the strength of physical, formal, and material evidence. The Government immediately issues procedural law rules in proving related to electronic certificates so that there is no legal vacuum.

INTRODUCTION

On September 24, 1960, the draft UUPA was ratified by President Soekarno as Law Number 5 of 1960 concerning Basic Agrarian Regulations known as UUPA (Arba, 2019). Primary land rights are the types of land rights stipulated in Article 16 paragraph (1), which consist of a) property rights, b) usufructuary rights; c) Building use rights; d) usufructuary rights; e) Rental rights; f) The right to clear land; g) The right to collect forest products; h) Other rights that are not included in the rights mentioned above which will be determined by Law as well as temporary rights mentioned in Article 53 (Arba, 2019).

In order to obtain legal certainty over a right as stipulated in Article 16 paragraph (1) of the UUPA, it is necessary to have a certificate of land rights carried out through land registration. Land registration is regulated in Article 19, paragraph 1 of the UUPA, which stipulates that in order to guarantee legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government regulations. These provisions were implemented by issuing Government Regulation 24 of 1997 concerning Land Registration.

In general, it can be said that those who have the right to apply for land rights over certain lands are people who have legal relations/interests in certain lands. Requesting is everyone's right, but to be granted or rejected is the State's authority (through its officials), which will make decisions based on statutory regulations (Perangin, 1991).

The Explanation of Government Regulation No. 10 of 1961 concerning Land Registration states that recording a right in the register of land books in the name of a person does not result in the person who should be entitled to the land will lose his rights (Sutedi, 2008). It was further stated that the person can still claim the rights of those registered in the land book as the rightful person. So, the registration method of rights regulated in this Government Regulation is not positive but negative. Thus the explanation of Government Regulation No. 10 of 1961 (Sutedi, 2008).

With the registration of land rights according to the procedure by the Land Agency, a certificate of land rights will be issued to guarantee legal certainty over the registered land. It will be given to the owner of the land rights physically. However, in a new development, the Minister of ATR/Head of BPN Number 1 of 2021 issued a regarding Electronic Certificates, which was signed on January 12, 2021; in which this Ministerial Regulation explains that electronic land certificates will replace physical land certificates, including the replacement of land books, measuring/drawing letters. area. The Head of the Land Office for each area will later be tasked with withdrawing the certificate to be combined with the land book and stored as Dwarka at the Land Office.

That land has high economic value, and because of this, there are often disputes about a particular land location by parties who feel they own the location or plot of land. These disputes can occur due to a change in location by selling by one party without involving another party in the case of inherited land, or there is a sale on sale of the exact location, or even a violation of other people's rights by entering other people's yards and building or grow crops or by building

fences that cross other people's boundaries. Ali Sofwan Husein argued that since land must meet human needs, either as the basis for creating that need or as a factor of production, it will continue to increase, even if Indonesia's population growth stops at the point of zero population growth. It was further stated that various individuals or legal entities are greedy for land and always try their best to control and collect the land of weak people who are squeezed by the bondage of economic progress (Husein, 1997).

A land rights dispute arises because of a complaint/objection from a person/legal entity that contains the truth and demands a State Administration decision in the land sector stipulated by the State Administration Officer within the Chomzah National Land Agency. (2003). Therefore, according to EffendiPerangin, preventing disputes is always better than winning cases in Court (Perangin, 1994).

If a dispute arises between the parties, especially those who feel disadvantaged, the dispute resolution process will be carried out through the stages regulated in civil procedural Law. The parties often carry out a settlement through negotiation. If this negotiation method is not successful, then mediation is carried out either by the National Land Agency (BPN) or the party entrusted by the parties to resolve the problem. If the mediation settlement is unsuccessful, the aggrieved party can submit a lawsuit to the District Court, which has the authority to adjudicate to examine and decide on the land claim per the applicable procedural Law.

In examining cases at the District Court, there is also a Mediation procedure where the case will end if the mediation is successful. The parties are punished for complying with the peace agreement made. However, if the mediation provided by the panel of judges is not successful, then based on the recommendation of the Mediator Judge or Non-Judge Mediator who is appointed by the trial, it will proceed with the process of reading the lawsuit, responding to answers, proving it and entering the reading of the judge's decision.

At the evidentiary stage at trial, written evidence must be prepared in the form of a certificate which is usually photocopied and then stamped and postmarked and must also be legislated in Court before being used as evidence at court hearings. The problem that is certainly not known to the public and even related law enforcement officials is the procedure for proving land e-certificates in Court because there is no precise regulation. So the problem in this research is how is the process of proving the electronic certificate of land rights as evidence in civil case trials at the Class District Court? Moreover, how is the strength of evidence from the electronic certificate of land rights as evidence in the trial of civil cases at the District Court?

LITERATURE REVIEW

Land Registration

This land registration is known as *Recht Cadastral* (Sutedi, 2008). Article 1 point 1 Government Regulation No. 24 of 1997 concerning land registration states that: Land registration is a series of activities carried out by the Government continuously, continuously and regularly, including collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and apartment units, including the issuance of certificates of proof of title for land parcels that already have rights and ownership rights to apartment units and certain rights that burden them.

Land registration is done in the form of maps and lists. Likewise, we know that one of the series of land registration activities is the maintenance of physical data and juridical data, which is also carried out in the form of maps and lists containing physical data and juridical data of land parcels and apartment units (Arba, 2019).

Physical data, as referred to in the provisions of Article 1 number 6 of Government Regulation No. 24 of 1997 concerning land registration, is stated that: physical data is information regarding the location, boundaries, and area of registered land parcels and apartment units, including information regarding the existence of buildings or parts of buildings on them.

From the definition above, it can be seen that the objects are land parcels and apartment units, and the information needed for these objects is regarding the location, boundaries, area, and buildings on them. Meanwhile, the juridical data referred to in the provisions of Article 1 number 6 of Government Regulation No. 24 of 1997 is a statement regarding the legal status of land parcels and apartment units that are registered, their rights holders, and the rights of other parties and other burdens that burden them (Arba, 2019).

Government Regulation Number 24 of 1997 is an implementation regulation of Article 19 of the LoGA concerning Land Registration as a substitute for Government Regulation Number 10 of 1961 concerning Land Registration. Arba (2019) argues that the principles of implementing Land Registration as stipulated in Article 2 PP No. 24 of 1997 are: 1) The principle of simplicity, that in land registration, it is intended that the main provisions and procedures can be easily understood by interested parties, especially land rights holders; 2) The Principle of Security, that in land registration it is meant to be carried out carefully and accurately so that the results can provide legal certainty by the purpose of the land registration itself; 3) The principle of affordability, that in land registration, make it affordable for those who need it, especially taking into account the needs and capabilities of the economically vulnerable groups. The services provided in the context of implementing land registration must be affordable to the parties who need them; 4) Sophisticated Principles; that in the implementation of the land registration, there is sufficient completeness in its implementation and continuity in the maintenance of the data. The available data must show the current State. For this reason, it is necessary to follow the obligation to register and record changes that occur at a later date. This principle requires continuous and sustainable maintenance of land registration data so that

the data stored at the Land Office is always by the actual conditions on the ground, and the public can obtain information regarding the correct data at any time; 5) Open Principle; that in land registration it should always be open to all parties so that for those who need information about land it will be easy to obtain the necessary information.

Indrajaya (2020) says that the purpose of land registration, as referred to in Article 3 of Government Regulation Number 24 of 1997, is; 1) to provide certainty and legal protection to rights holders over a parcel of land, apartment units, and other registered rights so that they can easily prove themselves as the holders of the rights in question, for this reason, the right holders are given certificates, 2) to provide information to interested parties including the Government so that they can quickly obtain the necessary data in carrying out legal actions regarding registered land parcels and apartment units. In order to carry out the information function, physical and juridical data and registered land plots and apartment units are open to the public, and 3) for the implementation of orderly land administration.

Thus, the purpose of land registration is to guarantee the legal certainty of land rights. The guarantee of legal certainty over land rights includes: a) Legal certainty over the object of the land parcel, namely the location of the land parcel, the location of the boundaries, and the extent (object of rights); b) Legal certainty over the subject of the rights, namely who is the owner (subject of rights) and; c) Legal certainty regarding the type of land rights (Indrajaya, 2020). Certainty regarding the object and subject of rights is very much needed in legal traffic regarding land rights, so the Government in most countries organizes a system of disclosure/announcement regarding land rights or a publicity system. Publicity means that everyone can determine all land rights and all legal actions regarding land (Arba, 2019).

The publicity system, in its announcement, adheres to the principle of specialization, namely a way of setting boundaries so that the identity of a plot of land becomes clear, the location of the boundaries, and the extent. With this publicity system, a public register is maintained in the form of maps and land registers, lists of measuring papers, lists of names, and lists of land books. Arba (2019) says that to guarantee legal certainty of land rights, land registration must include two activities: a) Cadastre of rights, namely activities of measuring and mapping land parcels with rights and registration of these land parcels in the register -land register. Plots of land with rights are plots of land owned by individuals or legal entities with certain rights; b) Registration of rights, namely the activity of registering rights in the land book registers of the rights holders).

Land Registration Publication System

Inland registration has several land registration systems adopted by many countries implementing land registration. The land registration system is as follows:

1. Torren's System

This system is better known as *The Real Property Act* or *Torrens Act*, which came into force in southern Australia in 1858. As the name implies, this system was created by Sir Robert Torrens. This system was later regulated by many other countries and has been adapted to the material laws of each country, but the basic system is still the same (Arba, 2019). Adrian Sutedi argues that the registration system used is the registration of titles, as used in implementing land registration according to Government Regulation No. 10 of 1961, not the deed registration system. It was further stated that this was evident from the existence of a land book as a document containing juridical and physical data that was collected and presented, as well as the issuance of a certificate as proof of registered rights (Sutedi, 2008).

According to the Torrens system, land certificates are the most complete and inviolable evidence of land rights holders. Compensation for the valid owner is provided through an insurance fund. Changing the land book is prohibited, except if the land rights certificate was obtained using forgery or fraud (Arba, 2019).

Furthermore, Arba (2019) argues that the advantages of the Torrens system, according to its creator Sir Robert Torrens are as follows: a) Uncertainty is replaced by certainty, b) The cost of switching is reduced from pounds to shillings, time from months to days, c) Unclear and convoluted descriptions be clear and concise, d) Agreements are simplified in such a way that everyone can take care of their own interests, e) Fraud is strictly prohibited, f) Many property rights to land have decreased in value due to uncertainty over land rights returned to their true value, and g) The process is simplified by eliminating a few things.

2. *Positive System*

Widiyanti et al. (1988) said that if a person as a subject of rights has his name registered in the Land Book, his rights have positive power and cannot be disputed. According to Arba (2019), the positive system in land registration states that what is listed in the land book and the proof of title issued is indisputable evidence. If a third party acts on the basis of the evidence, then he gets absolute protection even if later it turns out that the information contained therein is not accurate. It was further stated that the executor of land registration plays an active role in thoroughly investigating whether land rights can be registered in a person's name or not.

Like the Torrens system (Arba, 2019) says that the positive system also has several advantages, namely: a) the certainty of the land book is absolute; b) implementation of the land registration act actively and thoroughly; and c) ordinary people easily understand the working mechanism of land rights issuers. However, this system also has weaknesses, namely: a) due to the active and thorough implementation of land registration, the time taken is very long; b) the owner of the actual land rights, will lose things; c) the authority of the Court is included in the administrative authority because the issuance of a certificate cannot be contested.

3. *Negative System*

Indrajaya et al. (2020) argue that according to this system, everything stated in the land certificate is always considered correct until the party in question can prove a contrary situation before the Court. Arba (2019) also argues that according to the negative system, the certificate of land rights issued is strong proof of rights. This means that all information in the certificate has legal force and must be accepted by the judge as accurate information as long as other evidence does not prove otherwise. If, at a later date, it turns out that the information on the certificate is incorrect, then based on a District Court decision that has permanent legal force, the certificate can be amended as necessary.

mem plus juris principle protects the actual right holder from the actions of others who transfer their rights without the actual right holder knowing (Arba, 2019). The main feature of the negative system is that the registration of land rights does not guarantee that the name registered in the land book cannot be disputed if the name registered is not the real owner. Another main feature is that the official behind the name of the land plays a passive role, meaning that he is not obliged to investigate the truth of the documents submitted to him, Arba (2019).

The advantage of a hostile system is that legal protection is given to the faithful (actual) right-holders. Meanwhile, the weaknesses of this system are: a) the passive role of officials behind land titles causes overlapping of land certificates; b) the working mechanism of issuing land rights needs to be better understood by the ordinary people Arba (2019).

UUPA does not explicitly state which registration system is adopted from the three systems that have been described. However, if it is based on the provisions of Article 19 paragraph (2) of the UUPA, namely the land registration activity that ends is the granting of proof of rights which acts as a "strong means of proof," it is clear that the UUPA adheres to a negative system in terms of land registration. Article 32, paragraph (1) of the UUPA adheres to a negative system considering that land registration takes a relatively short period. However, this does not mean that based on a hostile system, the implementation of land registration is lacking or not thorough. Regarding the land registration system adopted by the UUPA, several legal experts have responded as described below.

Regarding the land registration system adopted by the UUPA, there are several opinions among legal experts. Harsono (1997) stated that land registration in the UUPA does not adhere to a purely negative system but a negative system with a positive tendency. The definition of a positive tendency is the active role of executors of land registration. The active role is, for example: 1) investigate the origin of the land very thoroughly (Article 3 paragraph (2) PP No. 10 of 1961; 2) Announcement for 3 (three) months for the first time land registration (Article 6 paragraph (1) PP No. 10 of 1961. The characteristics of a negative land registration system with a positive tendency as adopted by the BAL are: 1) The name of the land owner listed in the register of the land book is the correct land owner and protected by Law, and is a proof of the highest title; 2) Every event of a transfer of names through careful research, terms, and procedures based on the principle of openness (*openbaar heads begins*); 3) The boundaries of each plot of land (*Persil*) are measured and drawn on a registration

map with a scale of 1: 1,000. This measure makes it possible to re-examine parcel boundaries if a boundary dispute occurs at a later date; 4) Landowners who are listed in the land book and certificate can still be contested through the District Court by the National Land Agency; and 5) The Government does not provide funds for payment of compensation to the community due to administrative errors in land registration. Aggrieved communities can sue through the District Court to obtain their rights.

As for the object of land registration according to the provisions of Article 9 PP No. 24 of 1997, objects of land registration include 1) Plots of land which are owned with property rights, usufructuary rights, building use rights, and usufructuary rights; 2) Land with Management Rights; 3) Waqf Land; 4) Ownership of Flats; 5) Mortgage Right; 6) State Land.

Specifically for State Land as an object of Land Registration, registration is carried out only by way of recording land parcels State in the land register (Article 9 paragraph (2)). The administrative area unit for Land Registration is the village or village. Meanwhile, specifically for the registration of land use rights, management rights, mortgage rights, and state land administrative area units, business registration is Regency/Municipality. Land registration for the first time (Article 13) is carried out in two ways: 1) Systematically, based on a work plan and carried out in areas determined by the Minister; 2) Sporadically, land registration is carried out at the request of interested parties.

With the issuance of the provisions of the Minister of Agrarian Affairs/Head of BPN Number 1 of 2021 regarding Electronic Certificates signed on January 12, 2021, where in Article 1 number 8 it is stated that Electronic Certificates, from now on referred to as e-Certificates, are certificates issued through an electronic system in the form of electronic documents.

Then in Article 1 number 2, it is stated that Electronic Documents are any electronic information that is created, forwarded, sent, received, or stored in an analog, digital, electromagnetic, optical, or similar form that can be seen, displayed, and heard through a computer or system. Electronic, including but not limited to writing, sound, pictures, maps, designs, photographs, or the like, letters, numerals, numbers, access codes, symbols, or perforations that have meaning or meaning or can be understood by people who can understand them.

Settlement of Land Disputes in the District Court

Before a case is submitted to the Court, in general, efforts to settle it outside the Court have been taken to reconcile the parties by finding a solution to the problem that is mutually agreed upon by the parties. It is also inseparable from land issues which often become disputes between parties who feel they have an interest or are disadvantaged.

Regency /City National Land Agency generally becomes the mediator in resolving land disputes between the parties. If the mediation is successful, the dispute ends, and the parties must carry out the contents of the mutual agreement. However, if it is not successful, then the case can be continued by the party who feels aggrieved to Court. Parties who feel aggrieved regarding the land in dispute can only file a lawsuit against the defendant to the District Court, which has the authority to examine and adjudicate the case.

After the lawsuit is addressed to the chairman of the district court through the Civil Registrar and then the lawsuit is registered and given a registration number, and after paying the down payment for the case, the lawsuit is submitted to the Chief Justice, who then appoints a panel of judges and a replacement clerk. However, before the trial, mediation efforts will be made in the district court by a mediation judge appointed by the chairman of the district court. If the mediation succeeds, the case ends, and the parties are punished for complying with the amicable decision.

However, if there is no amicable agreement, the mediator judge will convey the results to the judges. The chairman of the panel of judges then set the day for the first trial and ordered the clerks to summon the plaintiff and the defendant to attend on the first day of the hearing to hear the reading of the lawsuit. Then in the following weeks, it continued with the answer-and-response event. After answering questions, the next step is the proving stage. The proof attempts to convince the judge about the truth of the arguments in a dispute or case. According to Subekti (1995), proving is convincing the judge about the truth of the arguments or arguments put forward in a dispute.

The proof of this is set out in the fourth book, The Civil Code, regarding proof and expiry date is also regulated in the HIR/RBg. The arguments that must be proven are only matters in dispute, namely the arguments put forward by one party but denied or denied by the other party. The argument put forward by one party and acknowledged by the other party does not need to be proven because there is no dispute, likewise, with matters submitted by one of the parties whose truth is not expressly acknowledged or denied by the opposing party. In the Civil Procedure Code, the attitude of not denying is equated with admitting (Subekti, 1995).

As a guideline regarding what is proven or the burden of proof, refer to Article 1865 of the Civil Code, Article 163 HIR/ Article 283 RBg. In the provisions of this article, it turns out that what can be proven is not only events but also concerning abstract rights. Article 1865 of the Civil Code states that "everyone who argues that he has a right, or, to confirm his rights or refute someone else's rights, refers to an event, is obliged to prove the existence of said right or event."

The division of the burden of proof is difficult to determine because it needs policy or accuracy in giving this burden of proof. However, in practice, the plaintiff is usually burdened first to submit evidence based on consideration, as referred to in Article 1865 of the Civil Code. After that, it was the defendant's turn to present his evidence. According to Article 164 HIR/Article 284 RBg. and Article 1866 of the Civil Code, evidence in civil cases consists of 1) documentary evidence, 2) witness evidence, 3) allegations, 4) confessions, and 5) oaths.

Kurdianto (1991) argues that a letter is written evidence that contains writing to express one's thoughts as evidence. This is the primary evidence in the traffic of civil evidence because it relates to the truth sought by the judge.

According to the form, the letter is divided into deed and non-deed. A letter contains punctuation marks intended to pour out one's heart or convey one's thoughts and is used as evidence (Mertokusumo, 2002). There are two types of deeds, namely: authentic deeds and private deeds. An authentic deed is

determined by Law, made by or before public officials with power where the deed was done (Article 1968 of the Civil Code, Article 165 HIR/283 RBg.) What is meant by public officials/employees who have the power to do so and are stated by Law have the authority to do authentic deeds, for example, Notaries, Civil Registry Officers, Judges, and Registrars.

If an authentic deed is used as evidence in Court, then each deed has three types of strength of evidence: 1) strength of birth evidence, 2) strength of formal evidence, and 3) the strength of material evidence. An authentic deed is used as evidence at trial; from the outside, the judge is sure that the facts are authentic as long as it is not proven otherwise that the facts are fake. This means that what is certain is the signature of the parties and or officials.

The strength of formal evidence here concerns the truth of the events mentioned in the authentic deed. This means that officials and interested parties explain and carry out what is stated in the authentic deed, which is true. In this case, the date and place where the deed was drawn up and the signature's authenticity are specific. The strength of material evidence here concerns the truth of the contents of an authentic deed, meaning that what is contained in a deed really happened between the parties.

1. Witness Evidence

Evidence by witnesses in practice is commonly called testimony (Sutantio et al., 2002). Testimony is the certainty given to the judge in Court about events that have been seen, and experienced by themselves, regarding something in dispute by explaining verbally and personally by a person who is not a party to the case Kurdianto (1991).

In proving with witnesses, more than one witness should be used because the testimony of a single witness without being supported by other evidence is not considered evidence. Witness obligations: 1) the obligation to appear before Court after being duly summoned; 2) the obligation to take an oath according to their respective religions; and 3) the obligation to provide information.

2. Prejudice Evidence.

The presupposition is a conclusion drawn from an event that is well known or considered proven towards an event that is not known, meaning it has not been proven. There are two kinds of assumptions:

- a. Predictions under the Act. Predictions according to the Law, namely presumptions based on articles in the Law, for example:
 - Article 1394 of the Civil Code (concerning periodic payments) states that if a person has the last three receipts in a row, he is deemed to have paid the previous account.
 - Article 1977 paragraph 1 of the Civil Code states that a person who controls a movable object is considered the owner.
- b. Predictions according to the judge. What is meant is that the judge concludes the stages of events told by each witness.

3. Evidence of Confession

Confession is a unilateral statement from one of the parties in a case in which he acknowledges what was stated by the opposing party or part of what was stated by the opposing party. There are two kinds of confessions: confessions made before the Court and confessions made outside the Court. In Court, one party may admit (justify) the other party's argument. While outside the trial, there was an acknowledgment by one of the parties of the other party's argument, and a third party heard this. Therefore, this third party explained the testimony regarding the confession of one of these parties at trial.

4. Oath Proof

In HIR, this oath evidence is divided into three types: complementary oath (*suppletion*), *decision* oath, and appraiser oath (*estimator*). A judge orders a superior or complementary oath because of his position to one of the parties to complete the proof of the event in dispute as the basis for his decision. A decision or breaker oath is an oath imposed at the request of one party to the opponent (Mertokusumo, 2002).

The appraiser's oath determines the amount of money allowed or granted (Sutantio et al., 2002). The data in this field will be linked to the arguments of both parties and will be considered by the judge in deciding the case.

METHODOLOGY

This research examines the rules of positive Law, especially the UUHT and the Civil Code, PPAT, so the approach is normative juridical and analytical descriptive in nature. This research uses literature or document studies. Legal materials that have been collected are compiled regularly, then analyzed qualitatively.

RESEARCH RESULT & DISCUSSION

Procedure for Proving the Electronic Certificate of Land Rights in Court

Regulation of electronic certificates in Law Number 11 of 2008 concerning Information and Electronic Transactions.

In Article 5 of Law Number 11 of 2008, it is stated that: 1) Electronic Information and Electronic Documents and their printouts are valid legal evidence; 2) Electronic Information and Electronic Documents and printouts, as referred to in paragraph (1) are an extension of valid evidence by the applicable Law of Procedure in Indonesia; 3) Electronic Information and Electronic Documents are declared valid when using Electronic Systems by the provisions stipulated in this Law; 4) Provisions regarding Electronic information and Electronic Documents as referred to in paragraph (1) do not apply to a) Letters which according to the Law must be made in written form; and b) Letters and their documents which according to the Law must be drawn up in the form of a notarial deed or a deed drawn up by the official who did the deed.

Regarding Electronic Systems in Article 1 number 5 of Law number 11 of 2008 concerning Information and Electronic Transactions, it is stated that electronic systems are a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit and distribute Electronic Information.

Article 1 number 9 of Law Number 11 of 2008 concerning Information and Electronic Transactions states that Electronic Certificates are electronic certificates that contain electronic signatures and identities that show the legal subject status of the parties in electronic transactions issued by the Certificate Operator. Electronic.

Whereas in Article 1 number 12 of Law Number 11 of 2008 concerning Information and Electronic Transactions, it is stated that an electronic signature is a signature consisting of electronic information that is attached to, associated with, or related to other electronic information that is used as a means of verification and authentication.

Article 6 Law number 11 of 2008 concerning Information and Electronic Transactions states that if there are provisions other than those stipulated in Article 5 paragraph (4), which require that information must be in written or original form, electronic information, and electronic documents are considered valid. as long as the information contained therein can be accessed, displayed, guaranteed for its integrity, and can be accounted for to explain a situation.

Article 7 of Law number 11 of 2008 concerning Electronic Information and Transactions states that every person who claims rights reinforces existing rights or rejects the rights of others based on the presence of electronic information and electronic documents must ensure that electronic information and the electronic documents in it originate from an electronic system that meets the requirements based on the Laws and Regulations.

Arrangements for land rights electronic certificates

In 2021 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 been issued, with the consideration that to realize services 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. Furthermore, to realize electronic-based land services, land registration activities are issued in the form of electronic documents.

Electronic Documents are any electronic information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and heard through a computer or electronic system but is not limited to writing, sounds, pictures, maps, plans, photographs or the like, letters, numerals, numbers, access codes, symbols or perforations that have meaning or significance or can be understood by people who can understand them.

An electronic certificate, from now on referred to as an e-certificate, is issued through an electronic system as an electronic document. Land rights in question are rights obtained from legal relations between rights holders and land, including space on land and underground to control, own, use, utilize, and maintain land, space above land, and cellar.

Procedure for Proving the Electronic Certificate of Land Rights in Court

So far, land-related disputes in Court usually involve the parties submitting evidence in the form of certificates of land rights either ownership rights or other physical rights Court as evidence. The certificate is photocopied and then brought by the interested party to the post office, stamped, signed by the postal employee, and postmarked. After that, a copy of the postmarked copy is taken to the District Court to be legislated according to the original or a photocopy of the certificate by the Civil Registrar at the Court by paying the legal fee by the applicable regulations. After the Civil Registry legalizes the evidence, it can be submitted in court proceedings.

However, if it is related to the electronic certificate of land rights, new regulations have been issued, so there are still many pros and cons regarding the electronic certificate of land rights in evidence in Court. Article 10 of the ATR/BPN Ministerial Regulation it is stated that:

- (1) Proof of rights is carried out based on written evidence regarding land ownership in the form of evidence for the registration of new rights and old rights by statutory provisions regarding land registration.
- (2) Written evidence, as referred to in paragraph (1), can be in the form of:
 - a. Electronic documents issued through Electronic Systems and
 - b. Documents that are transferred to the media become electronic documents.

Because the ATR/BPN Ministerial Regulation regarding electronic certificates is new, some suggest postponing its implementation because it is expected to cause many problems. There is also an opinion that the electronic land rights certificate should be a backup of the conventional certificate.

This means that the physical certificate is used as evidence in Court, while the electronic certificate is only used as a backup. Thus the proof by utilizing electronic data is only used if parties object as regulated in Article 7 of the Electronic Information and Transaction Law. If objections are raised based on Article 7, then the proof of the electronic document is opened to see the truth of the data.

John Aufa, Head of the ATR/BPN Regional Office for Papua Province, also expressed that the registration uses a favorable system to apply electronic certificates. Moreover, the data may be in the form of a card, such as an ID card, which, when opened, all the data in the card. This means that what is stated in the land book and certificate of title issued is indisputable evidence.

Therefore, it means that the name listed in the electronic certificate based on the electronic document is the holder of the rights to the land in question because the land has been registered according to the applicable rules, namely ATR/BPN Ministerial Regulation Number 1 of 2021. However, referring to the opinion of HM Arba that if a dispute occurs in Court, the system adopted is harmful because, according to a negative system, the certificate of land rights issued is a strong proof of title. This means that all information in the certificate has legal force and must be accepted by the judge as accurate information as long as other evidence does not prove otherwise. If, at a later date, it turns out that the information on the certificate is incorrect, then based on a District Court decision that has permanent legal force, the certificate can be amended as necessary.

This means that the strength of material proof is applied in electronic certificates when there is a dispute over land rights. However, until now, there are no regulations governing the legal procedure if a dispute occurs and the case is filed in Court, especially regarding the process of proving an electronic certificate.

If adequately reviewed, Law Number 11 of 2008 concerning Electronic Information and Transactions and 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 not yet regulated the legal procedures for the procedure in the event of a dispute regarding an electronic certificate.

Therefore, if there is a dispute related to electronic certificates in Court, the panel of judges must be active in assisting the smooth running of the trial, as stated by Sudikno Mertokusumo that judges must actively lead the trial, expedite the course of the trial, assist both parties in seeking the truth, but in examining civil cases The judge must act *tut wuri*. The events proposed by the parties bind the judge.

Even though the rules do not yet exist, the judge must still accept the case to be tried or examined and decided based on the assumption that the judge is deemed to know the Law (*ius curia novit*). Article 4, paragraph (2) of the Law on Justice states that the Court assists justice seekers and tries to overcome all obstacles and obstacles in order to achieve a simple, fast, and low-cost trial.

Strength Proof of electronic certificates of land rights in Court

Certificates are classified into letters that will be used as evidence for the parties later if there is a dispute regarding the certificate's contents. This evidence is the primary evidence in the traffic of civil evidence because it relates to the truth sought by the judge, and the land certificate is classified as an authentic deed because it is a deed in the form determined by Law, made by or before public officials in power for that at the place where the deed was done as referred to in Article 1968 of the Civil Code, Article 165 HIR/283 RBg.

An electronic certificate is classified as an authentic and official deed because an authorized official issue it. In general, if an authentic deed is used as evidence in Court, then each deed has 3 kinds of strength of evidence: strength of birth evidence, the strength of formal evidence, and strength of material evidence. An authentic deed that is used as evidence in Court, from the outside, the judge is sure that the deed is authentic as long as it is not proven otherwise that the deed is fake.

Therefore, it is necessary to prepare a computer device supported by the internet to open and view the front of the electronic certificate, such as the title and other writing. The strength of formal evidence here concerns the truth of the data stated in the certificate of land rights, such as the date and place where the certificate was issued and the signature. The strength of material evidence here concerns the truth of the contents of the authentic deed. This means the contents or data in an electronic certificate of land rights are correct. Thus the strength of proof of an electronic certificate of land rights is the same as that of a certificate issued

conventionally; that is, it has three kinds of evidentiary strengths: birth, formal, and material.

CONCLUSIONS AND RECOMMENDATIONS

The legal procedures for proving electronic certificates of land rights in district courts have not yet been regulated in Law number 11 of 2008 concerning Electronic Information and Transactions or 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, and although the rules do not yet exist, if later there is a case, the judge must still accept the case to be tried and decided, based on the assumption that the judge is considered to know the Law (*ius curia novit*) in order to achieve a simple, fast and low-cost trial by applying the use of electronic certificates land rights as a reserve while the primary evidence is a physical certificate of land rights. However, if it is used as the primary evidence, the method of proof is by opening the electronic document data together before the litigants using a computer device connected to the internet in Court during the evidentiary event.

The evidentiary strength of the electronic certificate of land rights as evidence at the Class IA Jayapura District Court trial is the same as the physical certificate of land rights, namely having the strength of physical, formal, and material evidence.

Therefore, the authors recommend:

1. The Government immediately issues procedural law rules in proving related to electronic certificates so that there is no legal vacuum.
2. The Government, in this case, the ATR/BPN, to conduct a trial first to find out the deficiencies in this certificate to be addressed before being implemented to avoid falsification of data by irresponsible parties and to prepare a unique laboratory for data processing.

ADVANCED RESEARCH

In writing this article the researcher realizes that there are still many shortcomings in terms of language, writing, and form of presentation considering the limited knowledge and abilities of the researchers themselves. Therefore, for the perfection of the article, the researcher expects constructive criticism and suggestions from various parties.

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